

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF GTE SOUTH INCORPORATED)
AND CONTEL OF KENTUCKY, INC.,)
D/B/A GTE KENTUCKY FOR EXEMPTION) CASE NO. 92-358
OF ITS TELEMESSAGING SERVICES)
FROM REGULATION)

O R D E R

On August 17, 1992, GTE South Incorporated and Contel of Kentucky, Inc. d/b/a GTE Kentucky ("GTE"), filed their petition to exempt from Commission regulation Personal SecretarySM, ContraNetSM Voice Messaging and Message ManagerSM ("voice mail services"). On October 14, 1992, the Attorney General of the Commonwealth of Kentucky ("AG") moved to intervene and the motion was granted. On September 28, 1992, October 1, 1992, March 1, 1993, and April 14, 1993, the Commission ordered GTE to provide additional information and GTE responded to all requests. On August 26, 1993, the Commission held a public hearing and on September 13, 1993, GTE 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

¹ Administrative Case No. 338, Inquiry Into The Provision of Enhanced Services in Kentucky, Order dated August 1, 1991.

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 a subscriber's transmitted information; (2) Provide the subscriber with additional, different, or restructured information; (3) Involve subscriber interaction with stored information."²

DISCUSSION

GTE's voice mail services allow customers to receive, manage, and retrieve telephone messages from callers. Messages may be retrieved either on site or from remote locations. GTE identified several tariffed services which must be purchased by a voice mail provider or subscriber to allow the services to function properly or enhance the operation of its voice mail services. Voice mail services are not necessarily provided on a network or "integrated" basis, using a central office switch. Which services are actually purchased depends upon whether services are offered on an integrated or non-integrated basis.³ GTE uses the following services to provide of voice mail services: Exchange Access Lines, DID/DOD trunks, PBX trunks, Message Waiting Indication - Audible,

² 47 C.F.R. Sec. 64.702(a).

³ Item Nos. 1(b) and 3(b) in GTE response filed November 10, 1992 and Item 1 in GTE response filed March 22, 1993.

Forwarded Call Information - Intraoffice, Data Link MRC, Data Link NRC, Queuing, User Transfer, Call Forwarding Busy Line, Call Forwarding No Answer, Call Forwarding Busy Line/No Answer, Pager Notification, and CentraNet lines. 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 GTE's petition for regulatory exemption of its voice mail services, the Commission considers 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 of the statutory 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.

GTE identified several alternatives to its voice mail services.⁴ Other equipment vendors currently offer private branch exchanges ("PBXs") with voice mail capabilities. GTE also competes

⁴ Petition Exhibit 1.

with numerous paging and answering services. Cincinnati Bell Telephone and Pacific Telesis Company operate in regions other than Kentucky and currently offer competing voice mail services in GTE's service territory. Though not mentioned in GTE's petition, retail and discount outlets, such as Sears, Circuit City, and Service Merchandise, offer answering machines with capabilities similar to GTE's voice mail services. Interexchange carriers ("IXC") such as AT&T, MCI, and Sprint, and resellers offer competing voice mail services in regional and global markets. GTE faces numerous active competitors in the voice mail market.

The Commission also weighs the overall impact of the proposed regulatory change on the availability of existing services at reasonable rates. GTE states that its "voice messaging products have been offered to the public on a deregulated basis and there remains an abundance of competitors. The continuation of the status quo, which [GTE] is seeking, should have no effect on existing services."⁵ Also, the deployment of new enhanced services will stimulate network usage and the need for new network function, which redounds to the overall benefit of basic local exchange service. GTE's provision of existing network services at reasonable rates is not endangered by the exemption of its voice mail services.

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

⁵ Petition at 4.

exempted services could be subsidized by tariffed network services: (1) expenses and capital costs could be under-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 GTE 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 GTE. In GTE'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 project up to five years into the future. 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.

GTE monitors market conditions relevant to each of its services. Obsolescence of or changes in technology and changes in market conditions are examples of events which would cause specific price reevaluations. However, there is no standard schedule for price reviews.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 no 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 on an ongoing basis by tariffed network services utilized by exempted services, GTE 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 do not deviate significantly from the most recent forecasts. 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 GTE will have to produce new cost support. GTE may request a waiver of this requirement for regulated services generating de minimis revenues.

⁶ Item No. 1 in GTE's response dated September 10, 1993.

The Commission has considered the impact that exempting GTE's voice mail services will have upon universal service. GTE 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 GTE's voice mail services will not endanger the provision of universal service at reasonable rates.

Conversely, regulation of GTE's voice mail services will hamper GTE'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 GTE 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 GTE's investment, revenues and expenses associated with enhanced services will not be considered by the Commission in determining rates for GTE's services, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514. GTE shall continue to fulfill all reporting requirements of KRS Chapter 278 and applicable Commission Orders.

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

IT IS THEREFORE ORDERED that:

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

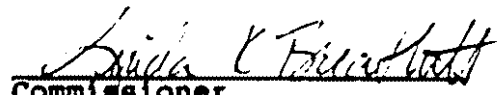
2. Within 90 days of the date of this Order and every three years thereafter, GTE shall file updated demand and revenue forecasts and new tariff sheets as necessary for those services which are used with Personal SecretarySM, CentraNetSM Voice Messaging and Message ManagerSM, which include: DID/DOD trunks, PBX trunks, Message Waiting Indication - Audible, Forwarded Call Information - Intraoffice, Data Link MRC, Data Link NRC, Queuing, User Transfer, Call Forwarding Busy Line, Call Forwarding No Answer, Call Forwarding Busy Line/No Answer, Pager Notification, and CentraNet lines.

Done at Frankfort, Kentucky, this 5th day of November, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director