

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH TELECOMMUNICATIONS,) CASE NO.
INC. FOR PRESUMPTIVE VALIDITY OF TARIFF) 2002-000276
FILINGS)

O R D E R

On July 12, 2002, BellSouth Telecommunications, Inc. (BellSouth) applied to this Commission, pursuant to KRS 278.512, for presumptive validity treatment of certain retail tariffs. Southeastern Competitive Carriers Association (SECCA), AT&T Communications of the South Central States, Inc. (AT&T) and TCG Ohio (TCG) and Sprint Communications Company L.P. (Sprint) requested, and were granted, intervention. On April 29, 2003, we denied the petition based on KRS 278.512, which permits this Commission to exempt to the extent it deems reasonable, services or products related to telecommunications utilities or persons who provide telecommunications services or products from any or all of the provisions of this chapter, or adopt alternative requirements for establishing rates and charges for any service by a method other than that which is specified in this chapter upon a finding that clear and satisfactory evidence demonstrates that such exemption or alternative requirements are in the public interest. The statute requires, among other things, that we find that a reasonable level of competition exists before relaxing regulatory requirements. Upon review of the record presented, we did not find that

sufficient competition exists to relax our regulatory oversight to the extent requested by BellSouth.

As the record in this case was lacking in evidence of a reasonable level of competition, we looked to the December 2002 report of the Federal Communications Commission (FCC) on the state of telecommunications competition in the several states based on FCC Form 477 filings (the FCC Report).¹ According to the statistics in the FCC Report, only West Virginia, Puerto Rico, New Mexico, and Montana reported a higher percentage of zip codes without competitive carriers. In contrast, 27 zip codes in Florida, and 15 in Georgia, both BellSouth states, had 10 or more competitive local exchange carriers. Neither state reported a single zip code lacking at least one competitive local exchange carrier. The FCC Report indicates that Kentucky has less local exchange competition than any state in the BellSouth area.

We also found that prior review of tariffs continues to assist us in ensuring that BellSouth's regulated services do not subsidize its unregulated services, and that our limited staff resources will not, as a practical matter, permit us to reduce the tariff review period for all carriers.

On May 22, 2003, BellSouth filed a petition for reconsideration, questioning the accuracy of the information regarding the level of competition faced by BellSouth and stating that, regardless of the aggregate market share of CLECs in Kentucky, granting presumptive validity status to BellSouth tariffs would enhance competition and consumer welfare.

¹ Federal Communications Commission Releases Data on Local Telephone Competition, <http://www.fcc.gov> (Dec. 9, 2002); FCC Reference Information Center, Washington, D.C.

We decline BellSouth's invitation to provide exemptions from any statutory requirement without having first determined that sufficient competitive alternatives exist to protect the public interest. We are bound by KRS 278.512, which mandates precisely this inquiry. We also clarify one further issue: BellSouth appears to see a contradiction between our having found that it has opened its markets to competition pursuant to Section 271 of the Telecommunications Act of 1996 and our finding in this case that BellSouth retains market dominance in its local exchange areas. There is no contradiction. A finding that competition is *possible* is not a finding that competition *exists*. The Section 271 inquiry was premised on the former; our decision here must be based on the latter.

BellSouth does, however, point to several flaws in the FCC's methodology, and indicates that it wishes to provide accurate information regarding competition in its service areas in Kentucky. For this purpose, we grant rehearing and reopen this case to hear evidence on this issue. A procedural order will follow.

IT IS THEREFORE ORDERED that BellSouth's motion for rehearing is granted.

Done at Frankfort, Kentucky, this 6th day of June, 2003.

By the Commission

ATTEST:


Executive Director

Case No. 2002-00276