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July 10, 2009

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PUBLIC SERVICE
COMMISSION

VIA COURIER

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: SouthEast Telephone, Inc., Complainant v. BellSouth
Telecommunications, Inc. d/b/a AT&T Kentucky, Defendant
KSPC 2008-00279

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and five (5) copies of Rebuttal Testimony of Deborah Fuentes Niziolek on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky

Sincerely,

Mary K. Keyer

cc: Parties of Record

Enclosures

738909

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

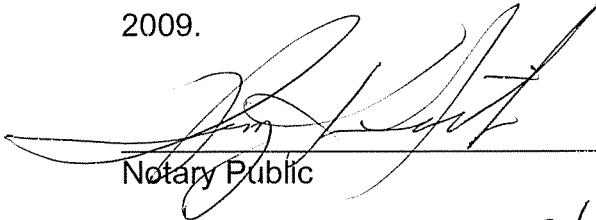
COUNTY OF COOK

STATE OF ILLINOIS

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Deborah Fuentes Niziolek, who being by me first duly sworn deposed and said that she is appearing as a witness on behalf of BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, before the Kentucky Public Service Commission in Docket Number 2008-00279, *In the Matter of: SouthEast Telephone, Inc., Complainant v. BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, Defendant*, and if present before the Commission and duly sworn, her statements would be set forth in the annexed rebuttal testimony consisting of 16 pages and 0 exhibits.


DEBORAH FUENTES NIZIOLEK

SWORN TO AND SUBSCRIBED BEFORE ME THIS 25th DAY OF JULY, 2009.



Notary Public

My Commission Expires: 3/12/2012



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**AT&T KENTUCKY
REBUTTAL TESTIMONY OF DEBORAH FUENTES NIZIOLEK
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
DOCKET NO. 2008-00279**

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Deborah Fuentes Niziolek, and my business address is 350
N. Orleans, Chicago, Illinois.

**Q. ARE YOU THE SAME DEBORAH FUENTES NIZIOLEK WHO
PROVIDED DIRECT TESTIMONY FOR THIS DOCKET?**

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to Darrell Maynard's
direct testimony provided on behalf of SouthEast Telephone and address
some of the misconceptions stated by Mr. Maynard. Specifically, I will
address AT&T Kentucky's compliance with this Commission's Change of
Law Order and the variety of loop/port combinations offered by AT&T
Kentucky that provide the functionality SouthEast was seeking with the
commingled arrangement it requested. I will explain that AT&T Kentucky
has provided appropriate billing adjustments to SouthEast for the move of
its WLP lines to a commingled arrangement and what was involved in
doing so. I will also further explain the basis for AT&T assessing
installation charges rather than conversion charges when calculating the

1 appropriate billing adjustments. And, finally, I will clear up some
2 inaccuracies in Mr. Maynard's testimony regarding Zone 3 rates.

3

4 **Q MR.MAYNARD MAKES SEVERAL STATEMENTS IN HIS TESTIMONY**
5 **THAT AT&T KENTUCKY REFUSED TO COMPLY OR "DID NOT EVEN**
6 **NOMINALLY COMPLY" WITH THE COMMISSION'S CHANGE OF LAW**
7 **ORDER UNTIL ALMOST A YEAR AFTER IT WAS ENTERED.¹ HOW**
8 **DO YOU RESPOND TO THAT?**

9 A. Mr. Maynard is incorrect. At the time the Commission issued its Change
10 of Law order in December 2007, AT&T Kentucky offered 200 or more
11 loop/port arrangements under its commercial agreement based on those
12 arrangements that competitive local exchange carriers ("CLECs") had
13 previously ordered and had indicated an interest in ordering. To this day,
14 *no CLEC, except for SouthEast Telephone*, has requested any loop/port
15 arrangement, commingled or otherwise, other than what AT&T Kentucky
16 had available at the time the Change of Law order was issued.

17

18 As I stated in my direct testimony, AT&T provides up to 44 different stand
19 alone Switch Ports and 13 various Loop types to CLECs in Kentucky. This
20 results in approximately 572 possible scenarios of arrangements CLECs
21 could request. The fact that AT&T Kentucky did not have a process in
22 place to begin immediately processing SouthEast Telephone's order for a
23 first-time commingled arrangement does not constitute delay or a violation

¹ Maynard Direct, page 5, lines 14-15.

1 of the Commission's Change of Law order. While the Commission
2 ordered that AT&T Kentucky has an obligation to commingle Section 251
3 with Section 271 elements, the Commission did not require AT&T
4 Kentucky to develop and make available unlimited versions of
5 arrangements that no CLEC may ever order or want and before any CLEC
6 ever ordered them. That would be a waste of time, resources and money
7 that no company can afford, particularly in these economic times.

