



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

March 30, 2009

Hon. David L. Sieradzki
Hogan & Harsto
55 Thirteenth Street NW
Washington, DC 20004

Re: SouthEast Telephone, Inc. - Petition for Confidential Treatment
received May 3, 2007 - PSC Reference - Case No. 2006-00316

Dear Mr. Sieradzki:

Please find enclosed a copy of your Petition for Confidential Treatment in the above styled case and the Commission's response. I regret the Commission's untimely response to your Petition. In the confusion of several retirements in 2008, a group of Petitions was left unanswered. We are responding to these Petitions for Confidential Treatment as fast as possible. As we work our way through the Petitions, you may receive additional outdated responses and thank you for your patience.

To correct the situation, we have established an electronic logging system so that we avoid a recurrence. I apologize for any inconvenience this may have caused you or your client. Please contact me should you have any questions with regard to any Petitions for Confidential Treatment.

Sincerely,

A handwritten signature in black ink, appearing to read "Helton Helton".

Helton Helton
General Counsel

kg/

cc: Parties of Record



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Hogan & Harston
55 Thirteenth Street NW
Washington, DC 20004

Re: SouthEast Telephone, Inc. - Petition for Confidential Treatment received May 3, 2007
PSC Reference – Case No. 2006-00316

Dear Mr. Atkinson:

The Public Service Commission has received the Petition for Confidential Treatment you filed on May 3, 2007 on behalf of SouthEast Telephone, Inc., to protect certain information filed with the Commission as confidential under Section 7 of 807 KAR 5:001 and KRS 61.870 et. seq. The information you seek to have treated as confidential is identified as portions of the Affidavit of Charles E. Richardson, III of Momentum Telecom, Inc. dated May 1, 2007 filed as an attachment to SouthEast's May 1, 2007 Opposition to AT&T Kentucky's Motion for Reconsideration and/or Rehearing. Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise SouthEast's competitive position in the industry and result in an unfair commercial advantage to SouthEast's competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information you seek to keep confidential is not of a confidential or proprietary nature and therefore does not meet the criteria for confidential protection, and is **DENIED**.

The information denied confidential treatment will be withheld from public inspection for 20 days from the date of this letter in accordance with 807 KAR 5:001. If you disagree with the Commission's decision, you may seek a rehearing with the Commission within 20 days of the date of this letter under the provisions of KRS 278.400.

Sincerely,


Jeff Derouen
Executive Director

kg/

Howell
RECEIVED

MAY 02 2007

**HOGAN &
HARTSON**

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COMMISSION**
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May 1, 2007

David L. Sieradzki
Partner
+1.202.637.6462
DL.Sieradzki@hhlaw.com

Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd., PO Box 615
Frankfort, KY 40602



Re: *Petition of SouthEast Tel., Inc., for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection Under the Telecommunications Act of 1996, Case No. 2006-00316*

Dear Ms. O'Donnell:

On behalf of SouthEast Telephone, Inc. ("SouthEast"), I am transmitting with this letter SouthEast's Opposition to the Motion for Reconsideration and/or Rehearing filed by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky. A hard copy of this letter and the attachments will be sent to the Commission tomorrow.

SouthEast's Opposition is accompanied by two attachments: (1) the affidavit of Darrell L. Maynard, President of SouthEast; and (2) the affidavit of Charles E. Richardson III, Vice President and General Counsel of Momentum Telecom, Inc.

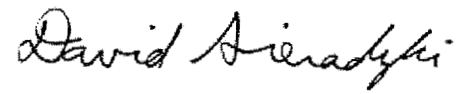
The electronic version of Mr. Maynard's affidavit is unsigned, but is identical to the version that will be signed, notarized, and submitted in hard copy to the Commission tomorrow.

There are two versions of Mr. Richardson's affidavit: (a) a confidential version, and (b) a redacted version to be made available to the public, with certain confidential information deleted. We respectfully request that the confidential version be withheld from public inspection.

If you have any questions, please contact me.

Beth O'Donnell
May 1, 2007
Page 2

Respectfully submitted,

A handwritten signature in cursive script that reads "David L. Sieradzki".

David L. Sieradzki
Counsel for SouthEast Telephone, Inc.

cc: Amy E. Dougherty
Mary K. Keyer
Andrew D. Shore
Darrell Maynard

Howell

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MAY 03 2007

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of)
)
Petition of SouthEast Telephone, Inc. for Arbitration of) Case No. 2006-00316
Certain Terms and Conditions of Proposed Agreement)
with BellSouth Telecommunications, Inc. Concerning)
Interconnection Under the Telecommunications Act of)
1996)

PETITION FOR CONFIDENTIAL TREATMENT

SouthEast Telephone, Inc. ("SouthEast"), pursuant to 807 KAR 5:001 § 7, respectfully request that the Commission grant confidential treatment of the confidential version of the Affidavit of Charles E. Richardson III, General Counsel and Vice President of Momentum Telecom, Inc. ("Momentum"), which was filed as an attachment to SouthEast's May 1, 2007, Opposition to AT&T Kentucky's Motion for Reconsideration and/or Rehearing.

