

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE USE OF CONTRACT SERVICE)	
ARRANGEMENTS BY TELECOMMUNICATIONS)	CASE NO.
CARRIERS IN KENTUCKY)	2002-00456

O R D E R

The Commission opens this docket to investigate the use of, or non-use of, contract service arrangements (CSAs) by telecommunications carriers subject to our jurisdiction. The pro-competitive provisions of KRS 278.512 and the Telecommunications Act of 1996, as well as KRS 278.160 and KRS 278.170, will provide the guiding principles in this proceeding. All incumbent local exchange carriers (ILECs) and those competitive local exchange carriers (CLECs) that are active before this Commission are hereby made parties hereto.¹ In addition, intervention by customers with experience in regard to telecommunications CSA practices is welcomed.

Technological advances, together with extensive changes in the legal treatment of telecommunications utilities, have necessitated numerous regulatory adjustments by this and other state public utility commissions. We have been called upon to reduce

¹ The Commission recognizes that numerous CLECs authorized to provide service in Kentucky are small operations with limited resources. Accordingly, although a copy of this Order shall be sent to all ILECs and CLECs authorized to serve customers in Kentucky, only the names of those ILECs and CLECs that regularly participate in Commission proceedings are listed in Appendix A, which shall serve as the active service list of this proceeding. Carriers whose names do not appear on this service list may, by letter, request to be added to the active service list and to participate fully in this proceeding. The service list also includes the parties who participated in Case Nos. 2001-00068, 2001-00099, and 2001-00077.

regulation while protecting Kentucky's telecommunications customers and ensuring fair and equitable treatment of both incumbent carriers and new market entrants. It is perhaps inevitable that we now find it necessary to determine whether some of our decisions relaxing the regulatory regime pursuant to KRS 278.512 may inadvertently have created problems.

For example, we held in Case No. 2001-00077² that BellSouth Telecommunications, Inc. (BellSouth) need no longer file its increasingly numerous CSAs for our review, granting a deviation from Administrative Regulation 807 KAR 5:011, Section 13, which requires every utility to file true copies of all special contracts entered into governing utility service. Instead, we have accepted summaries of those CSAs that do not include item pricing for the services sold. In relaxing our requirements in regard to BellSouth's CSAs, we intended to ensure that BellSouth was not unfairly subject to regulatory requirements that disadvantaged it as opposed to its competitors. Moreover, it appeared at that time that, given the competitive conditions of the marketplace, detailed review of each CSA was no longer necessary. However, our action in that docket may well have disadvantaged telecommunications customers and CLECs who no longer are able to review the full CSAs.

We will investigate pricing practices in regard to CSAs, and to that end, we incorporate herein the respective records of Case Nos. 2001-00099³ and 2001-00068.⁴

² Case No. 2001-00077, BellSouth Telecommunications, Inc.'s Proposed New Procedures For Filing Contract Service Arrangements and Promotions.

³ Case No. 2001-00099, SPIS.net v. BellSouth Telecommunications, Inc.

⁴ Case No. 2001-00068, Computer Innovations v. BellSouth Telecommunications, Inc.

In each of these cases, an Internet service provider (ISP) filed a complaint objecting to BellSouth's refusal to provide it the lower rates it had provided to another ISP. In both cases, we found that the two ISPs in question should, in fact, have received the same rate on the same terms as the third ISP. Consideration of the questions raised, and evidence presented, in these cases have led us to question whether BellSouth and other carriers are providing services under CSAs when they should be providing service at tariffed rates. To the extent CSAs are appropriate, we welcome comment as to standards that should limit their use and provide objective criteria for pricing services differently.

In Case No. 2001-00099, we addressed, among other issues, the proper role of competition in determining prices for service, and the tension existing between carriers legitimate need to price services based in part on competition and the legislative mandate that all similarly situated customers be treated equally. However, we set no specific, objective criteria in that case: so broad an issue requires that we amass a broad record upon which an ultimate decision, which will be applicable to all, may appropriately be based. Accordingly, we concluded only that, on the facts of that case, SPIS.net was entitled to the rate given to an ISP in the same locality. In this case, we will explore the policy implications associated with setting parameters, based on objective criteria, that should govern a carrier's ability to set prices based on competitive offers. We will consider whether the existence of competition should be a factor in determining whether two customers are similarly situated so that they are entitled to the same rate.

We wish to explore the legal and policy implications of creating a special tariff for which only one unnamed customer, in fact, qualifies. Earlier this year, BellSouth filed a switched access tariff that became effective on June 28, 2002. Upon informal inquiry, it became apparent that this tariff, like a CSA, was the product of negotiations with a single long-distance carrier and had been designed specifically to provide discounts of up to 35 percent to that carrier. The tariff, on its terms, was available to persons who are similarly situated for only 30 days after its effective date. Moreover, the discounts pursuant to this contract tariff are based on percentage growth rather than actual volume growth. On its face the tariff is not available to BellSouth's highest volume users but only to those who obtain a specified level of growth each year.

