COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES FOR AN EXEMPTION FROM THE REGULATION OF ENHANCED SERVICES	) CASE NO. 92-405

O R D E R

On September 17, 1992, American Telephone & Telegraph Company ("AT&T") filed a petition pursuant to KRS 278.512 and KRS 278.514 requesting that its enhanced services be exempted from regulation. The Attorney General, by and through his Utility and Rate Intervention Division, requested and was granted intervention. On April 9, 1993 and on June 9, 1993, the Commission ordered AT&T to provide additional information. AT&T filed its responses to the Commission's Order and there being no requests for a hearing on the petition, the matter was submitted for decision based upon the case record.

BACKGROUND

On August 1, 1991, the Commission initiated Administrative Case No. 338[1] to investigate the provision of enhanced services within the state. In its Order the Commission adopted the Federal Communications Commission's ("FCC") definition of "enhanced services" set forth in 47 C.F.R. Sect. 64.702(a). The FCC distinguished enhanced services from basic services by their functional characteristics. Basic telecommunications services were

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1 Administrative Case No. 338, Inquiry Into The Provision of Enhanced Services in Kentucky, Order dated August 1, 1991.

defined as virtually bare transmission capacity, provided by a common carrier for the movement of information between two points while enhanced services provide more than bare transmission capacity.

The FCC's definition of "enhanced services" refers to three service classes: "services, offered over common carrier transmission facilities that. . . (1) Employ computer processing applications that act on the format, content, code, protocol, or similar aspects of subscriber's transmitted information; (2) Provide the subscriber additional, different, or restructured information; or (3) Involve subscriber interaction with stored information." 47 C.F.R. Sec. 64.702(a).

DISCUSSION

In evaluating AT&T's petition for exemption of its enhanced services, the Commission is bound by KRS 278.512 and KRS 278.514. KRS 278.512 provides that the Commission may exempt telecommunications services and products or may reduce regulation if it determines that exemption or alternative regulation is in the public interest. The statute identifies eight criteria to be considered by the Commission when making this determination and permits the Commission to consider any other factors it deems in the public interest.

The first three subsections of KRS 278.512(3) focus on the existing conditions of the market. KRS 278.512(3)(a) requires the Commission to consider the extent to which competing telecommunications services are available in the relevant market. To address this criterion, AT&T provided summaries of relevant articles. Data on the voice-message market indicates ten competitors have market shares ranging from 2 percent to 23 percent of the voice-message market.[2] In 1991, AT&T had a 14 percent share of revenues in the voice-mail end-users market. Increased competition in the calling card market will lead to the availability of more enhanced features on calling cards.[3] The 900 network market and the present availability of 900 network services from AT&T, MCI and Sprint are indicators of the extent to which competing telecommunications services are available.[4] Several articles were provided that described the competition between AT&T and Sprint in the provision of videoconference services.

Under Subsection (3)(b) of KRS 278.512, the Commission must also consider the existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available. Published information demonstrates the competitiveness of the market for voice message services (including

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[2] Data from cover page and chapter 1, page 7, of Voice Processing Industry Dynamics & Network Services: Voice Mail, Voice Response & Multi-Applications Platforms Through 1996, dated August 1992 as prepared by The Insight Research Corporation.

[3] This topic and the calling card features of AT&T, MCI and Sprint are discussed in an article entitled Calling All Cards: A Long Distance Update, which appeared at pages 7-11 of the December 1992 edition of Yankeevision Consumer Communications.

[4] This information is discussed on pages 1-11 of an article entitled New and Traditional Opportunities for 900 services, by Mark Winther, Vol. 1, March 1993, in the publication Mass Market Telecommunications published by LINK Resources.

electronic data interchange, e-mail, and enhanced fax services), database (including information services and imaging), and videoconference applications. The three primary types of participants in the market are: IXCs, Value-added network providers and RBOCs. The substitutability of these services for each other is indicated by the use of interconnect agreements, and by the variety of competing features available on calling cards from alternate providers. In addition, AT&T, MCI and Sprint have all experimented with the 700 area code while AT&T has marketed certain limited 950 exchange services.

KRS 278.512(3)(c) requires the Commission to consider the number and size of competitive providers of services. Published information lists the top 25 automated companies and agencies and provides Tables depicting the industry composition, by number of lines and company size, for four market segments and the growth of telemarketing agencies and services bureaus.[5] This information indicates that numerous companies compete in the market and the entry of new participants continues. Another publication describes numerous companies in the transaction services industry, many of which already provide telecommunications services, and others which could easily enter the market (or a particular market segment).[6]

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[5] This data is from 5 pages of information from a publication entitled Strategic Telemedia 1991.

[6] This data came from pages 5-9 of an article entitled "Ranking The Top POS Debit Networks" which appeared in the September 1992 edition of POS News.

There are approximately 25 competitors in the Point of Sale ("POS") market.[7]

Subsection (3)(d) of KRS 278.512 requires the Commission to evaluate the overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates. The many new entrants to the enhanced services marketplace described by the previously mentioned articles and publications demonstrates, not only the lack of entry barriers, but also that the incentives for market entry are potent and self sustaining. Many enhanced service providers in Kentucky are well-established and substantial entities. The investment by enhanced service providers in Kentucky has allowed them to place in service thoroughly up-to-date technology and to offer the services and features most demanded by consumers.

KRS 278.512(3)(e) requires the Commission to consider the existence of adequate safeguards to assure that rates for regulated services do not subsidize exempted services. Since AT&T does not provide monopoly services in the enhanced services field, the Commission is not concerned about cross-subsidization of exempted services by regulated services. This criterion is not applicable to AT&T.

Subsections (3)(f) and (g) require the Commission to consider the impact of proposed regulatory change upon universal availability of basic telecommunications services and upon the need

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7 Id.

of telecommunications companies to respond to competition, and upon the ability of a regulated utility to compete with regulated providers of similar services or products, respectively. Enhanced services are not, by definition, basic telecommunications services. Further, AT&T does not provide basic local exchange telephone services in the Commonwealth of Kentucky. Hence, exempting AT&T's enhanced services from regulation would have no impact on universal availability of basic telecommunications service.

Commission regulation of AT&T's enhanced services could hamper AT&T's ability to react quickly to market changes and thereby restrict its ability to compete with providers of equivalent and substitute services. It could also hinder AT&T's ability to compete with non-regulated providers and have a detrimental affect on the market place. As AT&T neither controls bottleneck facilities nor exercises market power in Kentucky's enhanced service market, no purpose would be served by subjecting its enhanced services to these potentially detrimental effects of regulation. After considering the statutory criteria contained in KRS 278.512, the Commission finds that exempting AT&T's enhanced services from the provisions of KRS Chapter 278 is in the public interest.

Exemption of enhanced services does not mean that adequate safeguards do not exist to protect customers from unfair treatment, poor service quality, or excessive prices. Though the market will discipline companies offering enhanced services, customers are encouraged to exercise their option of filing complaints with the company and the Commission.

Although AT&T's investment, revenues, and expenses associated with enhanced services will not be considered by the Commission in approving rates for AT&T's services, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514. AT&T shall continue to fulfill all reporting requirements of KRS Chapter 278 and Commission Orders.

IT IS THEREFORE ORDERED that the enhanced services specifically described in AT&T's petition are exempted from regulation, pursuant to KRS 278.512 and KRS 278.514.

Done at Frankfort, Kentucky, this 18th day of October, 1993.

PUBLIC SERVICE COMMISSION

Chairman

Robert M. Davis
Vice Chairman

Linda K. Breathitt
Commissioner

ATTEST:

Don Mills
Executive Director