8
9 For Mr. Maynard to suggest that "AT&T did not even *nominally* comply
10 with the Commission's Change of law" order is clearly incorrect. The facts
11 above demonstrate that AT&T is in full compliance with the Change of
12 Law order.

13
14 **Q MR. MAYNARD ALLEGES THAT AT&T KENTUCKY DELAYED**
15 **FILLING SOUTHEAST TELEPHONE'S ORDERS FOR THE UCL-ND**
16 **COMMINGLED WITH A SWITCH PORT. DID AT&T KENTUCKY**
17 **DELAY IN FILLING SOUTHEAST TELEPHONE'S COMMINGLING**
18 **ORDERS?**

19 A. No. As I explained in my direct testimony on page 9, of the approximately
20 200 different loop and port arrangements available prior to the
21 Commission's Change of Law order under commercial agreements to all
22 CLECs, including SouthEast Telephone, the one that SouthEast
23 requested (incorporating a UCL-ND) was simply not available. Because

1 this was a new arrangement that had never before been requested, it took
2 AT&T some time and effort to first determine exactly what SouthEast
3 Telephone wanted and then to determine how AT&T could provide it.
4 Without a way to get that order through the ordering, provisioning, and
5 billing systems necessary to process it as explained in my direct testimony
6 on pages 13-15, SouthEast Telephone's order could not be processed.
7 Quite simply, SouthEast Telephone, being the only CLEC requesting a
8 UCL-ND commingled with a stand alone port, unreasonably expected the
9 arrangement to be developed and provided overnight and without
10 contributing to the planning or development cost of the process for its
11 single unique request. Immediate implementation is an impossible task as
12 well as an impractical one, given all of the mechanics involved in
13 developing such a process. Once AT&T Kentucky established the billing
14 adjustment process in November 2008, AT&T Kentucky began applying
15 the billing adjustments in the next bill period in December 2008. While the
16 time for developing processes necessary for a new offering can take a
17 year or longer, AT&T Kentucky was able to provide SouthEast Telephone
18 with the financial results it was seeking within three and one-half months
19 after clarifying and confirming what arrangement SouthEast Telephone
20 wanted.

21
22 AT&T Kentucky worked diligently to develop a process and there was no
23 delay by AT&T Kentucky in filling SouthEast Telephone's orders.

1

2 **Q. CAN YOU EXPLAIN WHY AT&T BELIEVES IT REASONABLE TO**
3 **CONSIDER INSTALLATION CHARGES IN THE BILLING**
4 **ADJUSTMENT PROCESS?**

5 A Yes. The simple answer is that in order to accurately replicate the
6 financial result of the commingled arrangement SouthEast Telephone
7 seeks, AT&T considers all charges in the parties' agreements that would
8 apply to the commingled arrangement if it were provisioned. That includes
9 the lower pricing of the monthly recurring charges for the UCL-ND as well
10 as the one time non-recurring charges associated with the UCL-ND and
11 port.

12

13 SouthEast Telephone appears to be satisfied with the "theoretical"
14 arrangement because it really wants the lower pricing, which it is getting
15 through the billing adjustment process, and not the actual functionality of
16 the commingled arrangement. If SouthEast Telephone does not want to
17 accept the one-time non-recurring charges because there is no physical
18 installation occurring, it should not be allowed to accept the lower monthly
19 recurring pricing of a UCL-ND.

20

21 In addition to the above, I would also like to make several underlying
22 points in answering this question. First, Mr. Maynard's statement that,
23 "the billing system is in fact 'converted' from WLP to commingled

1 elements² is inaccurate. It appears that Mr. Maynard believes that
2 migration of the existing WLP lines to the commingled elements requires
3 simply a billing conversion, like resale to UNE-P; it does not. In resale to
4 UNE-P, the exact same facilities can be used. That is not the case here. If
5 AT&T Kentucky were able to actually provide SouthEast Telephone with
6 the commingled arrangement it wanted, AT&T Kentucky would not be able
7 to re-use the same facilities that are in use today on the WLP lines, but
8 would have to provision a different loop.

9
10 Second, as indicated in my direct testimony, this is a “theoretical”
11 arrangement, not a physical one. If AT&T were to actually provision the
12 commingled arrangement SouthEast Telephone requested, AT&T would
13 have to physically disconnect the WLP loop and reconnect the
14 commingled arrangement utilizing the UCL-ND loop that SouthEast
15 Telephone requested. This would include installation, not simply a
16 conversion, and the applicable installation and associated charges set
17 forth in the parties’ agreements would apply.

