

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO LOCAL COMPETITION,)	ADMINISTRATIVE
UNIVERSAL SERVICE, AND THE NON-TRAFFIC)	CASE NO. 355
SENSITIVE ACCESS RATE)	

O R D E R

This matter arising upon petition of GTE South Incorporated ("GTE"), filed June 3, 1996, pursuant 807 KAR 5:001, Section 7, for confidential protection of the cost information contained in the study requested by the Commission in its Order of April 3, 1996 on the grounds that disclosure of the information is likely to cause GTE competitive injury, and it appearing to this Commission as follows:

On April 3, 1996, the Commission issued an Order directing GTE to submit "a complete study of the most recent estimate (1994-1995) of the incremental cost of providing local exchange service on a statewide, disaggregated level." In response to that request, GTE filed a study containing the cost information which it seeks to protect as confidential. As grounds for its petition, GTE maintains that disclosure of the information is likely to cause it competitive injury.

The information sought to be protected is not known outside of GTE and is known only to those GTE employees who have a legitimate business need to know and act upon the information. GTE's policy is to preserve the confidentiality of the information through all appropriate means, including the maintenance of proper security at its offices.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The technology necessary to offer local exchange service is currently available to GTE competitors, many of whom are parties to this proceeding, and several of whom have already announced their intention to offer competitive local exchange services. The cost information sought to be protected is valuable information which could be used to plan market entry strategies to the detriment of GTE. Therefore, disclosure of the information is likely to cause GTE competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that the cost information filed in response to the Commission's Order of April 3, 1996, which GTE has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

Done at Frankfort, Kentucky, this 31st day of October, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissiener

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
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AN INQUIRY INTO LOCAL COMPETITION,)
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TRAFFIC SENSITIVE ACCESS RATE) CASE NO. 355

O R D E R

On September 26, 1996, the Commission entered its final Order in this proceeding addressing interconnection and unbundled network elements, resale pricing issues, universal service issues and the Universal Service Fund, rural company exemptions, rate rebalancing issues, monitoring requirements, and conditions necessary to implement local competition. Petitions for rehearing have been filed by BellSouth Cellular Corporation ("BSCC"); the Independent Telephone Group ("ITG");¹ BellSouth Telecommunications, Inc. ("BellSouth"); GTE South Incorporated ("GTE"); Kentucky CATV Association, Inc. ("KCTA"); ALLTEL Kentucky, Inc. ("ALLTEL"); American Communication Services of Louisville, Inc. and American Communication Services of Lexington, Inc. ("ACSI"); and AT&T Communications of the South Central States ("AT&T").

¹ The ITG is comprised of Ballard Rural Telephone Cooperative Corporation, Inc., Brandenburg Telephone Company, Inc., Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative Corporation, Inc., Harold Telephone Company, Inc., Highland Telephone Cooperative, Inc., Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Cooperation, Inc., North Central Telephone Cooperative, Inc., Peoples Rural Telephone Cooperative Corporation, South Central Rural Telephone Cooperative, Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative Corporation.

Many of the issues for which rehearing is requested relate to the "Universal Service Fund" section of the Commission's Order.² Specifically, BSCC, ITG, BellSouth, GTE and KCTA ask the Commission to rehear certain issues related to universal service and its funding. Parties argue that there is some ambiguity in the Order of September 26, 1996, as to whether the Commission's determinations concerning the Universal Service Fund issues are final determinations for purposes of petitions for rehearing pursuant to KRS 278.400.

The policies to be implemented, along with the proposed methods of implementing them that are discussed in the "Universal Service Fund" portion of the Order, are indeed preliminary. They are subject to the Federal Communications Commission's ("FCC") decision on universal service, expected in May 1997, and to conclusions reached in upcoming workshops to be sponsored by this Commission. The parties to this proceeding will have the opportunity to participate in these workshops and to file comments.

Many of the findings in the "Universal Service Fund" section of the Order are based on an extensive record compiled in this case. An example is the finding that "[a]ll telecommunications providers regulated by this Commission will contribute toward universal service, except for customer-owned, coin-operated" telephone ("COCOT") providers.³ This finding has been based not only on the extensive record, but upon the policy that since all carriers benefit from telephone penetration, all should contribute to

² September 26, 1996 Order at 20 - 45.

³ September 26, 1996 Order at 22.

assuring that penetration. BSCC's arguments that cellular carriers should not be required to contribute to the Universal Service Fund have been previously addressed.⁴ The Commission's decision on this issue may be revisited in workshops or in written comments if BSCC or another party presents new evidence on this issue that could not with reasonable diligence have been offered in the original proceeding.

Since all findings in the "Universal Service Fund" discussion of the Order are open to comment and further Commission mandate, the findings and discussion found in the "Universal Service Fund" section of the Order are preliminary and are not final determinations for purposes of petitions for rehearing pursuant to KRS 278.400. Accordingly, all requests to rehear matters relating to the Universal Service Fund issues are denied as premature.

