

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF SOUTH CENTRAL BELL)
TELEPHONE COMPANY FOR AN EXEMPTION)
FROM THE REGULATION FOR) CASE NO. 92-354
TELEMESSAGING SERVICES)

O R D E R

On August 17, 1992, BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company ("SCB") petitioned the Commission for exemption from regulation of its MemoryCall™ voicemail service ("MemoryCall"). On September 15, 1992, SCB filed an addendum to its original petition, containing further information regarding its service proposal. On October 5, 1992, the Attorney General of the Commonwealth of Kentucky ("AG") moved to intervene. On November 13, 1992, Advanced Telecommunications Corporation ("ATC") moved to intervene. Both motions were granted. On October 6, 1992, March 1, 1993, and April 14, 1993, the Commission ordered SCB to provide additional information. SCB responded to all requests for information. On August 17, 1993, a public hearing was held. On September 7, 1993, SCB furnished additional information requested at the hearing.

BACKGROUND

On August 1, 1991, the Commission initiated Administrative Case No. 338¹ 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. Sec. 64.702(a). The FCC distinguished enhanced services from basic services by their functional characteristics.

The FCC's enhanced service definition 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 with additional, different, or restructured information; (3) Involve subscriber interaction with stored information".²

DISCUSSION

MemoryCall is a voicemail service which allows customers to receive, manage, and retrieve telephone messages from callers. Messages may be retrieved either on site or from remote locations. SCB identified several tariffed services which either must be purchased in association with MemoryCall for it to function properly or may be purchased (complementary services) to enhance

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

² 47 C.F.R. Sec. 64.702(a).

the functions of MemoryCall.³ SCB uses the following services to provide MemoryCall: Exchange Access Lines, Multi-line Hunt Groups, SMDI, Private Lines as used in conjunction with MemoryCall service, User Transfer, and Touchtone. Call Forwarding Variable, Call Forwarding Busy Line, Call Forwarding Don't Answer, and Message Waiting Indication were identified as complementary services. With the exception of exchange access lines, all of these network services are individually priced. Individually pricing a service requires that service-specific cost and demand studies be conducted.

In evaluating SCB's petition for regulatory exemption of its MemoryCall service, the Commission is bound by KRS 278.512 and 278.514. 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 consideration of any other factor deemed in the public interest.

Three criteria focus on the existing conditions of the market. The Commission is to consider the extent to which competing telecommunications services are available in the relevant market, the existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available, and the number and size of competitive providers.

³ Petition at 5 and Item 2 in SCB response filed October 6, 1992.

SCB identified several alternatives to MemoryCall.⁴ Other equipment vendors currently offer private branch exchanges ("PBXs") with voice mail capabilities. Cincinnati Bell Telephone Company and GTE South Incorporated operate in regions larger than the borders of Kentucky and currently offer competing voice mail services in SCB's service territory. Retail and discount outlets, such as Sears, Circuit City, and Service Merchandise, offer answering machines with capabilities similar to MemoryCall. Interexchange carriers, such as AT&T, MCI, and Sprint, offer competing voice mail services.

The overall impact of the proposed regulatory change on the availability of existing services at reasonable rates is also to be weighed by the Commission. SCB states that MemoryCall has been non-tariffed since May 30, 1991. As such, "all direct investment and expenses associated with [MemoryCall] in Kentucky are allocated to non-regulated accounts."⁵ To the extent that tariffed network services are used with MemoryCall, MemoryCall stimulates usage of the regulated network and contributes revenues toward SCB's joint and common costs. SCB's provision of existing network services at reasonable rates is not endangered by the exemption of MemoryCall.

The Commission fully considered whether adequate safeguards exist to assure that rates for regulated services do not subsidize exempt services. There are two possible methods by which exempt

⁴ Petition at 3 and Item 3(a) in SCB's information response dated October 6, 1992.

⁵ Petition at 4.

services could be subsidized by tariffed network services: (1) insufficient expenses and capital costs could be allocated to exempted services relative to tariffed network services and (2) tariffed network services could be priced below some optimal level.

There are several existing safeguards that protect Kentucky ratepayers against subsidization. These safeguards include the FCC's Joint Cost and Affiliated Transaction Accounting Rules (Part 32 and Part 64 of the FCC's Rules and Regulations); the Cost Allocation Manual, which describes how SCB complies with the cost allocation rules of Part 64; the annual independent third party audit, which assures compliance with Parts 32 and 64; the annual Form M reporting requirements; and the quarterly and annual Automated Reporting and Information System reporting requirements. In addition, the Commission receives monthly financial data from SCB and holds quarterly monitoring meetings with SCB. In SCB's opinion, these safeguards are adequate to assure that subsidization does not occur between the regulated and non-regulated services.