In order to determine appropriate policies, to safeguard the public interest regarding contract service arrangements, and to determine what, if any, amendments to Administrative Regulation 807 KAR 5:011, Section 13, are appropriate, we require telecommunications carriers named in Appendix A hereto to respond to the data requests contained in Appendix C hereto by no later than February 5, 2003, and to comply with the procedural schedule attached hereto as Appendix B. While we expect full compliance from Kentucky's ILECs and from the larger CLECs who are active before this Commission, a carrier that does not wish to participate in this proceeding may file a statement to that effect that includes a full explanation of its reasons therefor. We shall review each statement so filed and, if necessary, enter orders requiring information, if not full participation, from each carrier so filing.

IT IS THEREFORE ORDERED that:

1. Each telecommunications carrier named in the service list hereto shall respond to the information requested in Appendix C hereto no later than February 5, 2003 or, in the alternative, shall file with the Commission a statement that it does not wish to participate in this proceeding, together with a full explanation therefor.

2. Each telecommunications carrier named in the service list hereto shall comply with the procedural schedule in Appendix B hereto or, in the alternative, shall file with the Commission a statement that it does not wish to participate in this proceeding.

3. Any party filing testimony shall file an original and 5 copies. The original and at least three copies of the testimony shall be filed as follows:

- a. Together with cover letter listing each person presenting testimony.
- b. Bound in 3-ring binders or with any other fastener which readily opens and closes to facilitate easy copying.
- c. Each witness's testimony should be tabbed.
- d. Every exhibit to each witness's testimony should be appropriately marked.

4. All requests for information and responses thereto shall be appropriately indexed. All responses shall include the name of the witness who will be responsible for responding to questions related to the information, with copies to all parties of record and an original and 5 copies to the Commission.

Done at Frankfort, Kentucky, this 19th day of December, 2002.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. O'Dell", written over a horizontal line.

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2002-00456 DATED December 19, 2002

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APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2002-00456 DATED December, 19, 2002

PROCEDURAL SCHEDULE

Responses to the information requested in Appendix C
are due no later than 02/05/03

Parties shall submit data requests to other parties no later than 03/26/03

Responses to parties data requests are
due no later than 04/15/03

Parties shall submit prefiled testimony and a list of
witnesses and their qualifications no later than 04/30/03

Parties shall submit prefiled rebuttal testimony
no later than 05/21/03

Public Hearing shall begin at 9:00 a.m., Eastern Daylight Time,
at the Commission s offices at 211 Sower Boulevard,
Frankfort, Kentucky 06/17/03

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2002-00456 DATED December 19, 2002

1. Provide full and complete copies of all CSAs entered during 2001 and 2002, or, in the alternative, if such CSAs are on file with the Commission, a list of those CSAs and their effective dates. For each CSA, provide:

- a. Customer name.
- b. Effective date.
- c. Expiration date.
- d. Description of services included.
- e. Unique conditions involving the service.
- f. Total value of the contract.
- g. A price-out of the contract.
- h. A price-out of the same services as provided under tariff, if applicable.
- i. The net savings to the customer in total and on a per unit basis.
- j. Details concerning installation or other fees waived pursuant to the CSA.
- k. Details concerning recurring rates suspended or waived pursuant to the CSA.

2. Provide a narrative description of your policies regarding entry into CSAs with specific customers, including a description of the manner in which those CSAs are filed or reported to the commissions for the states in which you operate. If you operate

in multiple jurisdictions, compare and contrast applicable state requirements. Provide citations to applicable rules in other jurisdictions.

3. To what extent should a telecommunications carrier be permitted to price its services differently depending on the existence of a competitor that is willing to serve some customers but not others?

a. If you believe different pricing in such instances is appropriate, what level of objective evidence showing the actual existence of a competitive offer for the services in question should be required?

b. If you do not believe that different pricing in such instances is appropriate, what would be the financial result to carriers who would no longer be able to price services based on competition?

4. Would you support or oppose a policy requiring that all customers for regulated services in the same geographic area or market receive the same prices, on the theory that if a competitor is in the area it may reasonably be assumed that a competitive offer is available to all customers in the area?

a. If such a policy were adopted, how should the geographic area or market for which prices should be uniform be defined?

b. If you oppose such a policy, explain the reasons for your opposition.

5. Would a requirement that all CSAs be filed publicly with the Commission ensure transparency and permit both customers and CLECs the access necessary to buy, resell, and notify the Commission of alleged violations of law?

6. What criteria should govern whether a regulated service should be sold by tariff only or by CSA? Explain fully.

7. Discuss the impact on competition in particular and on the telecommunications industry in Kentucky in general that would result from deregulation of CSAs.

8. At what level of availability of competitive alternatives in a given market should a service be deregulated pursuant to KRS 278.512? Is it feasible to deregulate a service in one market area of Kentucky and not in another?

9. What procedures should take place during a Commission case to determine whether a service is sufficiently competitive to be deregulated?