

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE SALE AND DETARIFFING OF EMBEDDED) ADMINISTRATIVE
CUSTOMER PREMISES EQUIPMENT) CASE NO. 269
PHASE IV

O R D E R

The Commission has before it complex issues concerning enhanced 911 emergency services ("E911") and the conditions under which customer data base access or information should be provided by local exchange companies to Kentucky communities who wish to obtain 911 services.

BACKGROUND

On January 14, 1987, the Commission issued an Order in Phase IV of this proceeding which detariffed customer premises equipment ("CPE") used to provide 911 emergency services effective January 1, 1988. On March 17, 1988, the Commission issued an Order affirming the decision to detariff 911 customer premises equipment and mandating "unbundled 911 data base access."

On August 1, 1988, the Commission received a letter from the city of Madisonville, Kentucky, which described the city's negotiations with South Central Bell Telephone Company ("South Central Bell") to install E911 emergency service and how Madisonville had been investigating the use of equipment offered by vendors other than South Central Bell. Madisonville stated

that "South Central Bell simply refuses to make available the necessary information which would enable [the City] to operate a different system." Madisonville further stated "[i]f indeed South Central Bell can refuse to provide the basic information, i.e. telephone number, name and telephone location, of those customers who reside in the area which we seek to offer 911 service, then the results of [the Commission] ruling would seem meaningless." According to Madisonville, South Central Bell offered another option of "providing only the 'listed' numbers" but this would not allow Madisonville to provide 911 service to all its residents.

After receiving this letter, the Commission, on its own motion, reopened Phase IV of this proceeding to investigate the E911 data base access available to Kentucky communities from local exchange carriers. By Order dated January 10, 1989, the Commission stated that it would consider the city of Madisonville's correspondence to be a formal complaint and take this opportunity to further reconsider the decision to detariff customer premises equipment used to provide E911 emergency services. At that time the Commission identified the following issues to be considered:

1. The need for restrictions and the reasonableness of restrictions on E911 data base access designed to prevent unauthorized access to customer proprietary information.

2. The availability in the market place of competitive options for customer premises equipment used to provide 911 emergency services that are E911 software compatible.

3. Whether E911 data base access restrictions and software compatibility requirements constitute a monopoly bottleneck in the provision of E911 emergency services.

4. Whether the Commission should retariff customer premises equipment used to provide E911 emergency services.

5. Other issues that may be raised in this investigation.

By the same Order, each local exchange carrier was required to notify its E911 emergency service customers and potential customers about the initiation of this investigation and to provide to the Commission a list of those customers and a copy of the method of notification. Such notice has been provided.

The following parties participated in this proceeding, including sponsoring witnesses for the hearing held April 5, 1989:

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| 1. City of Madisonville | Testimony of Mr. Bob G. Simmons prefiled February 13, 1989; Brief filed May 16, 1989; Reply Brief filed May 26, 1989. |
| 2. South Central Bell | Testimony of Mr. John F. Dorsch prefiled January 30, 1989; Brief filed May 15, 1989; Reply Brief filed May 26, 1989. |
| 3. Cincinnati Bell Telephone Co. ("Cincinnati Bell") | Testimony of Mr. Robert S. Wedig prefiled January 30, 1989; Brief filed May 11, 1989. |
| 4. GTE South Incorporated ("GTE South") | Testimony of Mr. Robert Vernon Williams prefiled January 30, 1989; Brief filed May 15, 1989. |
| 5. Contel of Kentucky, Inc. ("Contel") | Testimony of Mr. Christopher K. Fallis prefiled January 30, 1989; Brief filed May 11, 1989. |
| 6. Kentucky Justice Cabinet and Dept. of State Police ("Justice Cabinet") | Testimony of Mr. C. Mike Moulton prefiled March 27, 1989; Brief filed May 9, 1989. |

7. Lexington Fayette Urban
County Government

Testimony by Mr. Frank Fryman,
Brief filed May 10, 1989; Reply
Brief filed May 30, 1989.