When a regulated service is initially offered, a study is filed in conjunction with the tariff sheets which compiles and lists the various costs involved in providing the service, as well as estimated demand and revenue figures. The forecasts may be as long as five years. Subject to Commission review, the tariffs may be updated at any time in response to changing cost and market conditions. It is possible for tariffed network services to be incorrectly priced when market conditions change relative to demand and revenue forecasts.

SCB stated that it monitors market conditions relevant to each of its services and that monitoring is an ongoing process. There is a product manager for each SCB service. Product managers have a variety of tools, including market studies, which can be used to monitor specific service markets. Product managers have definite market evaluation cycles. However, the record is not clear on either evaluation frequency or whether evaluations are coordinated across product lines.⁶

The safeguards inherent in the FCC's guidelines, along with federal and state monitoring policies, should be adequate to assure that expenses and investments are being properly allocated between regulated and non-regulated services. However, there is not a coordinated systematic effort to keep the Commission apprised of specific market changes or market evaluation results. To assure that optimal revenue streams are being captured by tariffed network services utilized by exempt services, SCB should update the demand and revenue forecasts which form the basis of its tariffed prices. Updating forecasts may not necessarily require new marketing surveys, as long as it can be demonstrated that actual demand and revenues are not significantly deviating from the most recent forecasts for the services in question. Updated forecasts should be filed with the Commission at least every three years, either reaffirming an existing tariff or justifying a tariff change. In instances where such a tariff change is warranted the Commission does not contemplate that SCB will have to produce new cost

⁶ Transcript of Evidence at 61-68.

support. SCB may file for a waiver of this requirement for regulated services generating de minimis revenues.

The Commission has considered the impact that exempting MemoryCall will have upon universal service. SCB contends that the federal and state accounting guidelines and reporting and monitoring procedures adequately protect universal service goals. Given existing federal and state safeguards, exempting SCB's MemoryCall service will not endanger the provision of universal service at reasonable rates.

Conversely, regulation of SCB's MemoryCall service may actually hamper SCB's ability to compete in a competitive market environment. There are many competitors in the voice mail market, either offering competing services or customer premises equipment with voice mail capabilities. Within the specific context of this proceeding, the Commission finds that SCB does not exercise significant market power in Kentucky's voice mail market.

The competitive nature of the voice mail market should provide adequate safeguards to protect customers from unfair treatment, poor service quality, or excessive prices. However, all customers are encouraged to exercise their option of filing complaints regarding the exempt services with the company and the Commission if deemed necessary.

Although SCB's investment, revenues and expenses associated with enhanced services will not be considered by the Commission in determining rates for SCB's services, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS

278.514. SCB shall continue to fulfill all reporting requirements of KRS Chapter 278 and Commission Orders.

The Commission has carefully reviewed SCB's petition in accordance with the criteria contained in KRS 278.512 and finds that exemption of SCB's MemoryCall service, as described in this proceeding, is in the public interest.

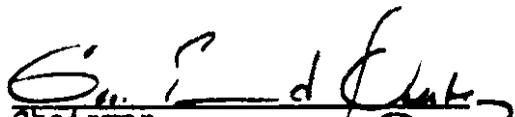
IT IS THEREFORE ORDERED that:

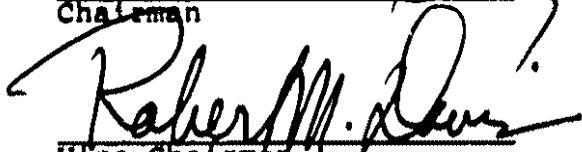
1. The enhanced services specifically described in SCB's petition are exempted from regulation, pursuant to KRS 278.512 and KRS 278.514.

2. Within 90 days of the date of this Order and every three years thereafter, SCB shall file updated demand and revenue forecasts and new tariff sheets as necessary for the following services used to provide MemoryCall: Multi-line Hunt Groups, SMDI, Private Lines as used in conjunction with the MemoryCall service, User Transfer, Touchtone, Call Forwarding Variable, Call Forwarding Busy Line, Call Forwarding Don't Answer, and Message Waiting Indication.

Done at Frankfort, Kentucky, this 23rd day of November, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner