COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE USE OF CONTRACT SERVICE ARRANGEMENTS BY TELECOMMUNICATIONS CARRIERS IN KENTUCKY	)))	CASE NO. 2002-00456

CINCINNATI BELL TELEPHONE COMPANY'S
RESPONSES TO INFORMATION REQUESTS

By Order dated December 19, 2002, the Commission initiated this proceeding for the purpose of investigating the practices and policies of Kentucky's telecommunications carriers with respect to contract service arrangements ("CSAs"). Cincinnati Bell Telephone Company ("CBT") hereby files its response to the information requests presented by the Commission in the December 19, 2002 Order.

D. Scott Ringo, Jr., Director of Regulatory/Business Markets, is the CBT representative responsible for responding to any questions related to the following responses to the Commission's information requests. Mr. Ringo's contact information is attached hereto as Appendix A.

1. Provide full and complete copies of all CSAs entered during 2001 and 2002, or, in the alternative, if such CSAs are on file with the Commission, a list of those CSAs and their effective dates.

CBT entered into a total of 31 CSAs during 2001 and 2002. Because each of the CSAs has been filed with the Commission in accordance with 807 KAR 5:011, Section 13 of the Commission's regulations, CBT has prepared a document listing each of the CSAs and providing the more detailed information requested by the Commission at Request 1(a) through (k). The document is attached hereto as Exhibit 1.

2. Provide a narrative description of your policies regarding entry into CSAs with specific customers, including a description of the manner in which those CSAs are filed or reported to the commissions for the states in which you operate. If you operate in multiple jurisdictions, compare and contrast applicable state requirements. Provide citations to applicable rules in other jurisdictions.

CBT's General Exchange Tariff PSCK No. 3, Section 2.1, on file with the Commission and attached hereto as Exhibit 2, sets forth CBT's Kentucky alternative regulation plan. The tariff includes a description of the permitted use of contracts as well as the procedures for filing such contracts with the Commission. Attached hereto as Exhibit 3 is a narrative description of CBT's use of contracts as set forth in CBT's alternative regulation plan on file with the Public Utilities Commission of Ohio ("PUCO"). Exhibit 4 contains the PUCO's recently revised Competitive Retail Services Rules regarding customer contracts.[1]

In sum, the Kentucky alternative regulation plan ("the Kentucky Plan"), the Ohio alternative regulation plan ("the Ohio Plan"), and PUCO rules provide that CBT may enter into individual contracts with its customers to provide any service or bundle of services in response to competition or other unique circumstances. Generally, CBT can enter into a CSA with a particular customer and provide service at non-tariffed rates where the customer has been offered service by a competitive carrier at rates below CBT's generally available tariff rates. CBT can also enter into CSAs where the nature of customer and the types and quantities of services requested can be characterized as "unique circumstances." Such "unique circumstances" might arise where a customer has the option of building a private network rather than purchase services from CBT or where the customer has unique service requirements, requests unique combinations of services, or purchases a high volume of service(s). In fact, CBT, like other providers, used

[1] Ohio Administrative Code Chapter 4901:1-6-19. See also *In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines* and *In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services under Chapter 4927, Revised Code*, Case Nos. 99-998-TP-COI and 99-563-TP-COI, respectively, Entry on Rehearing, November 21, 2002.

CSAs in unique circumstances even before the advent of local competition and alternative regulation. In either case, CBT has the flexibility to offer a contractual arrangement, including reduced rates, in order to retain the customer. As discussed further throughout these responses, CBT contends that this flexibility is crucial to CBT's ability to (1) cover the fixed costs of the network and the business as a whole, (2) avoid stranded investment, and (3) improve the overall financial position of the company to the benefit of the general body of ratepayers.