Other issues for which rehearing is requested relate to wholesale rates and avoided cost studies, certain conditions of resale, the escrow or bond mechanism, and monitoring requirements. BellSouth argues that the Eighth Circuit stay of the pricing rules pertaining to resale, interconnection and unbundling of the FCC's August 8, 1996 order frees the Commission of any requirement to follow the FCC order regarding resale.⁵ BellSouth accurately states that the Commission is no longer required to follow

⁴ September 26, 1996 Order at 34 - 36.

⁵ The FCC's order is styled "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996" (CC Docket No. 96-98) and "Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers" (CC Docket No. 95-185 FCC 96-325, First Report and Order).

the FCC's methodology for determining the wholesale discount or to use the default rates.⁶

BellSouth also filed a "Notice of Order of the Eighth Circuit Court of Appeals Order Granting Stay Pending Judicial Review and Request for Relief" in this proceeding as well as in Case Nos. 96-431⁷ and 96-482.⁸ GTE and ALLTEL also requested rehearing based on the Eighth Circuit stay of the FCC order. BellSouth urges the Commission to approve the wholesale discount it proposed in this case or to advise the parties of the appropriate discount methodology to be used. GTE contends that the use of the FCC proxy rates would result in an unconstitutional taking of GTE's property. Finally, ALLTEL argues that using the wholesale discount rate stated in the FCC order is inconsistent with the intent and the language of the Federal Telecommunications Act of 1996⁹ without first determining the actual avoided costs of the incumbent LEC.

Rehearing on the wholesale discount rates is denied. The Commission may address issues raised by BellSouth's "Notice of the Order of the Eighth Circuit Court of Appeals" in the two arbitration cases in which the document was also filed. GTE also filed an extensive brief in this proceeding regarding the default proxy rates and the Eighth Circuit decision. The issues contained in this brief and in BellSouth's filings may

⁶ BellSouth's Petition at 3.

⁷ Case No. 96-431, Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement With BellSouth Telecommunications, Inc., Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

⁸ Case No. 96-482, The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc., pursuant to 47 U.S.C. § 252.

⁹ The 1996 Act is codified at 47 U.S.C. § 151 et. seq.

be addressed in the arbitration proceedings involving GTE. The Commission fully intended to adopt the FCC's proxy wholesale discount on an interim basis, in part as an incentive for the incumbent LEC to provide accurate and reliable avoided cost studies.

The proxy wholesale discount rates are interim rates.¹⁰ These rates are only to be used in the absence of acceptable avoided cost studies. The length of time during the twelve-month period between the September 26, 1996 Order and the date that avoided cost studies must be filed by each LEC, during which the LEC is subject to these proxy rates, is within each LEC's control. Of course, the utilities engaged in arbitrations are required to file avoided cost studies for Commission review as part of the arbitration procedure, if resale is requested by the interconnecting party. For utilities, not involved in an arbitration proceeding where resale is an issue, avoided cost studies may be filed by separate petition no later than September 26, 1997. Utilities exempted pursuant to Section 251(f)(1) of the 1996 Telecommunications Act should file avoided cost studies by no later than September 26, 1999, unless otherwise directed by the Commission.

BellSouth has requested that the Commission advise parties of an appropriate discount methodology for the avoided cost studies. Each utility is in the best position to determine its own avoided costs. However, in general the FCC Part 32 accounts outlined in the FCC's August 8, 1996 order on implementing the 1996

¹⁰ September 26, 1996 Order at 14.

Telecommunications Act adopted by GTE in its arbitrations with MCI¹¹ would constitute the main accounts to be analyzed, although a company may choose to include other accounts. The Commission will require a Kentucky-specific analysis in the absence of a compelling argument by the utility that a state-specific study is unreasonable. Finally, allocations of cost to individual services should be based upon the FCC's cost allocation criteria. That is, cost should be divided into directly attributable, indirectly attributable and unattributable. Unattributable or common costs are allocated to individual services based on the relative distribution of the first three categories. Generally, revenues generated from individual services may not be used as an allocator because in many cases revenues bear no relationship to the cost of providing the service.

BellSouth, GTE, and AT&T have asked for rehearing of certain conditions and limitations on resale. The Commission's Order discusses cross-class selling.¹² The parties argue this section is unclear. The Commission will therefore clarify this section. The Commission's Order states "[b]ased upon the authority conferred on the Commission by the FCC Order, the Commission will prohibit the resale of all means-tested service." This statement is vacated as it is inaccurate. The cross-class selling of residential service to business is specifically prohibited. The resale of means-tested service is not prohibited per se but will be addressed on a case-by-case basis. As a general principle,

¹¹ Case No. 96-440, Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

¹² September 26, 1996 Order at 17.

the resale of means-tested services will be limited to similarly-situated customers who qualify under the same means test.¹³

The Commission will further clarify its conditions for promotions and discounts.¹⁴ Promotion prices offered for a period of 90 days or less need not be offered at a discount to resellers. All requests for rehearing regarding the conditions and limitations on resale made by GTE are denied.

