

SouthEast Telephone

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PUBLIC SERVICE
COMMISSION

March 18, 2003

Kentucky Public Service Commission
Attn: Thomas M. Dorman
Executive Director
211 Sower Boulevard
P O Box 615
Frankfort, KY 40602-0615

Re: Response to Case No. 2002-00456
Contract Service Agreements by Telecommunication Carriers

Dear Mr. Dorman:

Please find enclosed our original response plus five copies to Case Number 2002-00456,
Contract Service Agreements by Telecommunication Carriers.

The contact information for our organization is as follows:

Darrell Maynard
President
106 Power Drive
P O Box 1001
Pikeville, KY 41502
606-432-3000
darrell.maynard@setel.com

If we need to do anything else, or if additional information is required, please let us know.

Sincerely,



Darrell Maynard
President

SouthEast Telephone

INQUIRY INTO THE USE OF CONTRACT SERVICE ARRANGEMENTS BY TELECOMMUNICATIONS CARRIERS IN KENTUCKY

CASE NO. 2002-00456

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**

N/A. SouthEast Telephone does not have any CSAs.

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.**

SouthEast Telephone does not have a policy regarding CSAs because of current systems in place by BellSouth which prevents SouthEast Telephone from offering a customer a contract service arrangement. At this point in time, SouthEast Telephone has run into cases where BellSouth has proposed pricing in place in the absence of competition, thereby precluding us from the bidding process. However, SouthEast Telephone can take over a CSA at our discount once BellSouth has signed the contract with the customer.

A point-to-point T-1 is an example of a service which places SouthEast Telephone at a disadvantage when customers request pricing. This service cannot be provisioned through the UNE-P platform and thus prevents SouthEast Telephone from having the ability to competitively price the service in comparison to BellSouth.

SouthEast Telephone certainly desires to have the ability to compete with BellSouth in the near future and be able to attract new customers by offering them competitive pricing.

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?

If 3 competitors are located in an area and if BellSouth has lost at least 20% market share, then the telecommunications carriers should have the flexibility to price services differently, provided these services are provisioned by the UNE-P platform. However, services that are tariffed and can only be provisioned through resale should not be eligible for special pricing arrangements unless the competitor carriers have access to a pricing mechanism that will also allow them to offer a potential customer the same discounted pricing.

The requirement that BellSouth has lost a 20% market share, along with the 3 competitors, will limit BellSouth's ability to hide their anti-competitive behavior behind a CSA arrangement. The customer must have the ability to choose among competitors to ensure quality service at the most affordable pricing.

In addition, especially in the rural markets where it will still be awhile before it is technological and financial feasible to put in facilities, competitors have to rely on the UNE-P platform. However, the UNE-P platform is very unstable at this time given the regulatory environment. Until there is more stability in both the regulatory and technological environment, a very limited amount of special contract arrangements should be allowed so the competitors can garner market share.

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?

The evidence required should include a hard and fast physical quote from 2 or more competitors before CSA pricing is allowed. Also, the carrier requesting a CSA should have to prove the 20% loss of market share plus ample competition in the service area. This information should be filed with the Public Service Commission.

The competitive offer should show the following: (1) Customer name (2) Effective date (3) Expiration date (4) Description of services included (5) Unique conditions involving the service (6) Total value of the contract (7) A price-out of the contract (8) A price-out of the same services as provided under tariff, if applicable (9) The net savings to the customer in total and on a per unit basis (10) Details concerning installation or other fees waived pursuant to the CSA (11) Details concerning recurring rates suspended or waived pursuant to the CSA (12) Company name making the competitive offer (13) Name of individual and title of person making the competitive offer

- 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?**

Even if SouthEast Telephone didn't believe that different pricing is appropriate, we do believe the financial result to carriers would be minimal in the scenario being discussed in this case. CSAs are only necessary when competition exist; therefore, if there is no competition, the pricing remains the same and the customer goes forth as is.

- 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?**

SouthEast Telephone would support a policy which required all customers for regulated services in the same geographic area to receive the same prices. Since SouthEast Telephone is a rural CLEC operating in at least 20 economically distressed counties, it is our belief that rural consumers should have access to the same high-quality services at the same discounted pricing options as consumers in metro and urban areas. SouthEast Telephone battles daily roadblocks which hinders rural Kentuckians from receiving the same quality telecommunication services at the same price as consumers in metro and urban areas currently receive.