18
19 While developing the billing adjustment process, AT&T recognized that if
20 the arrangement that SouthEast Telephone requested - a commingled
21 arrangement utilizing UCL-ND - were to be developed, it would be
22 appropriate to consider *all* applicable charges under the applicable
23 agreements, including the lower monthly recurring charges for the UCL-

² Direct Testimony, Darryl Maynard, page. 6, lines 15-16.

1 ND and the one time installation charges. What SouthEast Telephone is
2 requesting is that this Commission provide it with only the better recurring
3 pricing aspects of the commingled arrangement and not the one time non-
4 recurring charges associated with that commingled arrangement.

5

6 **Q CAN YOU PROVIDE THE BASES IN THE PARTIES'**
7 **INTERCONNECTION AND COMMERCIAL AGREEMENTS TO THESE**
8 **NON-RECURRING CHARGES THAT WOULD APPLY TO THIS**
9 **COMMINGLED ARRANGEMENT?**

10 A. Yes. Attachment 2 Rate Exhibit of the Parties' Interconnection Agreement
11 identifies the non-recurring charge for an unbundled copper loop/non-
12 designed (first and additional). There is also a nonrecurring disconnect
13 charge that applies when a loop is disconnected (first and additional).
14 Exhibit A of Attachment 1 of the Parties' Market-based Rates Agreement,
15 identifies a nonrecurring charge for the standalone 2-wire commercial port;
16 there is no nonrecurring disconnect charge associated with the 2-wire
17 commercial port.

18

19 As provided for in the parties' applicable agreements, if SouthEast
20 Telephone were receiving this specific commingled arrangement, it would
21 be required to pay all applicable rates, including the installation rates.

22

1 **Q HOW DO YOU RESPOND TO MR. MAYNARD’S SUGGESTION THAT**
2 **AT&T KENTUCKY CHARGED SOUTHEAST TELEPHONE TO**
3 **CONVERT LINES FROM RESALE TO THE WHOLESALE LOCAL**
4 **PLATFORM AND, THEREFORE, SHOULD NOT CHARGE SOUTHEAST**
5 **TO CONVERT THOSE LINES AGAIN?³**

6 A. Mr. Maynard’s suggestion is not supported by the facts in this case. This
7 case does not involve the conversion of resale lines to WLP; rather, it
8 deals with the provisioning of a commingled arrangement. The decision to
9 convert its resale lines to WLP was solely that of SouthEast Telephone.
10 AT&T Kentucky merely charged the rates as agreed to by the parties in
11 their applicable agreements. AT&T Kentucky did not force SouthEast
12 Telephone to make that conversion. Nor has AT&T Kentucky forced
13 SouthEast Telephone to move its WLP lines to a commingled
14 arrangement. That is SouthEast Telephone’s choice to make that change,
15 not AT&T’s. As such, SouthEast Telephone should bear the applicable
16 and appropriate costs of doing so. If SouthEast Telephone continues to
17 look for ways to operate more cheaply and change its services, it must
18 pay the cost of making such changes, rather than expect AT&T to absorb
19 the cost.

20
21 While the billing adjustment process has been developed by AT&T to
22 expeditiously meet SouthEast Telephone’s needs, if the UCL-ND/port
23 combination were available as a provisioned arrangement, AT&T would

³ Maynard Direct, page 7

1 have to disconnect and install a different, less expensive loop per
2 SouthEast Telephone's request. In the real world scenario, the conversion
3 charge that Mr. Maynard refers to (where AT&T converts resale to WLP
4 and WLP to resale) would not apply to the commingled arrangement
5 because in the case of a commingled arrangement, AT&T would actually
6 do work (physically disconnect/install) in order to provide the requested
7 arrangement. In that case, installation charges rather than conversion
8 charges are appropriate.

9
10 **Q. DO YOU AGREE WITH MR. MAYNARD THAT SOUTHEAST**
11 **TELEPHONE IS ENTITLED TO AT&T BILLING ADJUSTMENTS AS OF**
12 **JULY 1, 2008 BECAUSE THAT IS "THE BEGINNING OF THE MONTH**
13 **SUBSEQUENT TO THE DATE SOUTHEAST FIRST BEGAN TO**
14 **ATTEMPT TO PLACE COMMINGLED ORDERS, AND OVER SIX**
15 **MONTHS AFTER THE COMMISSION ORDERED COMMINGLING TO**
16 **BE MADE AVAILABLE"?**⁴