While the language of the Ohio and Kentucky Plans related to the use of CSAs as well as respective filing procedures are generally the same, there are two primary differences. First, the PUCO maintains the confidentiality of customer identifying information, such as the customer name, address, and telephone number.[2] The PUCO has determined that it is not necessary to disclose such customer identifying information to the public because it is the services and prices contained in the contract that are of regulatory importance. The PUCO has also found that revealing customer identifying information to the public may be contrary to the privacy expectations of the customer and may also adversely affect the customer's competitive position within its own business market.[3] Moreover, as CBT has explained to this Commission in requests for confidential treatment of customer identifying information, disclosure of the customer's identity gives CLECs a competitive advantage over ILECs because they can use the information contained in the contract to develop competitive business strategies and in designing their pricing and marketing strategies.[4] CLECs can also use the identity of the customer in the CSA to attempt to resell the entire contract to the same customer at reduced rates, a practice that

[2] O.A.C. § 4901:1-6-19(B).
[3] *In the Matter of Numerous Applications of Ameritech Ohio for Approval of a Contract or Other Arrangement Between Ameritech Ohio and Various of its Customers*, Case No. 96-389-TP-AEC et. al., Entry on Rehearing (April 30, 1998).
[4] *In the Matter Cincinnati Bell Telephone Company's Petition for Confidential Treatment of Certain Terms and Conditions of an Individual Customer Contract, and Cost Data in Support Thereof*, Case No. 2002-00004.

serves to eliminate the ILEC's incentive to compete for customers that can be captured after a sale is made by CSA.

Second, CBT's Ohio Plan is more detailed than CBT's Kentucky Plan in that the Ohio Plan specifically details the information to be filed with any request for contract approval while the Kentucky Plan does not. The information required to be filed by the Ohio Plan includes the following: (1) cost information demonstrating that the contract price is above the long run service incremental cost ("LRSIC") and the imputation test, if applicable; (2) evidence or description of the relevant competition; and (3) a cross-reference to the service offerings as set forth in CBT's Ohio tariff.

With respect to cost support information, the most significant difference between the Kentucky and Ohio requirements is that the Ohio Plan specifically requires CBT to price contractual arrangements that include both regulated and nonregulated services above the *aggregate* LRSIC for the regulated services. For example, a contract to provide a number of regulated services may price one or more regulated services, say additional trunks, below the LRSIC for the trunks so long as the aggregate price for all of the regulated services, including the trunks, is above the aggregate LRSIC for all regulated services. In other words, some individual prices may be below LRSIC and some may be above LRSIC so long as the aggregate price of the entire contract is above the aggregate LRSIC. Thus, the price for a service in one contract may reflect a price below that stated in another contract or stated in the tariff based on the unique combination of services purchased by a particular customer. If the aggregate LRSIC test is met, the total price of the contract meets the Ohio cost requirements.

By allowing CBT to price contracts in accordance with the aggregate LRSIC test, the Ohio Plan provides the necessary pricing flexibility for CBT to respond to competition and other

unique circumstances. Moreover, such a pricing standard recognizes that the important competitive test is whether the pricing of a service bundle is equal to or above the total incremental cost incurred by CBT to provide the service bundle to the prospective customer. So long as the total price for the bundle of services covers CBT's costs to provide the service, the company and its customers are better off than if the sale were not made because the CSA customer's contribution to fixed costs is maintained.

3. To what extent should a telecommunications carrier be permitted to price its services differently depending on the existence of a competitor that is willing to serve some customers but not others?

All telecommunications carriers, including ILECs, must be able to fully compete with one another and with all potential providers of alternative services, including non-regulated services and bundled offerings of regulated and non-regulated services. Generally, telecommunications customers have little to no understanding much less patience for deciphering the nuances of regulatory rules, the implications of a service being characterized as regulated versus non-regulated, or the pricing restrictions inherent to regulated utility service. Customers only know that they need telecommunications services and that they ultimately want to purchase those services at the best possible combination of price, service quality, and value. If the Commission adopts rules which limit the pricing flexibility of one telecommunications provider, i.e. the ILEC, vis-à-vis a competitive provider, e.g. the CLEC, such rules will not only be discriminatory, anti-competitive, and economically inefficient, but the rules will be contrary to the public's interest in having viable competition.

In CBT's view, the competitive telecommunications environment can be summarized as follows: An ILEC is required to provide service, with limited exceptions, to *all* customers within its operating territory. Because of its universal service obligations, the ILEC continues to be the

so-called "carrier of last resort" to any customer who desires service and who can meet minimal credit requirements. A CLEC, on the other hand, does not have universal service obligations and can simply "pick and chose" the most attractive customers in a particular ILEC's operating area. In CBT's experience, CLECs typically choose to serve mid-sized to large business customers who purchase multiple services and/or have a high volume of traffic. CBT posits that a CLEC's ability to target only the most lucrative customers supports the need for the ILEC to have pricing flexibility in order to retain those customers and to attract new business.

