COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE REVIEW OF BELLSOUTH TELECOMMUNICATIONS, INC.'S PRICE REGULATION PLAN	)))	CASE NO. 2003-00304

O R D E R

On August 1, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed a 3-year review of its Transition Regulation Plan, as mandated by the plan. BellSouth has sought only one change to the plan. Its proposed tariff would convert the plan from a 3-year pilot to a plan that would continue until the Commission approves revisions.

The Commission has conducted a management audit pursuant to KRS 278.255 to review the effectiveness of BellSouth's regulation plan. The audit report is a part of this record. According to the audit report recommendations, the regulation plan of BellSouth should be continued.[1] BellSouth has, according to the auditor, "successfully implemented the objectives of the Transition Regulation Plan."[2] Further, the auditor asserts that "[b]y any measure, the broadband investment objective agreed to by BellSouth ... has been met" and even "greatly exceeded."[3] The auditor determined that,

[1] Audit report at 51 and 52.

[2] Id. at 37.

[3] Id. at 36.

given the 3 years of success of the program, there may not be a need for another probationary period. However, the auditor went on to state that “there are advantages of establishing a new term of some duration.” This requirement would, according to the auditor, allow “for a formal review and assessments of events that have occurred.” Moreover, the auditor suggested that BellSouth could provide an annual assessment of competition in its service territory with details of line loss and other relevant statistics.[4] AT&T Communications of the South Central States, LLC (“AT&T”), in comments filed March 30, 2004, agreed that the regulation plan should be continued, but argued that it should be for a fixed term to allow for periodic review.[5] Likewise, the Attorney General asserted that elimination of review would be “premature.”[6]

Having carefully reviewed the management audit report and comments filed by parties to this proceeding, the Commission agrees with the reasoning of the auditor and the parties, and therefore finds that the Transition Regulation Plan should be continued. However, given the changing telecommunications market, it would be unwise to abandon the formal review process. Accordingly, the plan should be altered to provide for a formal review by the Commission in 5 years. The Commission also directs BellSouth to file an annual assessment of competition in its service area as proposed by the audit report, based upon the reasoning therein. BellSouth should file tariffs implementing these changes.

[4] Audit report at 53 and 54.

[5] AT&T comments at 1.

[6] Office of Attorney General comments at 1.

The audit report contains three additional recommendations. First, the report recommends that the Commission consider establishing some form of presumptive validity of BellSouth's tariffs. This matter is pending in an open docket at the Commission and will not be further discussed herein.[7] Second, the audit report recommends that the Commission consider the joint industry proposal of BellSouth, Kentucky ALLTEL, Inc., and Cincinnati Bell Telephone Company, Inc. regarding standards for contract service arrangements. These issues, including the joint industry proposal, also are pending at the Commission in an open docket and will not be further addressed herein.[8] Third, the audit report recommends that the Commission review existing statutes and regulations to determine if any are outdated. Such a review may occur upon the motion of any person, including BellSouth, or upon the Commission's own motion pursuant to KRS 278.512. The Commission would encourage any telecommunications carrier who believes that statutes or regulations should no longer be applicable due to the availability of alternatives in a competitive market, or due to technological changes, to petition the Commission requesting such changes to the regulatory framework accompanied by adequate justification for the requested changes.

We address one additional issue in this proceeding: whether BellSouth should alter its band zone charges. The Commission has ordered BellSouth to file a proposal to eliminate these rates, based on a customer's complaint that the basic rates are no longer justified. Band zone charges, or mileage charges, are charges assessed to a

[7] See Case No. 2002-00276, Petition of BellSouth Telecommunications, Inc. for Presumptive Validity of Tariff Filings.

[8] See Case No. 2002-00456, Inquiry Into the Use of Contract Service Arrangements By Telecommunication Carriers in Kentucky.

customer whose service is provided outside of the base rate area of the serving exchange. The rates for these customers range from $1.30 to $5.20 a month. Currently, customers pay $1.30 for up to a mile outside the base rate area, $2.60 for up to 2 miles outside the base rate area, and $5.20 for areas greater than 2 miles from the base rate area.

BellSouth's proposal is to restructure its rates to eliminate zone charges over a 3-year period, while increasing basic rates to enable BellSouth to recover the total amount of revenue previously recovered from band zone charges. If BellSouth's proposal were implemented, at the end of 3 years, the residential basic exchange rates in all rate groups would be $18.70. The business basic exchange rates would increase in Rate Groups 1, 2 and 3 to $36.90, and Rate Groups 4 and 5 would remain at $33.75.

BellSouth was asked to submit information justifying its specific proposal for restructuring its rates to eliminate band zone charges, including specific financial justification for its need to retain the revenue received from band zone charges. The justification was to include an analysis of operational and maintenance expenses showing the differential in overall contribution to costs between basic local service end-user revenues and total service end-user revenues for each customer class. No such analysis was provided to the Commission by BellSouth. Nor did BellSouth provide a meaningful response to Staff's request that it explain why the costs associated with the provision of service outside the base rate area have not been adequately recovered over the years that BellSouth has collected band zone charges. Moreover, BellSouth could not differentiate between costs for initial construction, which almost certainly would have already been recovered, and those costs associated with maintaining the equipment, which may be ongoing. The Attorney General contends that, in the absence of such analysis, BellSouth's proposal must be denied.[9] We agree.

The Commission finds that BellSouth should eliminate its band zone charges over a 3-year period. Beginning and effective on August 1, 2004, BellSouth shall reduce its band zone charges of $5.20 to $2.60. On August 1, 2005, BellSouth shall reduce its band zone charges of $2.60 to $1.30. Finally, on August 1, 2006, the remaining zone charges should be eliminated.

IT IS THEREFORE ORDERED that:

1. The Transition Regulation Plan of BellSouth shall continue permanently, subject to further Orders of this Commission, with a formal review of the plan by the Commission commencing 5 years from the date of this Order with the following additional requirements:

a. BellSouth shall eliminate its band-zone charges consistent with the directives contained herein, beginning August 1, 2004.

b. BellSouth shall annually file a detailed assessment of competition in its service territory and shall include line loss information and other relevant statistics.

2. Within 10 days of the date of this Order, BellSouth shall file a tariff revision to its Transition Regulation Plan section which states that this plan continues permanently, subject to review by the Commission commencing 5 years from the date of this Order. The tariff revision also shall specify the elimination of band zone charges and the filing by BellSouth of an annual assessment of competition in its service territory.

[9] Office of Attorney General comments at 2 and 3.

3. On August 1, 2004, and each year thereafter, BellSouth shall file an annual report of competition in its service area in the format of Appendix C of the audit report.

4. The proposal of BellSouth to eliminate band zone charges on a revenue-neutral basis is hereby denied.

Done at Frankfort, Kentucky, this 29th day of June, 2004.

By the Commission

ATTEST:

Executive Director