8. The Attorney General
by and through his Division
of Rate Intervention

Cross-examined witnesses at the
hearing and filed a brief on May
16, 1989.

In addition, the Commission received public comments from the General Counsel of the Kentucky Municipal League, Mr. Thielen, and the chief administrative officer of the city of Madisonville, Mr. Lloyd Merrell.

DISCUSSION

Local exchange carriers provide 911 emergency services in similar ways. "Basic 911" is a relatively simple system that does not involve the use of a data base. In this arrangement, an end-user accesses a public safety answering point and provides the station attendant with a telephone number and address location. "Enhanced 911" is a more sophisticated system that involves the use of a data base. In this arrangement, an end-user accesses a public safety answering point and the data base provides the station attendant with automatic number identification and automatic location identification.

An E911 data base can be centralized and serve a number of communities or stand-alone and serve an individual community. In either case, program protocols are designed to protect customer proprietary information from unauthorized retrieval. Furthermore, local exchange carriers generally require the use of software compatible customer premises equipment. As a result, communities are often limited in their ability to choose customer premises

equipment. This is the substance of the issue raised by the city of Madisonville.

The issues identified by the Commission and the parties' views are summarized herein.

REASONABLENESS OF RESTRICTIONS ON E911 DATA BASE ACCESS

Madisonville asserts that any restrictions to the E911 data base access should not function as a prohibition on municipal governments from purchasing the optimal emergency system contending that it does not seek access to South Central Bell's on-line data, but merely seeks to recategorize the information of name, telephone number, and location of the end-users, and receive periodic updates.

South Central Bell, in addressing its concerns about restrictions on E911 data base access, describes its provisioning of E911 as follows:

South Central Bell provides this information for each subscriber to its emergency reporting service through unbundled access to data bases. The starting point for these data bases is an extraction from the company's customer record information system (CRIS data base). CRIS is the basis for the company's billing for all its exchange customers. Because of its use in the billing system it contains customer specific information for all South Central Bell's exchange service customers including those who have availed themselves of tariff offerings that limit or prohibit the availability of their telephone number to the general public and all other entities.¹

¹ South Central Bell's testimony filed January 30, 1989 at page 3.

South Central Bell then states that a clause in its tariff "allows for the display of the telephone number and calling-party address at a Public Safety Answering Point located on the premises of a customer (generally a city or county Emergency Reporting District) subscribing to E911 service."² South Central Bell concludes by stating that "it retains a policy for foreclosing such data base access."³

Cincinnati Bell described its restrictions on E911 data base access as follows: "PSAP operators have access to the data base through a call initiated by someone calling 911. In other words, Public Safety Answering Point operators are in a receive-only mode."⁴ Cincinnati Bell does not provide the entire data base. Instead, the data base resides in Cincinnati Bell's computer equipment under its direct control. Cincinnati Bell raised several concerns about releasing E911 data directly to Public Safety Answering Point operators. The possibility of unauthorized access and misuse of confidential data; accidental changes, deletions or degradation of E911 records by Public Safety Answering Point personnel; timely use of the E911 record update by Public Safety Answering Point personnel once received from the telephone company; problems of assessing liability if 911 data is mishandled or delayed; and the lack of control by the Commission

² Id. at pages 3 and 4.

³ Id. at page 4.

⁴ Cincinnati Bell's testimony filed January 30, 1989 at page 3.

over Public Safety Answering Point operators in the event of serious data base problems. Since then, Cincinnati Bell finally asserts that in its opinion the best way to protect its proprietary relationship with customers is to preclude any possibility of misuse. Cincinnati Bell seeks to avoid the possibility of misuse by maintaining control of customer records. Cincinnati Bell believes that "it is the customers decision whether or not to release his nonpublished telephone number and address to a third party."⁵

GTE South offers E911 service through a stand alone mini-computer based system. GTE South developed this system which uses its customer record billing file information with a street address file. The data base is developed in conjunction with the local government and is updated every three days. GTE South uses program protocols to prevent Public Safety Answering Point employees from tampering with the data base as well as preventing unauthorized use by local government employees or third parties.