17 **A.** No, SouthEast Telephone is not entitled to billing adjustments back to July
18 1, 2008. SouthEast Telephone's order submitted in mid-June 2008,
19 Exhibit DFN-1 to my direct testimony, was for a sub-loop feeder and port,
20 not a UCL-ND and port. Furthermore, the UCL-ND was not even available
21 at the location requested by SouthEast Telephone in its order. Once the
22 parties were able to finally confirm on August 21, 2008, that SouthEast
23 Telephone wanted the UCL-ND commingled with a port, AT&T began

⁴ Maynard Direct, page 8, lines 18-21

1 looking into a process to accomplish that request. After two weeks, in
2 early September, AT&T determined a long term process would be too
3 timely and costly to develop for both parties and began pursuing an
4 interim process that took approximately eight weeks to develop. On
5 November 7, 2008, AT&T shared this process with SouthEast Telephone
6 and began the billing adjustments in the next billing period effective
7 December 1. This occurred within three and one-half months of the final
8 clarification on August 21.

9
10 **Q MR. MAYNARD BELIEVES AT&T'S BILLING ADJUSTMENT**
11 **SOLUTION WAS A SIMPLE BILL CHANGE THAT COULD HAVE AND**
12 **SHOULD HAVE BEEN IMPLEMENTED IN LESS THAN THE TIME YOU**
13 **HAVE TESTIFIED IT TOOK. WHAT IS YOUR RESPONSE TO**
14 **MR. MAYNARD'S COMMENTS?**

15 A. Mr. Maynard's remarks about the lack of difficulty AT&T should have had
16 in simply altering the billing arrangements⁵ and that AT&T "decided to
17 simply change the billing anyway"⁶ are incorrect. First and foremost,
18 AT&T Kentucky did not simply change the billing. Second, even if it did,
19 there is no such thing as a simple bill change. AT&T cannot arbitrarily
20 alter billing processes and systems, particularly in the case of one CLEC
21 requesting something that is not commonly available or in demand.
22 Though I am not a billing system expert, I do know that AT&T's billing

⁵ Maynard Direct, page 5 lines 21-22

⁶ Maynard Direct, page 6 lines 1-2

1 affects all CLECs and ILECs doing business with AT&T. I am also aware
2 that, in order to “change” the billing system, forums need to be conducted
3 with CLECs and ILECs all participating and all agreeing upon those
4 changes. Even if more than one CLEC were part of the scenario, it would
5 take months for all parties to come together to even begin discussing the
6 need for the “change” to the billing requirements.

7
8 In lieu of seeking out and using the Change Management Process and the
9 Ordering and Billing Forum (OBF), which would have required a much
10 longer period of time, and which would have required much greater
11 expense, AT&T chose to develop an interim manual process for
12 calculating an amount for billing adjustment purposes in order to
13 expeditiously accommodate SouthEast Telephone’s request. This billing
14 adjustment process was not a simple bill change.

15
16 After the parties finally confirmed on August 21 what it was that SouthEast
17 Telephone wanted, and after AT&T determined that a long term process
18 would be too costly and involved for both parties (particularly given that
19 the arrangement was requested for financial purposes and not
20 functionality), the entire process took eight weeks to develop. SouthEast
21 Telephone is the only CLEC that is getting this billing adjustment based on
22 its unique request. As I explained in my direct testimony, several steps are
23 required prior to determining which telephone numbers qualify for the

1 adjustments. This is not a simple means of altering the billing arrangement
2 nor does AT&T simply change the billing. For example, various
3 employees (five) in various different organizations (as many as five)
4 needed to work together to determine what steps AT&T needed to take in
5 order to provide SouthEast Telephone with the financial benefit of the
6 commingled arrangement it requested. These groups of employees were
7 not simply waiting in the wings either; the project manager needed to find
8 the right folks, work through the issue, then train them on what needed to
9 be done.

10
11 The time required to develop this process is a fair and reasonable
12 reflection of the complicated nature of the systems and processes of a
13 large company such as AT&T. In fact, AT&T employed a “customer first”
14 and “can do” attitude to achieve this creative outcome in a timely fashion
15 for a single CLEC with a unique request.

