

COMMONWEALTH OF KENTUCKY

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PUBLIC SERVICE
COMMISSION

In the Matter of:

BellSouth's Contract
Service Arrangements

Case No. 2002-00456

**COMMENTS OF THE FRANKFORT
ELECTRIC & WATER PLANT BOARD**

The Frankfort Electric & Water Plant Board now files its Comments and Responses to the Public Service Commissions' questions in the above referenced matter.

PSC Question Number 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. For each CSA, provide:

- a. Customer name
- b. Effective date
- c. Expiration date
- d. Description of services included
- e. Unique conditions involving the service
- f. Total value of the contract
- g. A price-out of the contract
- h. A price-out of the same services as provided under tariff, if applicable
- i. The net savings to the customer in total and on a per unit basis
- j. Details concerning installation or other fees waived pursuant to the CSA
- k. Details concerning recurring rates suspended or waived pursuant to the CSA.

Response:

The Frankfort Plant Board has not entered into any contract service arrangements (CSAs) for regulated services.

PSC Question Number 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 commission 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.

Response:

The Frankfort Plant Board will provide service to all customers at rates equivalent to those provided to all other similarly situated customers. Our policy is to provide service at the rates established in our tariffs. We do not operate in any state jurisdiction other than Kentucky.

PSC Question Number 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?

- 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?
- 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?

Response:

It should be noted that while some competitors operate as "willing to serve some customers but not others", that is not the business plan for all competitive local exchange carriers (CLECs). The Frankfort Plant Board, for instance, is a facilities-based carrier that will provide service to all residence and business customers that can be connected to its physical plant.

The mere existence of a competitor that chooses to serve only select customers in a particular area should not provide license to force all competition out of that area through an incumbent local exchange carrier's (ILEC) use of CSA pricing. Such a possibility does exist. An incumbent LEC, such as BellSouth, has the market power to

price services to select customers at levels below what any carrier can economically provide the service.

The Frankfort Plant Board recommends that the ILEC not be given the latitude to price services at special rates in competitive situations, except under limited and well defined situations. Details of our recommendation for governing such situations is provided in response to PSC Question Number 6.

In response to question 3.b, the financial result to carriers who no longer are able to price services based on competition (through CSAs) depends on how successful they are in adapting to the presence of competition. In that kind of market situation the ILEC has several options.

- Provide better quality customer service than other competitors so as to make price not the deciding factor in the customer's selection of a carrier.
- Reduce non-essential overhead operating costs that will allow it to more competitively price services throughout its operating area.
- Reduce its local service profit margin to allow for more competitive pricing throughout its service area subsidized by expanding revenue in the interLATA long distance area.

PSC Question No. 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?

- a. If such a policy were adopted, how should the "geographic area" or "market" for which prices should be uniform be defined?
- b. If you oppose such a policy, explain the reasons for your opposition.

Response:

Yes, the Frankfort Plant Board would support the policy as stated.

In response to question 4.a:

For Incumbent LECs - the geographic area or market for which prices should be uniform should be the traditional statewide geographic area (territory) of the ILEC.

For Competitive LECs – the geographic area or market for which prices should be uniform should either be the entire state or by areas that correspond with ILEC territory, at the option of the CLEC.

PSC Question Number 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, resell, and notify the Commission of alleged violations of law?

Response:

No. To provide ready access the CSA information would have to be available on the PSC web-site. However, without some notification from the PSC most businesses would not know to access the site. Also, by the time the CLEC sees the filed CSA it is likely too late for a competitive response. The customer will have usually signed a long-term contract with early termination penalties that preclude consideration of a competitive offer.

In regard to the reference in the PSC question about notifying the Commission of "alleged violations of law", the Commission cannot rely on other parties to initiate the process for pursuing action in case of anti-competitive pricing or other perceived regulatory violations. Even if a CLEC suspects that service is being provided contrary to regulatory requirements by the ILEC to a particular customer, there is no business incentive for the CLEC to pursue regulatory recourse in that case. The CLEC will incur administrative expense, possibly some legal expense, and take the chance of alienating the customer whose contract could become the focus of a regulatory review.

PSC Question Number 6.

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

Response:

The criteria used to govern whether a regulated service should be sold by tariff only or by CSA should concern how best to serve the interests of all consumers in Kentucky.