Restrictions on the ILEC's competitive response would adversely affect the financial condition of the ILEC and, ultimately, its residential and small business users whose services are subsidized by large business customers. Traditionally, local exchange service has been priced on a residual basis and not on a cost of service basis. If the Commission fails to permit an ILEC to respond to competitive threats, the contributions provided by large users to the fixed costs of maintaining universal service (including the network and other overhead expenses) will no longer be available and will necessarily have to be recovered from small business and residential customers within the local exchange area.

Moreover, restricting the ILEC's ability to respond to competitive pressures imposed by alternative providers will adversely affect large and high volume business customers in two ways. First, restricting the ILEC's pricing options will reduce the number of providers competing for the customers' business and thereby limit the customers' choice. Second, if an ILEC is unable to provide a price to a particular customer based on its lower cost to provide service to that customer, the result may be a windfall to the competitive carrier. In other words, precluding the ILEC from competing based on price will enable the competitive provider to

charge higher prices for its service than it could in the face of competition from the ILEC. CBT believes that this result is not economically efficient and, therefore, not in the public interest.

In sum, the Commission must maintain the overall availability of good and valuable telecommunications services at just and reasonable rates while allowing *all* competitors, including ILECs, to adjust to the competitive marketplace when doing so is economically efficient. ILECs will continue to maintain universal service and fulfill carrier of last resort obligations, but they must have competitive pricing flexibility in order to do so. Even if an ILEC prices contract services at cost, doing so benefits the average customer because the contract customer continues to contribute to the fixed costs of operating the network. If the contract customer leaves the network, on the other hand, all customers remaining on the network will be required to absorb the former customer's contribution. CBT maintains that a competitive model that lacks pricing flexibility is inherently unsustainable and will eventually result in less competition, higher rates for all customers, and leave only the high cost or less desirable customers to be served by the ILEC. The Kentucky General Assembly stated it best when it enacted KRS 278.512(1)(b): "Flexibility in the regulation of the rates of providers of telecommunications service is essential to the well-being of this state, its economy, and its citizens."

a. If you believe different pricing in such instances is appropriate, what level of objective evidence showing the actual existence of a competitive offer for the services in question should be required?

CBT maintains that competitive evidence should not be required so long as the entire contract arrangement is available to other customers who want to purchase the same services

under the same terms and conditions.[5] Because contracts must be filed with the Commission, this disclosure process is self-policing: customers can compare pricing as set forth in a carrier's tariffs and in the filed contracts in order to make the best deal. The transparency of the process also ensures that carriers cannot price below their cost without risking their long run financial viability. Again, CBT reiterates its contention that the only relevant question for the Commission to consider is whether the contract covers the aggregate LRSIC costs to provide the regulated services. If it does, the contract should be approved by the Commission.

While CBT believes that objective evidence of competition should not be required, CBT's Ohio Plan specifically requires "evidence of or a description of competition" to be filed with the PUCO. CBT provides this information in several different ways depending on the circumstances of the competitive situation that exists. At times, actual proof of a competitor's offer is available if a competitor provides the customer with a written offer and the customer makes the offer available to CBT. Often times, however, customers will contact CBT requesting a bid for certain telecommunications services as a result of an offer from a competitor that is either verbal or in writing but which the customer chooses not to disclose to CBT. In such instances, if CBT ultimately wins the bid, CBT describes to the Commission the competitor's offer to the best of its ability based on the information made available to it by the customer.

While CBT's Ohio Plan requires evidence of competition for contract filings, CBT points out that the PUCO recently abandoned this requirement in its new Elective Alternative

[5] This does not mean that a customer can pick and choose specific rates from a contract. For example, a contract may contain a below tariff rate for basic business access lines along with rates for many other services. Customers who only want access lines would not and should not be able to purchase services at the lower access line rate because the rate is likely to be dependent on purchasing ALL of the other services in the contract. In other words, the provider probably would not have offered this lower rate absent the other services being purchased under the contract.