GTE South discussed the conditions under which it would agree to make the data base information available as a service offering. First, the condition that the Open Records Act, KRS 61.870 to 61.884, would be deemed to have an exception which would keep this data base from public inspection. Next, that the Commission treat E911 data base information as confidential and not as a matter of public record. Third, that customer records be provided to local

⁵ Id. at page 6.

government agencies only after having entered into a contract with GTE South which would provide safeguards to the telephone company. GTE South would provide customer information consisting of customer name, address, telephone number, and class of service. However, names associated with nonpublished numbers would not be furnished. The calling party would forfeit privacy afforded to nonpublished and nonlisted numbers only to the extent that the telephone number and address will be furnished to the local government. Additionally, local governments would not have the ability to tamper with components of the data base, but would have the information on a read-only capability.

Contel believes that there are two areas in which the data base access are of concern; first, the on-site data base access, and second, the application software located at the customers' premises. Contel restricts access to telephone number and address data to read-only functions.

In reaching the decisions contained herein, the Commission has considered the various interests asserted concerning the reasonableness of data base access restrictions.

DO ACCESS RESTRICTIONS AND SOFTWARE COMPATIBILITY
REQUIREMENTS CONSTITUTE A MONOPOLY BOTTLENECK?

All telephone companies and the city of Madisonville believe that competitive options or CPE are available. Many vendors provide CPE for the provision of E911 service. However, the problem of equipment compatibility remains. Because multiple vendors exist and because of the requirements the Commission finds

reasonable in this Order, further determinations concerning this issue are not necessary.

In addressing the question of whether access restrictions and software compatibility requirements constitute a monopoly bottleneck, Madisonville stated that "so long as SCB continues its present demand that its data base information be available only as part of its own E911 offering, then there really is no competition even though we can buy other equipment."⁶

South Central Bell asserts that "the Commission did not intend for it to relinquish control of data base access in the course of detariffing E911 CPE. Continued regulation of the data base portion on such terms thus addresses the needs and concerns of the end user, E911 subscriber, and South Central Bell."⁷

Cincinnati Bell agrees with South Central Bell and states that "data base construction and upkeep can and should only be accomplished by the primary telephone companies operating within a county or other geographical area."⁸

Contel believes that its provision of the Automatic Location Identification data base is a monopoly bottleneck, but that the provision of customer provided equipment is not a bottleneck as there are other equipment sources.

⁶ City of Madisonville's Testimony filed February 13, 1989 at page 4.

⁷ South Central Bell's Testimony filed January 30, 1989 at page 6.

⁸ Cincinnati Bell's Testimony filed January 30, 1989 at page 8.

After reviewing the parties' testimony and the record of evidence, the Commission finds that the impact of access restrictions, the availability of the customer information from the data bases, and software compatibility requirements currently in existence should be alleviated to the extent possible. By implementing the tariff changes and waiver procedures set forth herein, those problems should be mitigated.

SHOULD E911 CUSTOMER PREMISES EQUIPMENT BE RETARIFFED?

None of the parties felt that retariffing customer premises equipment used to provide E911 services was a solution to the problem of data base access except Contel. In its comments concerning retariffing customer premises equipment, Contel merely stated its preference for retariffing but did not fully develop its position. The Commission declines to retariff E911 CPE at this time because the solutions described herein should sufficiently resolve the data base access restriction problem.

The city of Madisonville and the Justice Cabinet requested the Commission take some action to reduce the price of providing E911 services. Because of the Commission's decision not to retariff E911 customer premises equipment, the Commission will not address the pricing issues.