According to the latest FCC Report on "Local Telephone Competition" (Issued December 2002, Status as of June 30, 2002)

- *A competitive alternative to telephone service is still not available in most areas of Kentucky.* The percentage of zip codes in the state of Kentucky in which there is no telephone competition is 79%, the fourth highest percentage in the nation.
- *The perception that most CLECs target only large business customers is not accurate.* Although information specific to Kentucky is not available, throughout the nation over one-half of CLEC switched access lines serve residential and small business customers.

Given the above, the Commission's policy on CSAs should support the introduction of competition to more areas of the state and foster competitive alternatives for both residential and business customers. A worst case scenario is to have ILECs use CSAs to lock in their existing large business customer to long term contracts and preclude other competitors from being considered. The effect is to insulate the most lucrative segment of the telecommunications market from competition. Those ILEC customers who are not eligible to receive a CSA (residence and small business) will effectively subsidize the ILEC contracts for large businesses. Our recommendation is that CSAs never be used as a preemptive tool for the ILEC to avoid competition.

There may be situations, however, in which the ILEC should be allowed to competitively respond through a CSA. On an individual case basis, where a CLEC makes a firm competitive offer that includes pricing below its authorized tariff rates to a large business customer (i.e., over ten lines), the ILEC should be allowed to competitively bid its services through a CSA.

In summary, the application for CSAs in the regulatory scheme should be defined and limited. Otherwise, a dominant market power such as BellSouth is provided the means to effectively prevent competition from developing, should it elect to use CSAs for that purpose.

Additional considerations that should be included in the Commission policy on CSAs include:

1. In no case should the ILEC or its affiliate be allowed to provide any service to end user customers at prices below the wholesale (tariff) cost of switched or special access or unbundled network elements provided to CLECs.
2. The same restrictions on CSAs should also apply to ILEC promotional tariff filings that are worded so as to apply only to certain customers in select areas or situations. Such promotional tariffs can be utilized to accomplish the same purpose as a CSA.

PSC Question Number 7.

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

Response:

The deregulation of CSAs would have a severe negative effect on developing telecommunications competition in Kentucky. At the present time, consumers have no competitive alternative to the ILEC in most areas of the state. Even in larger metropolitan areas of the state, only limited choice is available.

In the telecommunications market, the ILEC already serves the vast majority of customers and has an inherent advantage of an extensive network in place that it acquired during the time it was positioned as a monopoly utility with a guaranteed rate of return on investment. In addition, the ILEC enjoys the unique dual role of both a competitor and monopoly provider of essential services to its competition. With its market power and large base of residential and small business customers to subsidize its effort, the ILEC could effectively utilize CSAs to sign nearly all large business users to long term contracts in those areas where competition is emerging or is expected to develop. The CLEC could not effectively compete in such areas and, in most cases, would either halt any further network expansion or not enter the market in Kentucky.

PSC Question Number 8.

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

Response:

Regulation should continue to exist as a surrogate for competition to protect the interests of all Kentucky consumers as long as there is an absence of effective competition in the marketplace. As long as one competitor retains market power to the degree that some ILECs currently do in the telecommunications market, regulation must continue. As a possible blueprint for deregulation, the Commission should consider the case of AT&T, which was regulated as a "dominant" carrier in the long distance market by the FCC until a significant share of the long distance market had migrated to a competitive option. The Commission should continue to support and monitor the development of local competition at least until a reasonable number (e.g., 40%) of

Kentucky consumers have a facility-based local telephone service alternative available to them.

For large Kentucky ILECs, such as BellSouth, Alltel, and Cincinnati Bell, it is not feasible to deregulate a service in one market area as long as revenue from customers in other areas of the state is available to subsidize their response to competition. For those Independent ILECs that operate in a single defined market area, deregulation should be considered. However, regulation should still be extended to switched and special access services that other carriers or potential competitors may require.

PSC Question Number 9.

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

Response:

Before any service is deregulated, the following criteria must be satisfied.

1. Competitive options or functionally equivalent service alternatives to the service being deregulated must be available to all consumers in the state.
2. Deregulation of a service must be in the best interests of all Kentucky consumers. Residence and small business customers should not be subsidizing deregulation of service for large business customers. Rural customers should not be subsidizing deregulation of service for customers in metropolitan areas.
3. Deregulation of a service should not have a negative impact on the availability or price of services that remain subject to regulation.

The procedure to be followed in making such a determination should allow all interested parties the opportunity to participate. The burden of proof that the above criteria are satisfied should rest on the petitioner for deregulation.

CONCLUSION

The Frankfort Electric & Water Plant Board commends the Commission for allowing comments and allowing participation in this important case.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the parties included on the Commission's Official Service List by mailing a copy thereof.

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And Water Plant Board