Regulation Rules[6] and the new Competitive Retail Services Rules.[7] The Elective Alternative Regulation Rules do not require proof of competition, and the Competitive Retail Service Rules simply require ILECs to file affidavits attesting that contracts cover the costs to provide service. In other words, the PUCO has recognized the importance of continued cost recovery over the need for evidence of actual competition in evaluating the reasonableness of a particular CSA.

b. If you do not believe that different pricing in such instances is appropriate, what would be the financial result to carriers who would no longer be able to price services based on competition?

CBT reiterates its contention that pricing flexibility is crucial not only to the ongoing viability of the company but also the viability of competition in the local telecommunications market. Restricting an ILEC's ability to price services based on competition is economically inefficient for a number of important reasons. First, if an ILEC loses customers based solely on its inability to match a competitor's price, the market forces that drive companies to improve may be reduced or eliminated. There will be no incentive for the ILEC to improve operations, reduce costs, create better products, and lower prices in order to retain existing or gain new customers. In addition, customers will not benefit from competition since non-economic constraints will preclude them from purchasing the desired or preferred services at the lowest possible prices. Secondly, as discussed in more detail above, the carrier who loses the customer does not benefit because it will have a smaller subscriber base from which to recover its fixed costs. Thus, the only party that stands to gain from such pricing restrictions is the provider that acquires a new customer it might not otherwise be able to obtain if required to compete against all providers, including the ILEC.

[6] O.A.C. Chapter 4901:1-4. See also *In the Matter of the Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, Case No. 00-1532-TP-COI, Entry on Rehearing, April 25. 2002.
[7] Id. at fn 1.

Limiting contracts places a substantial administrative burden on the Commission in that it could significantly increase the number of tariff filings. Rather than filing contracts, LECs would likely tariff additional bundles, volume discounts, term rates, etc. in lieu of the contracts. Such a trend would create several problems. It would probably delay the time before a customer can receive the benefits of the pricing because tariff approval has historically required more time than contract approvals. Additional tariff filings will also create added work for the Staff, the Commission, and the service provider. More importantly, CBT believes that given the effectiveness and efficiencies of the existing CSA procedure, rules which encourage multiple tariff filings to achieve the same purpose as CSAs are unnecessary.

For these reasons, CBT reiterates its contention that CSAs and pricing flexibility are crucial to its sustainability in the current competitive marketplace.

4. Would you support or oppose a policy requiring that all customers for regulated services in the same geographic area or market receive the same prices, on the theory that if a competitor is in the area it may reasonably be assumed that a competitive offer is available to all customers in the area?

CBT would oppose this policy. While CBT agrees that the presence of a service alternative is a form of competition, fixing the price of a service based solely on the presence of competition is contrary to basic economic principles. As the Commission knows, fixed, regulated pricing is a hallmark of traditional monopoly rate setting. Fixed prices are determined based on the artificial construct that all customers within a class or even an operating area are homogeneous and make the same demands upon the network. It is obvious that they do not. For example, one customer may be located within a block of the wire center while another is three miles away. Each customer may also have entirely different serving requirements and thus place a different cost burden on the network.

Pricing flexibility is a necessary condition for the existence of a competitive market. Restricting ILECs existing pricing flexibility eliminates one of the major ways that companies can differentiate themselves in the market. Eliminating pricing flexibility also ignores the basic economic costs to serve a variety of customers. For instance, lower prices may be justified based on the lower cost to provide service to a customer. Examples of arrangements which lower costs include volume purchases, term agreements, unique arrangements, special combinations of services, etc. Additionally, from a practical perspective, any definition of the "geographic area" or "market" is likely to be arbitrary and controversial with respect to the presence of competition. (This concept is discussed more fully in response to Request 4.a. below.)

Furthermore, it is incorrect for the Commission to assume that a competitor providing service within a particular service area will make its service available to all customers within the service area. As mentioned before, CBT's experience has been that competitors target large users that require a number of services and generate large volumes of traffic in order to maximize revenue with minimal cost outlay.

a. If such a policy were adopted, how should the "geographic area" or "market" for which prices should be uniform be defined?