16
17 **Q IN HIS DIRECT TESTIMONY,⁷ MR. MAYNARD STATES THAT**
18 **SOUTHEAST TELEPHONE HAS ORDERED AT LEAST 1,740 UCL-**
19 **NDs. CAN YOU COMMENT ON THAT?**

20 **A.** Yes. I have three reactions and responses to this comment. First,
21 Mr. Maynard’s comment appears to address a qualifying issue that the
22 Commission has determined is not within the scope of this case and I will
23 not address it based on the Commission’s order. Second, based on an

⁷ Maynard Direct, page 8

1 internal review of 12 months of billing for SouthEast Telephone, AT&T has
2 not billed any UCL-NDs to SouthEast Telephone. In other words, based
3 upon a review of AT&T's internal billing systems completed at my request,
4 SouthEast Telephone has not ordered, and hence, been billed, for any
5 UCL-NDs for the past 12 months. Finally, even if it did, the UCL-ND is
6 available on a stand alone basis today along with the other 11 loop types.
7 But because the UCL-ND was designed for the provision of xDSL services
8 and was not intended to be used for voice services, no CLEC has
9 previously asked that it be made available in a commingled or combined
10 loop/port arrangement, and thus AT&T has not developed ordering,
11 provisioning, and billing processes to make it available in a commingled
12 arrangement.

13
14 **Q IN HIS DIRECT TESTIMONY, MR. MAYNARD DESCRIBES THE RATE**
15 **SOUTHEAST TELEPHONE PAYS FOR A UCL-ND AND A PORT IN**
16 **ZONE 3 AS A BASIS FOR SOUTHEAST'S FINANCIAL LOSS. HOW**
17 **DO YOU RESPOND TO THAT?**

18 A. First, let me say that it is AT&T Kentucky's position that SouthEast
19 Telephone has not experienced a financial loss and is not entitled to any
20 further billing adjustments than what it has already received from AT&T.
21 Having said that, I would like to correct Mr. Maynard's statement that the
22 WLP line costs \$45.74 (\$30.59 loop + \$8.15 port + \$7.00 usage) and the
23 commingled arrangement is \$21.71 (\$13.22 loop and cross-connect +

1 \$8.49 port) for a difference of \$24.03. Mr. Maynard in his example
2 neglected to include the usage rate element for the commingled
3 arrangement. The same usage assumption (\$7.00) should be used, which
4 would bring the difference down to \$17.03. Second, Mr. Maynard only
5 mentions the impact in Zone 3, which would show the greatest variance,
6 yet by SouthEast Telephone's own admission in response to the
7 Commission's First Set of Data Requests, 58.3% of SouthEast
8 Telephone's embedded base that SouthEast Telephone wanted to move
9 to a commingled arrangement was in Zone 2 with a rate difference of
10 \$2.49. In the same responses to the same Data Requests, Mr. Maynard
11 states that only 39.9% of SouthEast Telephone's lines are in Zone 3.⁸

12
13 Q. DO YOU HAVE ANY FURTHER REBUTTAL REGARDING
14 MR. MAYNARD'S DIRECT TESTIMONY?

15 A. Yes, I do. I want to address two areas of Mr. Maynard's testimony.

16
17 First, Mr. Maynard attempts to submit testimony regarding issues that this
18 Commission has ruled are not a part of this case. Those references
19 should be stricken from his testimony and ignored by the Commission.
20 For example, Mr. Maynard includes references to orders that have been
21 denied due to what he refers to as "qualifiers." He also asks the
22 Commission to address the load coil/pair gain issue that SouthEast
23 Telephone had previously asked the Commission to incorporate into this

⁸ Exhibit B

1 proceeding but the Commission denied SouthEast Telephone's request.
2 Mr. Maynard's inclusion of testimony on these issues indicates a disregard
3 of the Commission's order and should be excluded from consideration by
4 the Commission. Based on my understanding that these matters are
5 beyond the scope of this docket and should not be discussed either by
6 myself or Mr. Maynard, I will not address them in my rebuttal testimony.
7

8 Second, Mr. Maynard accuses AT&T Kentucky of issuing "prohibitively
9 exorbitant" bills "without any sort of cost justification and backed by threats
10 of disconnection."⁹ The bills AT&T issues to SouthEast Telephone have
11 been rendered based on the pricing ordered by the Commission and/or
12 agreed to in the parties' relevant agreements. A recent past due notice
13 was issued to SouthEast Telephone in May 2009 because SouthEast
14 Telephone is withholding payment in full for services rendered under its
15 commercial agreement under the claim that the withholding of payment is
16 due to the commingling complaint in this docket. The amounts withheld,
17 however, are well in excess of the amount SouthEast Telephone is
18 claiming it is entitled to in this case, and are being withheld in violation of
19 the express terms of the agreement under which they are due. Such
20 baseless statements by Mr. Maynard should be disregarded by the
21 Commission.
22
23

⁹ Maynard Direct, page 7

1 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

2 **A. Yes, it does.**


CERTIFICATE OF SERVICE – PSC 2008-00279

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by U.S. Mail this 10th day of July, 2009.

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