

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH)	
TELECOMMUNICATIONS, INC. FOR)	CASE NO.
PRESUMPTIVE VALIDITY OF TARIFF FILINGS)	2002-00276

O R D E R

BellSouth Telecommunications, Inc. ("BellSouth") filed a petition for presumptive validity of its tariff filings in July 2002. BellSouth requested that its tariff filings be exempted from the provisions of KRS 278.180 and KRS 278.190. According to BellSouth's request, this exemption would apply to all retail services to the extent that its tariff filings would be presumed valid on the proposed effective date and remain in effect unless and until modified or denied by Commission order. In response to concerns discussed at a November 2002 informal conference, BellSouth filed a modified petition. AT&T Communications of the South Central States, Inc. and TCG Ohio ("AT&T"), Sprint Communications Company LP, SouthEast Telephone, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, and an association comprised of Southeastern Competitive Carriers filed comments in this proceeding.

On April 29, 2003, after a full proceeding, the Commission denied BellSouth's petition. The Commission found that BellSouth had presented insufficient evidence of competition sufficient to warrant BellSouth's tariffs being presumed valid. On May 22, 2003, BellSouth submitted a motion for reconsideration. BellSouth asserted that the Commission had used inaccurate information from the Federal Communications

Commission (“FCC”) on which to base its decision. BellSouth argued that it could submit accurate information regarding competition in its service areas in Kentucky. On June 6, 2003, the Commission granted rehearing to hear evidence regarding competition experienced by BellSouth. A public hearing was scheduled and then canceled at the request of BellSouth. Before the hearing could be rescheduled, AT&T requested that the matter be delayed pending this Commission’s review of issues surrounding the FCC’s Triennial Review Order. BellSouth agreed to this delay. On January 26, 2004, the Commission scheduled a public hearing in this matter to be held September 15, 2004. BellSouth and AT&T submitted updated prefiled testimony, appeared at the hearing, and later, on November 17, 2004, submitted their briefs.

BellSouth’s specific proposal for presumptive validity includes the following:

1. No changes proposed for the procedures related to rate changes for stand-alone residential (1FR) and business (1FB) service. This includes voice service without any vertical features such as call waiting, call forwarding, or caller I.D.
2. For new service proposals and for rate increases, tariffs go into effect 30 days after filing, but may be suspended only within the first 15 days after filing. Following this 15-day period, the Commission may investigate the tariff and can order any adjustment to a rate, term, or condition retroactive to the effective date of the tariff.
3. Rate reductions including bundled offerings, other than the stand-alone 1FR and 1FB service, would go into effect on one day’s notice to the Commission.
4. For promotions, elimination of the “advance letter” filed with the Commission 30 to 40 days before the effective date of the promotion. Promotions are

currently effective with one day's notice to the Commission. BellSouth seeks to eliminate the advance letter.¹

BellSouth asserts that reducing the time for Commission review of its tariffs would enable it to get its products to the market more quickly and efficiently and would, therefore, benefit customers. BellSouth proposes that other telecommunications carriers in Kentucky should also be entitled to the presumptions and shortened review period.² The Commission agrees that all other carriers in Kentucky should be afforded the same treatment with regard to filing time frames for tariffs in order to prevent disadvantaging any other carrier.

The Commission granted rehearing in this proceeding to hear evidence with regard to the current amount of competition experienced within BellSouth's territory and to determine if the level of competition should afford BellSouth relaxed regulatory standards. Both BellSouth and AT&T estimated that the competitive local exchange carrier ("CLEC") market share was approximately 20%. This includes lines served by

¹ BellSouth's Revised Supplemental Testimony filed September 9, 2004 at 3-5. See also BellSouth's Brief filed November 17, 2004 at 4 and 5.

² In Administrative Case No. 19000359, Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones, Order dated June 21, 1996, the Commission determined on its own motion that long-distance carriers and resellers of telecommunications services may enter the telecommunications market by filing a proposed tariff and other information with 30 days' notice to the Commission. Once these carriers are participants in the market, they may change their tariffs' terms and conditions on one day's notice and without any customer notice. In Administrative Case No. 19000359 and Administrative Case No. 19000370, Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers, Order dated August 8, 2000, the Commission found that competitive local exchange carriers must still provide tariffs and any revisions thereto on 30 days' notice to the Commission.

utilizing unbundled network elements and resale of BellSouth services.³ BellSouth and AT&T differ in their analyses of the amount of competition that comes from facilities-based carriers that provide service. BellSouth estimates that, as of December 2003, there were 282,462 CLEC access lines in Kentucky and AT&T estimates that there were 240,756 CLEC access lines in Kentucky. Both of these estimates relate only to BellSouth territory. Regardless of the exact competitive access line count, the Commission recognizes that CLECs have established a level of competition sufficient to afford some relief to BellSouth and other incumbent local exchange carriers (“ILECs”) and CLECs in Kentucky.

In this Order, we address the tariff filing requirements of ILECs, such as BellSouth, and CLECs, such as AT&T. Our analysis is based on KRS 278.512, a statute that permits the 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.” KRS 278.512 requires the Commission to determine whether the exemption or alternative requirement is in the public interest based on certain enumerated factors. The statute emphasizes at least three basic principles: ensuring that a reasonable level of competition exists before relaxing regulation; protecting the ability of a regulated utility to compete with unregulated

³ BellSouth Brief at 8.

providers of functionally equivalent services; and protecting consumers' ability to obtain high-quality services at just and reasonable rates.