CBT opposes this policy for the economic reasons cited above as well as the practical concerns created by defining "geographic area" and "market." A "geographic area" is difficult to define because in most cases CLECs have been certified and have entered markets on a rate center basis.[8] CLECs who resell CBT's retail services can provide service to all the customers in a particular rate center. CLECs who provide services over their own facilities, however, do not always provide services throughout a rate center, especially if the rate center has multiple wire

[8] The current entry and certification procedures are consistent with the current local number portability (LNP) requirements that are on a rate center basis.

centers. Furthermore, even at the smaller wire center level, a facilities-based provider may choose to put facilities in only a portion of its serving area.

The definition of "market" is no less clear. Local telephone services have traditionally been classified as residence or non-residence services, although there are many variations within these overall customer categories. Further, customer size is often a key marketing component in the non-residence market, e.g. small versus large business customers. Types or quantities of services can also define a market, such as single line versus multi-line or analog versus digital. Markets can be defined as narrowly as individual services for a specific group of customers or as broadly as every service offered by a company. All of these factors make defining either "georgraphic area" or "market" virtually impossible.

Nonetheless, if such a policy were adopted, CBT recommends using existing geographic definitions for ease of administration. Consistent with the certification process, CBT posits that rate centers represent the most practical method for defining geographic areas. Similarly, CBT believes that defining market segments as either residential or business is the most practical means of distinguishing between groups of customers, particularly because such distinctions are easily made.

b. If you oppose such a policy, explain the reasons for your opposition.

Simply stated, the presumption that all customers should receive the same pricing for regulated services in the same "geographic area" or "market," however defined, is flawed from an economic standpoint. A policy founded on such a presumption ignores the historical use of contracts in both monopoly and competitive environments and fails to recognize that competition is constantly in flux. Competition can vary not only from provider to provider but also from customer to customer. As discussed previously, CLECs are <u>not</u> providing service to all

customers, and in most cases, their publicly stated business plans reveal that they do not intend to serve all customers. CBT's experience has shown that CLECs often choose customers in particular business segments (such as realtors) or of a certain size (such as PBX users) or with certain traffic usage (such as those with T-1 facilities and above). Additionally, a CLEC often solicits only specific customers within a targeted area of its certified operating territory based on geographic location to the CLEC's facilities and other economic factors.

The Commission's rules for competitive providers foster these very selective business plans and give the CLECs the ability to pick and chose customer opportunities. Without the ability of ILECs to competitively bid for individual customer opportunities with unique pricing arrangements, ILECs run the risk of lost business, the inability to cover fix costs, stranded plant, impeded cash flow, gradual and steady erosion of financial stability and, perhaps ultimately, financial disaster. CBT notes that it has no incentive to enter into a contract for telecommunication services with any customer at prices less than tariffed prices except where there is a competitive threat. As the Commission knows, CBT continues to operate under its Kentucky Plan. As a result, when CBT lowers prices to meet a competitive threat, there is simply less revenue collected than if it had been able to sell the service at the higher rate. Thus, CBT and other ILECs only seek to preserve their options to compete on an individual, case-by-case basis and to retain, grow or attract new business.

Furthermore, ubiquitous pricing is not appropriate and does not reflect the actual competitive marketplace that currently exists. Such a pricing policy also ignores the fact that contract pricing for volume and term discounts was in place for some large customers prior to the Telecommunications Act of 1996 that created the current CLEC market. Providers must be able

to look at the each customer's needs and evaluate the potential efficiencies of providing service to that customer when developing contract pricing.

5. Would a requirement that all CSAs be filed publicly with the Commission ensure transparency and permit both customers and CLECs the access necessary to buy, sell, and notify the Commission of alleged violations of law?

Yes. In accordance with KRS 278.160(1) and 807 KAR 5:011, Section 13, CBT files all contracts that contain rates not included in CBT's tariffs. CBT's Kentucky Plan, as described in the tariff attached hereto as Exhibit 2, also requires the filing of all contracts for approval by the Commission. With the exception of BellSouth Telecommunications, Inc. ("BellSouth"), which was granted a waiver of this requirement,[9] CBT assumes that all telecommunications providers are obligated to file contracts for approval of non-tariffed rates in accordance with Commission regulation.