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

The markets for local service could be defined in similar terms as the 2 divisions of cellular markets have been defined. One market could be structured like the "MSA" (Metropolitan Statistical Area) in the cellular industry which are areas that contain cities of 50,000 or more population and are characterized by the "community of interests." The "RSA" (Rural Statistical Area) consists of the remaining smaller populated areas.

Competition in the telecommunications market is the key in driving the growth of America; however, market areas must be defined to ensure quality services are available on a non-discriminatory basis, including the rural consumer. The end result of any future market segmentation must bring equilibrium into the competitive market arena. New technology has been rolling out at a relatively fast pace nationally but rural areas are progressing at a much slower pace due to the rugged terrain and sparsely-populated areas. It is only natural that the competitive markets will not progress at the same pace for all of Kentucky. Geographic areas or markets must be defined that will take into consideration the economic and technological differences between metro areas and rural areas.

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

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?**

Yes. BellSouth will have to demonstrate that each service offered in a CSA is priced at or above cost and that each service offered at less than the tariffed rate is necessary to meet a bona fide competitive offer. The CSAs would have to detail the following: (1) Customer Name (2) Effective Date (3) Expiration Date (4) Description of services included (5) Unique conditions involving the service (6) Total value of the contract (7) A price-out of the contract (8) A price-out of the same services as provided under tariff, if applicable (9) The net savings to the customer in total and on a per unit basis (10) Details concerning installation or other fees waived pursuant to the CSA (11) Details concerning recurring rates suspended or waived pursuant to the CSA. This information, along with a copy of the competitive quote, must be made publicly available so customers and CLECs can have knowledge of the special pricing and also in order for interested parties to identify violations of the law. The information should be filed timely with the Public Service Commission and should be posted on a website for inspection by interested parties. See suggested revised language to Section 13 of 807 KAR 5:011, as attached.

Section 13 of 807 KAR 5:011 should be amended to read as follows:

Section 13. Special Contracts.

- (1) Every Utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this administrative regulation applicable to tariffs containing rates, rules and administrative regulations, and general agreements shall also apply to the rates and schedules set out in said special contracts, so far as practicable.
- (2) *With respect to Contract Service Arrangement (CSAs), every utility which has entered into a CSA shall, in addition to the requirements of Section 13 (1), file a document setting forth the following information:*
 - 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. *Detail concerning recurring rates suspended or waived pursuant to the CSA.*

- l. Specific identity of person acting on behalf of the customer, who has disclosed the existence of a competitive offer.*
- m. Specific identity of competitor identified by such person, together with specific details of the offer including the following:*
 - i. Description of services included*
 - ii Unique conditions involving the service*
 - iii. Total value of the contract*

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

The criteria necessary to govern whether a regulated service should be sold by tariff only or by CSA should be based upon the amount of facilities-based competition. If customers have the choice of three competitors in their area, then CSAs should be allowed but only if the ILEC has lost a 20% market share. However, if there are only 1 or 2 competitors in the area, then CSAs should not be permitted.

Volume and term agreements for a particular service offered below cost should be examined closely to ensure they are not anti-competitive. In addition to volume and term agreements, a formal procedure by which similarly situated customers are notified about the existence of a CSA must be set in writing. This same offer must be made to all of the similarly situated customers in a defined geographic area. The process should not target or select customers in a manner that is intended to, or could have, an anti-competitive effect. The formal procedure cannot establish a policy that will allow the cutoff of potential competition and the removal of lucrative accounts from competition. A mechanism needs to be established that will compare the amount of discount offered by the large ILEC to the tariffed rate in addition to a matrix of comparable discounts that have been obtained by similarly situated customers and this information must be made public.

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

If CSAs are deregulated in Kentucky, competition would not be affected in areas where there are 3 or more facilities-based competitors. However, in other areas where competitive carriers are relying on ILEC facilities to jumpstart competition, deregulation would be detrimental until BellSouth has lost at least a 20% market share. Competitive carriers must depend upon the existing facilities-based infrastructure until the CLECs can garner enough customers to pay for investment in equipment.