AT&T requested rehearing on the issue of unbundling of operator services from resold services. The request is denied. The Commission's September 26, 1996 Order is affirmed on this point. In support of its request, AT&T has cited the FCC Order from paragraphs regarding the unbundled elements for interconnection and not regarding resale. The Commission correctly identified the appropriate cite, ¶1877, from the FCC August 8, 1996 Order.¹⁵ AT&T further argues that the FCC's Order requires that all services must be made available for resale and the Act does not require the creation of more discrete retail offerings than those already offered to customers. The Commission adopted this logic by defining basic service to include access to operator services. The tariffed operator services will be available for resale and access to them will be available through the purchase of a basic residential or business line. All LECs provide access to operator services as a part of basic residential or basic business service.

ACSI has requested clarification of the Commission's escrow or bond mechanism. Rehearing is granted only to the extent of clarifying the definition of intrastate gross

¹³ AT&T Petition at 6.

¹⁴ September 26, 1996 Order at 15.

¹⁵ September 26, 1996 Order at 8.

revenues. Intrastate gross revenues are calculated the same way as those revenues reported annually to the Commission on the form entitled "Kentucky Public Service Commission, Report of Gross Operating Revenues Derived From Intra-Kentucky Business for the Year Ending December 31, 19__." The companies should make contributions at the end of the month based on that month's revenues.

ACSI has also proposed a one-time annual escrow or bond requirement rather than an ongoing requirement.¹⁶ This request is denied. Payments should be made on a monthly basis as provided above until the completion of workshops and final rules for the USF.

GTE requested clarification on certain aspects of the monitoring requirements.¹⁷ The clarification is as follows: information should be provided by all LECs, incumbent and alternative, in the same format on January 31 and July 31 of each year. However, incumbent LECs should file only the number of access lines by type of customer served, business and residential, and the traffic volumes by month for the six-month reporting period. The other items required of the ALECs are already furnished by the incumbent LECs.

Finally, this Order closes this proceeding. A new administrative case proceeding, Administrative Case No. 360, Inquiry Into Universal Service and Funding Issues, is hereby opened for the purpose of receiving the comments due in this proceeding on universal service and for the conduct of the workshops and any hearings or orders on

¹⁶ ACSI Petition at 4.

¹⁷ September 26, 1996 Order at 49 and 50.

universal service issues. The record of Administrative Case No. 355 is incorporated by reference in this new proceeding. The Commission will place all universal service comments due October 28, 1996, into this new proceeding. All telecommunications carriers, except COCOTs, should be parties to this new proceeding. In addition, the Attorney General and other governmental offices that are on the current service list should be parties to this proceeding. Other persons wishing to participate in the universal service issues case should file a letter with the Executive Director's office requesting to be added to the service list for Administrative Case No. 360 within 30 days of the date of this Order.

Having reviewed the petitions for rehearing and having been otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. All requests to rehear matters relating to the Universal Service Fund issues are denied as premature.
2. BSCC's petition to rehear whether the cellular carriers should be required to contribute to the Universal Service Fund is denied, but will be revisited in workshops or in written comments only if BSCC or another party presents new evidence on this issue that could not with reasonable diligence have been offered in the original proceeding.
3. Request for rehearing on the wholesale discount rates are denied.
4. The utilities, not involved in an arbitration proceeding where resale is an issue, shall file avoided cost studies by separate petition no later than September 26, 1997.

5. Utilities exempted pursuant to Section 251(f)(1) of the 1996 Telecommunications Act shall file avoided cost studies by no later than September 26, 1999, unless otherwise directed by the Commission.

6. The statement from the September 26, 1996 Order that the Commission will prohibit the resale of all means-tested service is vacated. Such conditions and limitations on resale shall be determined on a case-by-case basis.

7. Promotion prices offered for a period of 90 days or less need not be offered at a discount to resellers.

8. AT&T's request to rehear the issues of unbundling of operator services from resold services is denied.

9. ACSI's request to rehear issues related to the escrow or bond requirement for implementing local competition is denied except to the extent of clarifying the definition of gross revenues. Utilities providing ALEC service shall make contributions at the end of each month based on that month's revenues.

10. GTE South's request for clarification of the monitoring requirements is granted to the extent of clarifying that incumbent LECs shall only file the number of access lines by type of customer served and the traffic volumes by month for the six-month reporting period.

11. This Order closes Administrative Case No. 355.

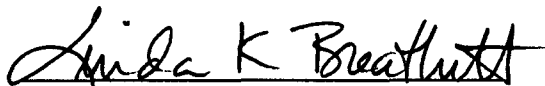
12. A new Administrative Case, Administrative Case No. 360, Inquiry Into Universal Service and Funding Issues, is hereby opened. The record of Administrative Case No. 355 is hereby incorporated by reference in this new proceeding.

13. All telecommunication carriers, except COCOTs, shall be made parties to Administrative Case No. 360. The Attorney General and other governmental offices on the current service list for this proceeding shall also be parties to Administrative Case No. 360.

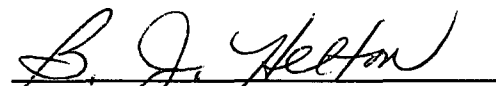
14. Within 30 days from the date of this Order, all persons not previously made party to Administrative Case No. 360, but wishing to participate, shall file a letter with the Executive Director's office requesting to be added to the service list for Administrative Case No. 360.

Done at Frankfort, Kentucky, this 31st day of October, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director