CBT emphasizes that the transparency of contract service arrangements for non-tariffed rates is in the public's interest. For that reason, the requirement must apply to all providers, not just ILECs. First, customers must have complete information to ensure that they understand the options available to them and are able to make the economic decision that is best for them. Second, a requirement that only ILECs must file contracts assumes that CLECs will not engage in price discrimination. In many cases, CLECs are competing against other CLECs as well as ILECs. Thus, a requirement that CLECs as well as ILECs must file contracts with the Commission will help to ensure that all providers are pricing their services appropriately.

[9] *In the Matter of BellSouth Telecommunications, Inc.'s Proposed New Procedures for Filing Contract Service Arrangements and Promotions*, Case No. 2001-00077.

6. What criteria should govern whether a regulated service should be sold by tariff or by CSA? Explain fully.

CBT does not believe that it is necessary for the Commission to delineate a list of criteria for use when a service should be sold by tariff or by CSA. The statutes and administrative regulations adequately address the use of special contracts and provide the Commission with ample oversight regarding their use. The Commission has also included specific conditions for the use of CSAs in various companies' alternative regulation plans. For example, CBT's Kentucky Plan states that "[c]ontracts shall be used to provide the Company with flexibility to price according to individual customers' needs." CBT's Kentucky Plan also provides that CBT "may enter into individual contracts with its customers for any service in response to competitive or other unique circumstances."[10] Additional regulations, therefore, are unnecessary for the Commission to ensure that all carriers use CSAs appropriately. Instead, the Commission should continue to permit carriers to enter into CSAs based on individual customer needs as well as in response to competitive or other unique circumstances.

In addition, CBT contends that market and economic conditions will function to prevent the abuse of CSAs by carriers, thereby obviating the need for the Commission to establish criteria for their use. As discussed previously, permitting the use of CSAs in response to competition or other unique circumstances is consistent with market and economic principles. Essentially, carriers and customers will only enter into CSAs if doing so is mutually beneficial. The carrier will only enter into a CSA and offer reduced rates to a customer if it is economically sound to do so, and the customer will only enter into a CSA if it offers the best possible combination of services and quality at the best price available on the market. Simply stated,

[10] Exhibit 2, CBT General Exchange Tariff PSCK No. 3, Section 2.1

competitive market conditions will determine when and where contracts are used as opposed to tariffs.

7. Discuss the impact on competition in particular and on the telecommunications industry in general that would result from deregulation of CSAs.

Although CBT is unsure of the Commission's intent with respect to this request, CBT assumes for the purposes of its response that the Commission is proposing that CSAs will no longer have to be filed with the Commission if they are deregulated. CBT does not think that such an "all or nothing" approach is necessary. Instead, CBT contends that it is appropriate for carriers to file CSAs setting forth off-tariff prices so long as the Commission provides the pricing flexibility necessary for carriers to meet competitive threats and respond to unique circumstances.

Today, regulated services sold by CSA are included in the LECs' tariffs. If CSAs are deregulated, CBT assumes that services currently characterized as regulated will remain regulated by the Commission. CBT contends that deregulation of CSAs without deregulation of the underlying services is likely to result in a huge increase in CSAs as companies strive to move away from regulation. CBT assumes that the Commission would not intend for services to effectively be deregulated as a result of the services being sold by CSA.

8. At what level of availability of competitive alternatives in a given market should a service be deregulated pursuant KRS 278.512? Is it feasible to deregulate a service in one market area of Kentucky and not in another?

CBT is concerned that this question implies that a service must be deregulated in order for the Commission to grant pricing flexibility for a service sold under a CSA. KRS 278.512(2) provides that the Commission may adopt alternative requirements for establishing rates and charges if the Commission finds such steps to be in the public interest. Although the

Commission is directed to consider the number and size of competitors when determining public interest, it is only one of many factors for the Commission to weigh. Moreover, the statute does not require a certain level of competition for the Commission to conclude that alternative requirements for establishing rates is in the public interest. For the economic reasons discussed herein, CBT believes that there is sufficient evidence for the Commission to conclude that CSAs and, more specifically, the pricing flexibility afforded by CSAs serves the public interest. CBT does not believe that deregulation of CSAs is required by KRS 278.512 in order for the Commission to permit pricing flexibility for specific services sold via CSA.

