

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On May 23, 2005, Time Warner Telecom of Ohio, LLC (“Time Warner”) filed a motion for rehearing of the Commission’s April 29, 2005 Order in this proceeding. On June 2, 2005, BellSouth Telecommunications, Inc. (“BellSouth”) filed a response to Time Warner’s motion. On June 9, 2005, Time Warner replied. Time Warner is a competitive local exchange carrier (“CLEC”) operating in portions of Northern Kentucky, and BellSouth is an incumbent local exchange carrier (“ILEC”) with operating territories across Kentucky.

Time Warner requests rehearing on the basis that the Order inappropriately revokes an exemption granted pursuant to KRS 278.512. Time Warner offers three grounds to support its position. First, Time Warner claims that the Commission did, in fact, waive certain filing requirements for non-dominant carriers. Specifically, Time Warner references the Commission’s Orders dated January 8, 1998 and August 8, 2000 in Administrative Case No. 370,¹ wherein the Commission identified streamlined

¹ Administrative Case No. 370, In the Matter of Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers.

procedures for non-dominant telecommunications carriers, including CLECs. Second, Time Warner notes that the Commission did not find any practices of CLECs to have been harmful. Last, Time Warner alleges that the Commission erred in revoking the relief granted pursuant to KRS 278.512 by not fully addressing relevant issues and failing to make necessary findings.

BellSouth responded to the motion, indicating that it opposes rehearing to the extent that the Commission might consider establishing different filing requirements for ILECs and CLECs, particularly if it results in greater obligations for ILECs. BellSouth contends that the Commission's determination was well supported by the record and struck a balance among competitors. BellSouth argues that ILECs lack market power and, therefore, should not be subjected to the competitive disadvantage that would occur if ILECs and CLECs were treated unequally. However, BellSouth stated that it would not object to revisiting the streamlining or elimination of filing special contract service arrangements for all telecommunications carriers.

The Commission finds that Time Warner's motion should be denied. The Commission recognizes that its policy regarding the filing of special contract arrangements has been interpreted differently by various carriers. Differing filing procedures have been utilized by certain carriers. Indeed, these varied understandings led, in part, to the establishment of this inquiry. In this proceeding, the Commission imposed, on a going-forward basis, a consistent, fair, and competitively neutral policy that protects the public interest and the development of competition. Time Warner's attempt to challenge this Commission's authority to revoke what it claims was an exemption pursuant to KRS 278.512 is misplaced and clearly not supported by the

record in this case, nor the record in Administrative Case No. 370. As Time Warner itself admits, the Commission specifically preserved its authority and the associated tariff requirements pursuant to KRS 278.160,² which requires “schedules showing all rates and conditions for service,” KRS 278.160(1). Of particular importance is KRS 278.160(3), which specifically references the filing of special contracts and the requirement that such filings may only be protected from disclosure and publication if the filing complies with KRS 61.878. The Commission acknowledges the apparent discrepancy that was created as a result of the August 8, 2000 Order in Administrative Case No. 370. There, the general filing requirements of KRS 278.160, including special contracts, were specifically retained while compliance with 807 KAR 5:011, Section 13, which also requires the filing of special contracts/tariffs, appears to have been exempted. However, the Commission’s intent was not to exempt non-dominant carriers from the filing of special contracts, but rather to exempt the more rigorous documentation filing requirements typically required of general tariff filings such as cost support. Nevertheless, the Commission, its Staff, and most telecommunications carriers have recognized that it is, and has been, the intent of the Commission that special contracts and customer service arrangements are to be filed with the Commission. In fact, Time Warner itself includes provisions for making such filings in its

² See Time Warner Motion at 3.

general services tariff, although it attempts to preserve its interpretation regarding the requirement.³

Although the Commission initiated this proceeding as a result of complaints filed against BellSouth regarding alleged discriminatory treatment, the Commission explained that the purpose of requiring the filing of customer service arrangements and special contracts is to fully comply with both KRS 278.160 and KRS 278.170. Time Warner does not claim that these statutory provisions have been exempted, and the Commission found that it cannot ensure compliance with these statutes without full and complete disclosure of all tariff filings, including special customer service arrangements and contracts. Therefore, whether or not the practices of carriers other than BellSouth have resulted in similar harm is immaterial to the Commission's decision. Upon finding that the failure to file special contracts "disadvantaged telecommunications carriers...and customers," the Commission further determined that equal treatment of competitors was warranted and necessary.

The Commission clearly understands that Time Warner, along with other affected carriers, may argue that they are burdened by having to make such filings. However, the Commission has weighed the disadvantages and advantages of such a policy and determined that public disclosure affords the Commission, telecommunications carriers, and customers sufficient information to ensure that rates are not unjustly discriminatory

³ See, e.g., Tariff No. 7 (Local Exchange) at 123, Section 5.11.2 (Effective April 15, 2004) and various other locations throughout Time Warner's Tariffs on file with the Commission where language similar to the following is included: "Contracts resulting from a special request will be submitted for approval with the Kentucky Public Service Commission, if the rules and regulations of the Commission do require such filings and approval."

and are made available to all who are similarly situated. Rather than impose a strict, detailed policy that addresses where, when, and how to offer special contracts, the Commission has elected to allow the market the opportunity to regulate these special circumstances. Full and complete disclosure is key to the success of such a policy. Without adequate disclosure, there is potential for discriminatory treatment of end-users in violation of KRS 278.170.

IT IS THEREFORE ORDERED that Time Warner's motion for rehearing is denied for the reasons stated herein.

Done at Frankfort, Kentucky, this 13th day of June, 2005.

By the Commission

ATTEST:



Executive Director