WHETHER LOCAL TELEPHONE COMPANIES CAN BE REQUIRED TO RELEASE TO 911 EMERGENCY SERVICE PROVIDERS THE NONPUBLISHED LISTINGS OF ITS SUBSCRIBERS

South Central Bell asserts in its brief that the data base component of emergency telephone service should remain fully regulated and exclusively controlled by the local exchange companies and that it should not be required to release the

nonpublished numbers of its subscribers without their consent.⁹ One reason cited by South Central Bell is alleged conflict with the Federal Electronic Communications Privacy Act, 18 U.S.C. Section 25, 10 et seq. That act provides that the records pertaining to a subscriber shall be released or disclosed to a governmental entity only under certain conditions. However, none of the conditions refer to the provision of E911 service, and therefore the Commission finds the Act inapplicable to this circumstance.

The primary concerns of GTE South in the release of such information were the change of long-standing practice and the possible imposition of liability on telephone companies for improper access or errors made by local government agencies. Contel asserts that it has an obligation to its subscribers with unlisted numbers to protect the confidentiality of those numbers and the integrity of the data base.

Cincinnati Bell raises the concerns of the right to privacy, Kentucky's Open Records Act, and its tariff provisions concerning nonpublished telephone numbers. Based on these issues, Cincinnati Bell concludes that proprietary information should not be disclosed to a stand-alone Public Safety Answering Point "without a subscribers consent."¹⁰

⁹ South Central Bell's Brief filed May 15, 1989 at page 11.

¹⁰ Cincinnati Bell's Brief filed May 11, 1989 at page 6.

On the other hand, the Justice Cabinet contends that despite the concerns raised about the "sanctity" of unlisted and nonpublished numbers, the public is entitled to the services that E911 provides. Also, the Justice Cabinet asserts that its Department of State Police neither intends nor will it divulge information of a confidential nature.

The Attorney General argues that the Commission may require local telephone companies to release to E911 emergency service providers the nonpublished listings of subscribers based on a standard of reasonableness. The Attorney General also contends that, in the alternative, the Commission should require local exchange companies on a case-by-case basis to allow customers to opt for the release of the information to E911 service providers. This same alternative is proposed by the city of Madisonville.

In response to this issue, the city of Madisonville argues that based on KRS 278.040(2) and KRS 278.030(2) the Commission has exclusive jurisdiction over the regulation of the service of utilities and that regulation should include the furnishing of adequate, efficient, and reasonable service. Based on these statutory mandates, the city of Madisonville believes that the Commission has the authority to require the release of the nonpublished numbers for the provision of E911 emergency service and that such release is in the public interest.

Madisonville requests the Commission to require, in the alternative, that all nonpublished number subscribers be polled concerning their exclusion from the E911 system. Madisonville suggests that the polling ensure a real opportunity to make the

subscribers' requests known and that such opportunity may require multiple notices and written confirmation of the choice.

The Commission, after weighing the divergent interests and positions held by the telephone companies and other parties, has decided that South Central Bell should develop a notification and waiver procedure as set forth below to be applied to its current customers who have nonpublished or unlisted numbers. The same procedure should also be applied to new customers in the future.

Having considered the record of evidence and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. South Central Bell shall revise its tariffs to provide a notification and waiver procedure to customers in which subscribers must agree in writing before nonpublished or unlisted numbers are given to local governments for E911 services.

2. South Central Bell shall provide local governments with the data base information in a mutually agreed format including those customers who have nonpublished or unlisted numbers that have agreed through the notification and waiver process to release this information.

3. South Central Bell shall revise its tariffs according to this procedure within 20 days of the date of this Order.

4. Any local exchange company providing E911 service shall revise its tariffs to provide for the same procedure required of South Central Bell above in addition to any other procedure they may offer in the provision of this service.

5. The expenses necessary for providing the notification and waiver procedure (i.e. the mail-outs) shall be recovered

through the rates charged to local government customers receiving E911 services.

Done at Frankfort, Kentucky, this 14th day of December, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:

Executive Director