If the Commission concludes that it should deregulate a service or services, CBT maintains that the Commission must find there to be reasonably available alternatives for the services from at least one other provider in the market. While the definition of that "market" may be difficult, as noted in response to Request 4, it is possible to deregulate a service in a particular area based on the availability of a similar function or feature capability in that area. For example, high-speed broadband transport is often provided by cable television companies and/or via satellite networks, as well as by LECs. Because customers will generally chose only one provider for each service consumed, only one additional provider of the same or similar service in a given area is necessary for there to be a competitive alternative. Once another provider of a service is available, no company providing or seeking to provide the same or comparable service can be said to have a "captive market" or the expectation of guaranteed revenues from customers of the service.

9. What procedures should take place during a Commission case to determine whether a service is sufficiently competitive to be deregulated?

CBT reiterates its contention that the Commission is authorized to grant pricing flexibility in the context of CSAs even without fully deregulating CSAs or the services offered by CSAs. If the Commission chooses to grant pricing flexibility on a service-by-service basis, however, the Commission should require data submissions from all regulated providers in the market for the service being considered for deregulation.

The Commission should request information regarding the geographic areas where service is provided and the presence of any regulated and unregulated alternatives to the service.[11] The Commission should also consider pricing and service descriptions contained in tariffs filed with the Commission. The Commission must not consider information regarding a providers' market share for the service under consideration, however. A high market share by a particular provider of a service does not mean that the market for the service is not competitive. It may simply mean that a particular provider's product is preferred to a comparable service provided by a competitor. Another reason is that market shares are often difficult and expensive to determine and subject to substantial disagreement. The difficulty of determining market share is particularly true when the service in question is ubiquitous, e.g. speed dialing on CPE. Finally, if the Commission requests information regarding sales of the service, the information must be kept strictly confidential within the Commission and not shared with other parties to the case. Otherwise, proprietary information regarding number of customers, customer locations, average spending, or other information would be disclosed that would be useful to competitors in developing business strategies and in designing their service offerings and marketing plans.

[11] For example, CPE provides ready alternatives to Speed Dialing and Repeat Dialing, while cable modems are competitive with DSL services.

CONCLUSION

CBT urges the Commission to continue to permit *all* telecommunication companies, including ILECs, to use CSAs in response to competition or other unique circumstances. Pricing flexibility is crucial to the continued economic stability of ILECs and is absolutely essential to the viability of competition in provision of local exchange services.

Additional rules or standards to govern the use of CSAs are unnecessary. KRS 278.512 authorizes the Commission to adopt alternative requirements for establishing rates and charges if doing so is in the public interest, and the Commission's existing contract filing requirements provide ample oversight regarding the use of CSAs. Thus, the Commission is authorized by statute to permit pricing flexibility for CSAs and to ensure that pricing of services sold via CSA is fair, just and reasonable in accordance with state law. Moreover, in accordance with KRS 278.512, CBT has entered into an alternative regulation plan which specifically authorizes CBT to enter into CSAs. CBT, therefore, has a vested interest in preserving pricing flexibility inherent to CSAs. Such pricing flexibility is the fundamental principle upon which alternative regulation is premised. As CBT has argued herein, the only relevant standard for the approval of CSAs should be whether the aggregate pricing of all services in the contract is equal to or above the aggregate LRSIC for all services. Finally, as the determined by the General Assembly in the adopting of KRS 278.512, competition in the provision of certain telecommunications services in Kentucky, whether by traditional telecommunications providers or because of the availability of service alternatives, is essential to the well-being of this state, its economy, and its citizens.

Respectfully submitted,

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APPENDIX A

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These representatives are identified for the purposes of this proceeding only.

CERTIFICATE OF SERVICE

It is hereby certified that a notice of the foregoing filing was served on the individuals on the attached Service List. The notice explained that the filing could be obtained from the Commission's website at www.psc.state.ky.us but that CBT would provide a printed copy to any party making such a request. The notice was served by first-class mail, postage prepaid, on the 21st day of March 2003.

/s/ Thomasina W. Wooldridge
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