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?

SouthEast Telephone agrees that in large metropolitan areas where BellSouth has lost an appropriate percentage of market share that BellSouth should have tools which would allow them to compete with the competition; however, in rural areas this is not true. Services should not be deregulated until there are at least 3 facilities-based competitors in the service area and at least a 20% loss of market share by BellSouth.

After an area has a sufficient amount of competition, SouthEast Telephone believes it is feasible to deregulate a service in one market area of Kentucky and not in others. Market areas must be defined that will take into consideration the economic and technological differences between the metropolitan and rural areas. The price of many services could remain high in rural areas where population density is sparse and costs would be distributed among fewer customers as compared to the metro/urban areas where the costs would be spread among large clusters of population. One possible solution is the segmentation of markets into metro and rural areas. However, the pricing in the rural markets would have to be closely scrutinized to ensure costs are comparable to the metro areas.

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

First, the Commission should determine if there are 3 or more facilities in ground for the community. If not, competition does not exist.

Also, BellSouth should not be allowed to average state-wide numbers to measure the amount of market share lost. BellSouth has lost substantial market share in the large metropolitan areas, such as Louisville, where ample competition exists. In these metro areas, BellSouth may have lost as much as 30-40% of their market share while in the rural areas, competition fails to exist. However, if the entire state is viewed as one market, the lost in the large metropolitan areas will skew the numbers and distort the percent of market share lost in rural areas. In reality, BellSouth has probably not lost more than 3-5% of market share in the rural areas because of the non-existence of competition.

Has BellSouth been allowed to use a formula that produces distorted results for the rural areas because of the concentration of market share in the large metropolitan areas? If so, a new formula to account for the economic and technological differences between the metro and rural areas needs to be used in the calculation of the amount of market share lost by BellSouth. Rural areas progress at a much slower pace due to the rugged terrain and sparsely-populated areas and cannot be measured with the same standards as we use to measure the urban areas. It is only natural that competitive markets will not progress at the same pace for all of Kentucky.

The Commission should be notified of the existence of a contract upon execution, and provided a written summary of the contract provisions including a description of the service provided. The Commission should then make a copy of the summary available for inspection by any interested party by posting the information on a website in a timely manner. Both the CSA and the competitive offer should be posted. Any special pricing package, contract, or discount should be made

available to any similarly situated customer who satisfies the required terms and conditions of the special agreement. All volume and term agreements for which a particular service is offered below cost should be closely examined and determined that it is not anti-competitive. One factor that could be used in determining the anti-competitive attitude of ILECs would be the past behavior of the ILEC. The large ILEC must demonstrate that each service offered in a CSA is priced at or above cost and that each service offered at less than the tariffed rate is necessary to meet a bona fide competitive offer. Only those services which can be proven are not anti-competitive should be deregulated.

With respect to deregulation, the procedures necessary during a Commission case in determining whether a service is sufficiently competitive should be as follows:

1. Receive testimony and exhibits from competing providers within the Commonwealth with respect to:
 - a. Whether or not each competitor provides the service(s) under consideration;
 - b. The ability and willingness of the competitor to provide equivalent or substitute services;
 - c. The number of subscribers the competitor serves with respect to the service(s) under consideration;
 - d. How the proposed change will influence the competitor's ability and willingness to offer other services at just and reasonable rates.
2. Examine the results of all Cost Allocation Audits conducted on the petitioning utility and take into account the result of such audits.
3. Render specific findings of fact with respect to each subsection of KRS 278.512(3), by clear and satisfactory evidence;
4. When, pursuant to KRS 278.512(5), the Commission is considering the vacation or modification of any existing order of exemption or establishment of alternative requirements, the Commission should examine the utility's operation with respect to such order and determine the following:
 - a. Whether or not the utility has applied the exemption sufficiently narrow to include only to those transactions, the character of which, are intended to be encompassed by the Commission's exemption;
 - b. Confirm existence of legitimate competitive offers for all CSA's executed by the utility, including the identity of the competitor, the details of the competitive offer and the identity of the person who received the competitive offer on behalf of the customer; and,
 - c. Whether or not the utility has set the contract price at or below cost.