As discussed above, the parties have established that competition exists in Kentucky for local exchange service. In addition, the parties assert that they face competition from intermodal service providers. Wireless and Voice over Internet Protocol ("VoIP") provide alternatives to local exchange service in varying degrees. Although these are not perfect substitutes, some consumers have substituted these services for local exchange service. The Commission does not regulate either of these services. The Commission's decision herein will protect the ability of the regulated carriers to compete with these unregulated carriers. The Commission's decision will also enable the consumers of the regulated service to be able to obtain high-quality service at just and reasonable rates.

In support of its petition, BellSouth asserts that electronic filing and distribution capabilities available to the Commission and parties allow for a shorter review period without reducing the actual time available.⁴ Moreover, BellSouth asserts that a 15-day suspension period will enable it to undertake appropriate changes and training necessary to implement a tariff on a date certain when the tariff will become effective.⁵ This streamlined tariff review does not, according to BellSouth, alter the utility's burden of proof to show that an increased rate or charge is just and reasonable, pursuant to KRS 278.190(3).⁶

⁴ BellSouth's Brief at 5.

⁵ Id. at 7; Transcript of Evidence at 35.

⁶ BellSouth's Brief at 7.

AT&T, on the other hand, asserts that BellSouth remains a dominant carrier with respect to the local service market and that relaxing the Commission's regulatory review is not in the public interest. AT&T contends that local competition in Kentucky appears to have reached its apex.⁷ Despite BellSouth's contention that intermodal competition is sufficient to justify the requested exemptions, AT&T asserts that these other sources are "hardly a threat to BellSouth."⁸ Moreover, AT&T asserts that the effect of BellSouth's proposal will be to shift the burden from BellSouth to the Commission or a third party.⁹

The Commission, having considered BellSouth's modified petition and AT&T's response thereto, finds as follows.

Weighing the principles contained in KRS 278.512, the Commission finds that BellSouth's request should be granted in part and denied in part. As noted in the Commission's April 29, 2003 Order in this proceeding, we are in agreement with BellSouth's desire to get products and services and lower prices to the public more expeditiously.¹⁰ The Commission finds that a reduction in time for it to review all telecommunications carriers' tariffs submitted by ILECs and CLECs would, at this time, be in the public interest. The availability of electronic filing of tariffs has reduced the

⁷ AT&T's Brief filed November 17, 2004 at 1 and 3. See also BellSouth's Brief at 21, footnote 42. [The testimony presented by BellSouth and AT&T indicated that approximately 60% of CLEC customers in BellSouth's service area are served via UNE-P.]

⁸ Id. at 3.

⁹ Id. at 6.

¹⁰ April 29, 2003 Order at 7.

time necessary for tariffs to be reviewed by the Commission without overburdening the limited Commission Staff resources. A 15-day review period, from the date a tariff is electronically filed to its effective date, is sufficient. This reduction in time for review of telecom tariffs is available to BellSouth and to all other ILECs and CLECs. The Commission finds that 30 days are no longer necessary to review even stand-alone residential and business services. However, tariffs containing rate reductions, including bundled offerings, must also be filed with 15 days' notice to the Commission. This will enable appropriate review of reductions and bundled offerings. Retaining Commission review of tariffs before their effective dates is vital to ensuring fair, just, and reasonable rates. The Commission is affording this relaxed regulatory treatment to all carriers in Kentucky, many of whom are rural carriers that do not experience the level of competition that BellSouth faces. To balance the needs of all carriers and to put all carriers on equal footing, the Commission has struck a balance between the BellSouth proposal and the decision herein. On a case-by-case basis, BellSouth and all communications carriers may petition for a time less than 15 days on a showing of good cause, pursuant to KRS 278.180(2).

The Commission currently accords presumptive validity on one day's notice to BellSouth's special promotion tariffs. BellSouth now seeks to eliminate the 30- or 40-day advance notice for such promotions. The Commission finds that elimination of this advance notice requirement is in the public interest. Thus, the 40-day advance notice required for promotional offerings available for resale to CLECs and the 30-day advance

notice required for promotions that are not available for resale should be eliminated.¹¹ Promotions are temporary rate reductions or incentives designed to gain customers or retain customers. Promotions are vital to enhancing consumer choice and competition and also to the company's marketing of its services. The Commission finds that no harm will occur from eliminating advance notice on promotional offerings and that it will advance competition.

The Commission HEREBY ORDERS that:

1. BellSouth's proposal should be granted in part and denied in part.
2. All tariffs submitted by ILECs and CLECs shall be filed on 15 days' notice to the Commission and may, should the Commission so order, be suspended or rejected any time within this 15-day window.
3. All promotions filed by ILECs and CLECs may be effective on one day's notice to the Commission.
4. Pursuant to KRS 278.512, ILECs and CLECs are exempted from the operation of KRS 278.180 to the extent that any change proposed by these utilities may be made on 15 days' notice to the Commission and, when necessary, 15 days' notice to the utility's customers.

¹¹ See Case No. 2001-00077, BellSouth Telecommunications, Inc.'s Proposed Changes and Procedures for Filing Contract Service Arrangements and Promotions, Order dated September 28, 2001.

Done at Frankfort, Kentucky, this 28th day of April, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:



Executive Director