The Kentucky Open Records Act, KRS 61.878(1)(c), exempts from disclosure certain commercial information that, if disclosed, would permit an unfair advantage to competitors of the party seeking confidentiality. The confidential version of Mr. Richardson's Affidavit includes information relating to an arrangement that BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") refers to as a so-called "commercial agreement." To the extent that AT&T Kentucky may take the position that disclosure of such information would have any advantageous or disadvantageous impact on competitors, and in an abundance of caution, SouthEast respectfully requests confidential treatment.

Respectfully submitted,

/s/

David L. Sieradzki
Hogan & Hartson, LLP
555 – 13th St., N.W.
Washington, D.C. 20004
(202) 637-6462
DLsieradzki@hhlaw.com

Bethany Bowersock
SouthEast Telephone, Inc.
106 Power Drive
Pikeville, KY 41502

Counsel for SouthEast Telephone, Inc.

May 2, 2007

Certificate of Service

It is hereby certified that a true and correct copy of the foregoing was served on the following individual via e-mail, this 2nd day of May 2007:

Mary K. Keyer
BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky
601 W. Chestnut St., Room 407
Louisville, KY 40203
Mary.Keyer@BellSouth.com

/s/

David L. Sieradzki

PUBLIC VERSION

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:)	
)	
Petition of SouthEast Telephone, Inc., for Arbitration of)	
Certain Terms and Conditions of Proposed Agreement)	Case No. 2006-00316
With BellSouth Telecommunications, Inc. Concerning)	
Interconnection Under the Telecommunications Act of)	
1996		

AFFIDAVIT

**STATE OF ALABAMA
SHELBY COUNTY**

Comes now Charles E. Richardson III, General Counsel and Vice President of Momentum Telecom, Inc. (“Mornentum”), and being first duly sworn, does depose and say as follows:

1. I serve Momentum, a competitive local exchange carrier (“CLEC”) operating in the state of Kentucky, as its General Counsel and Vice President and have done so during all relevant periods covered by the matters raised in this Affidavit. Momentum has been providing service in the state of Kentucky since December 16, 2001. Its customers are overwhelmingly residential consumers, many located in small towns and rural areas throughout the state.
2. I execute this affidavit in response to the representation by BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky (“AT&T Kentucky” or “AT&T”) that its “commercial agreements” are evidence that its local switching rates are just and reasonable, to-wit: **[Begin Confidential]**

PUBLIC VERSION

[End Confidential]

3. As a threshold point, the mere existence of these agreements provides no evidence as to whether the rates themselves are just and reasonable. A firm with market power – which AT&T undeniably enjoys in Kentucky – has the ability to charge rates that provide economic rents. Indeed, the entire purpose of rate regulation is to prevent a firm with market power from charging rates that are unreasonably high. The Commission cannot determine whether the rates are just and reasonable merely by observing the existence of commercial agreements² but must consider other indicia such as (at a minimum) the relationship of the price to cost and the effect of the price on the pattern of competition. The Commission should also consider the circumstances confronting CLECs that signed AT&T Kentucky's commercial agreements, including their motivation and alternatives.

4. Momentum is presumably one of the CLECs referred to by AT&T Kentucky, in that it currently operates in Kentucky under a March 2007 commercial agreement, which replaced a March 2006 commercial agreement, which, in turn, replaced an expired interconnection agreement.³ Despite repeated requests, AT&T Kentucky categorically refused to negotiate the rates it unilaterally incorporated in the two commercial agreements. AT&T Kentucky's negotiating posture in connection with its commercial agreements was—and has always been—“take it or leave it” with respect to all rates. AT&T Kentucky explained its refusal to negotiate with Momentum using the same argument offered in its Motion: **[Begin Confidential]**

¹ See Motion for Reconsideration and/or Rehearing of BellSouth Telecommunications, Inc.,(d/b/a AT&T Kentucky), Case No. 2006-00316, at 6-7 (filed April 20, 2007) (“AT&T Kentucky Motion”).

² The Commission should view the term “commercial agreement” with the same skepticism Voltaire used to describe the Holy Roman Empire – “As neither Holy, nor Roman, nor an Empire.” AT&T Kentucky's commercial agreements are neither commercial nor agreements as the term is commonly used to denote a meeting of the minds between two parties negotiating from equal bargaining positions.

³ The expired interconnection agreement is the subject of an arbitration pending before this Commission (Case No. 2006-00058).

PUBLIC VERSION

[End Confidential]

5. AT&T Kentucky's reasoning is a perfect tautology: AT&T's rates are just and reasonable because other CLECs have agreed to them, and because other CLECs have agreed to them, the rates must be just and reasonable. Consequently, *any* commercial agreement signed by *any* CLEC for *any* purpose, *i.e.* exiting the market, or under duress, or for services other than loops, transport or switching, becomes, in AT&T Kentucky's world, *ipso facto* evidence of just and reasonable rates. The Commission should not forget that, just one year ago, BellSouth would point to its "agreement" with AT&T as evidence of just and reasonable rates, only later to concede that AT&T was exiting and, therefore, uninterested in serving the mass market.

6. In reality, Momentum's commercial agreements with AT&T Kentucky are evidence of unjust and unreasonable rate levels, accelerating Momentum's exit from the Kentucky residential market. At the time of the FCC's *Triennial Review Remand Order*,⁵ Momentum served approximately **[Begin Confidential]** **[End Confidential]** Kentucky telephone consumers. Under AT&T Kentucky's commercial agreements, Momentum's line count now stands at just under **[Begin Confidential]** **[End Confidential]**, which represents a decrease of almost **[Begin Confidential]** **[End Confidential]** over two years. Momentum has suffered this substantial decline despite its every effort to find alternatives to AT&T Kentucky-provided local switching. With no alternative provider to AT&T Kentucky, Momentum has been forced to pursue legal redress for AT&T's failure to offer just and reasonable rates.⁶

⁴ **[Begin Confidential]**

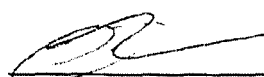

[End Confidential]

⁵ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* WC Docket Nos. 04-313, 01-338, Order on Remand, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*"), *affirmed Covad Communications v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

⁶ Momentum, through CompSouth, has participated in this Commission's change of law docket. *Petition of BellSouth Telecommunications to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law* (Case No. 2004-00427). Momentum's efforts are not limited to Kentucky and include arbitrations, change of law dockets and appeals in other AT&T/BellSouth states.

PUBLIC VERSION

7. AT&T Kentucky's theory that the mere existence of commercial agreements demonstrates just and reasonable rates is flawed both theoretically and practically. Certainly, Momentum's signing of a commercial agreement with AT&T Kentucky is not evidence of a just and reasonable rate – it evidences only a lack of alternatives and monopoly pricing. In the absence of just and reasonable prices for AT&T Kentucky's elements, Momentum has ceased sales and marketing efforts in Kentucky.⁷ It must hope for relief before its normal "churn" drives it out of business and further solidifies AT&T Kentucky's market dominance. Absent regulatory relief, AT&T Kentucky's "arms-length" agreement turns out to be a thinly disguised "strong-arm" tactic.

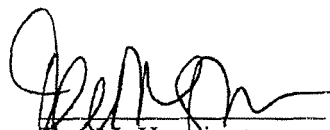

Charles E. Richardson 

ACKNOWLEDGEMENT

State of Alabama
Shelby County

I, Teri M. Hennington, a notary public in and for Shelby County, State of Alabama, do hereby certify that Charles E. Richardson III, who is personally known by me, appeared before me and, after being first duly sworn, did make the statements that appear in the above affidavit and did sign the same.

on May 1, 2007


Teri M. Hennington

Notary Public

My commission expires the 23 day of

April, 2011 [SEAL]

⁷ Momentum cannot even accept new customers in Zone 3 because AT&T Kentucky's unreasonably high local switching rate causes its wholesale rates for residential customers in Zone 3 to rise above higher AT&T Kentucky retail rates for customers in Zone 3, thus creating a price squeeze and effectively prohibiting Momentum from offering service to those customers.

SouthEast seeks confidential treatment of portions of an affidavit of Charles E. Richardson, III of Momentum Telecom, Inc. ("Momentum"). This affidavit was submitted by SouthEast in support of its opposition to rehearing. The Commission has reviewed the affidavit and finds that, with one exception, the portions for which SouthEast seeks confidential treatment are general characterizations of arguments made by AT&T Kentucky and include information already made public by AT&T Kentucky. As such, these characterizations do not meet the standards required under Kentucky law to withhold from public disclosure information submitted to the Commission. However, information contained in paragraph 6 of the affidavit does contain information regarding specific numbers of Momentum's Kentucky customers. This information is competitively sensitive. As such, it will be granted confidential treatment.

The information for which confidential treatment is denied appears to be characterizations written by AT&T Kentucky and submitted to a person not a party to this proceeding. Because of the third-party nature of the material for which SouthEast claims confidential protection, and because AT&T Kentucky has not responded to SouthEast's petition for confidential treatment of this information, the Commission will provide a 10-day window in which AT&T Kentucky may argue that this information should be retained as confidential.

Except for information contained in paragraph 6 of Mr. Richardson's affidavit, SouthEast's petition for confidential treatment is denied. However, the Commission will retain the affidavit as confidential for 10 days to provide AT&T Kentucky additional time in which to argue that confidential treatment should be granted.

If AT&T Kentucky has not submitted a petition for confidential treatment of the remaining information contained in Mr. Richardson's affidavit, SouthEast shall submit, within 20 days of the date of this letter a copy of Mr. Richardson's affidavit, making all information public except that contained in paragraph 6

-----This was the language that we came up with to put in the order, I agree with it except for granting confidential protection to the number of access lines, I think the whole thing should not be confidential. Amy said that she though there was a previous order on confidentiality that granted confidentiality of access line counts for a particular CLEC. However the CLECs report their access lines on their annual reports and on the Lifeline and TRS/TAP reports neither of which are confidential. In addition the petition does not state any grounds on which the number of access lines for Momentum should be held confidential.

Jim