

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE SALE AND DETARIFFING OF)
EMBEDDED CUSTOMER PREMISES) ADMINISTRATIVE
EQUIPMENT) CASE NO. 269

PHASE IV

O R D E R

BACKGROUND

On January 14, 1987, the Commission issued an Order in Phase IV of this proceeding which detariffed customer premises equipment ("CPE") used to provide 911 emergency services, effective January 1, 1988. On March 17, 1988, the Commission issued an Order affirming the decision to detariff 911 CPE and mandating "unbundled" 911 database access. On August 1, 1988, the Commission received a letter from the city of Madisonville, Kentucky, describing unsuccessful efforts to negotiate the provision of database information by South Central Bell Telephone Company ("SCB") to be used with CPE offered by enhanced emergency service ("E911") equipment vendors other than SCB. At the center of the impasse was the question of disclosure of nonpublished and unlisted subscriber listings to Madisonville by SCB. By Order dated January 10, 1989, the Commission stated that it would consider the letter to be a formal complaint and take this opportunity to further consider the decision to detariff CPE used to provide emergency services. On April 5, 1989, a hearing was

held to consider the issues of the case. On December 14, 1989, the Commission issued an Order (the "Order") which required SCB to: 1) revise its tariffs to provide a notification and waiver procedure whereby subscribers would have the opportunity to agree in writing to have their nonpublished or unlisted telephone listing included in database information provided to local governments for inclusion in E911 systems, and 2) provide the database information in a mutually agreed upon format including the subscribers who had consented to their nonpublished or unlisted telephone listing being included in the E911 database. The Commission also ordered that all other local exchange companies ("LECs") revise their tariffs to reflect the same conditions imposed on SCB in addition to any other procedure they may offer in the provision of E911 service. Finally, the Commission ordered that the expenses incurred as a result of implementing the notification and waiver procedure should be recouped through the rates charged to the local government customers who were receiving the database information.

On February 2, 1990, SCB filed a motion for leave to deviate from the Order. The reason for the motion was that SCB had determined, after it had studied and analyzed the procedures required to implement the requirements of the Order, that there were a number of administrative, technical, and interface problems associated with the implementation. In particular, computer software and administrative procedures would have to be developed to properly implement the requirements of the Order. SCB noted

that the procedure suggested in the Order did not appear feasible, necessary, or cost effective at this time since no agency, including the city of Madisonville, had requested the service. SCB also stated that it was unclear from the Order exactly who would bear the expense of the software and procedure development.

As an alternative, SCB suggested that because exceptions currently exist in its tariffs which provide for limited disclosure of nonpublished and unlisted information, the tariffs could further be modified to allow added disclosure to accommodate the interests of the E911 providers, the public, and SCB. Such further modification would allow disclosure of nonpublished and unlisted information to local governmental agencies for the purpose of providing E911 service. In addition, the modifications would require the local governmental agencies to sign a confidentiality agreement with SCB that would prohibit the agencies from using the database information for any purpose other than the provision of E911 service. The amended tariff would further provide that the E911 provider would defend and indemnify SCB for any claims brought where it was alleged that the database was misused by the E911 provider. Finally, in the event that a E911 provider requested the database information, including nonpublished and unlisted information, SCB offered to notify all existing nonpublished and unlisted subscribers within the area served by the provider that the listing was going to be disclosed for E911 purposes. The cost of this notification would be paid by the provider of the E911 service.

On February 6, 1990, Contel of Kentucky, Inc., filed a motion to deviate, in which it concurred with SCB's findings regarding administrative, technical and interface problems in implementing the Order.

On February 6, 1990, Cincinnati Bell Telephone Company ("CBT") filed a request for exemption and motion for clarification. The request for exemption from the Order was based on the fact that there were currently no E911 providers in CBT's Kentucky operating territory requesting the database information. Because of this CBT reasoned that there was no present need to incur the expenses associated with addressing the many administrative, technical, operational, and software interface problems in implementing the Order. The motion requested that the Commission clarify the Order to specify whether the individual ratepayer or the E911 provider requesting the information would have to bear the expense of developing the software required to provide the database information.

Finally, on February 15, 1990, the Lexington-Fayette Urban County Government ("LFUCG") filed responses to SCB's and Contel's motions and CBT's request and motion. LFUCG concurred with the proposal of SCB and Contel on the grounds that the process set forth in the Order should be simplified and that the SCB proposal was in accord with the initial position of LFUCG. Further, LFUCG reasoned that there should be minimal or no additional costs associated with provision of the database information and that any cost of notification should be the responsibility of the ratepayer

and included on the monthly bill. LFUCG asserted that CBT's request for exemption should be denied. The basis for denial was that CBT had been given due process and that its motion for exemption and clarification was an attempt to circumvent the entire process, and re-argue its previous position which had been rejected by the Commission. LFUCG reasoned that since CBT is an LEC doing business in Kentucky, it should be bound by the Order in the same manner as all other LECs in Kentucky. LFUCG's response did not specifically state the reasons for requesting the motion for clarification be denied.

DISCUSSION

This case was reopened to address the issue of whether or not LECs should be required to release to E911 providers, subscriber information including nonpublished and unlisted telephone listings heretofore protected from disclosure by tariff restrictions. In order to enjoy this protection, LEC subscribers pay an additional fee, over the normal monthly recurring flat rate. The protection provided by the LEC is a traditional service historically available in the telephone industry. Protection of the information was staunchly defended by SCB in the August 1, 1989 hearing (the "Hearing"). Conversely, potential providers of E911 service argued their right to obtain access to database information from the LECs including unlisted and nonpublished listings for use with E911 equipment not provided by SCB. The potential providers argued that E911 service was in the public interest and to withhold this information would make it impossible to provide universal E911 service at the most economical price.

Having reviewed the record in this case, the Commission finds that the alternative procedures proposed by SCB are substantially the same as those proposed by the potential E911 providers at the hearing, including the need to enter into a confidentiality agreement. The Commission finds that the proposal of SCB simplifies the procedures set forth in the Order, and satisfies the concerns of SCB and the E911 providers but does not allow current telephone subscribers to decide whether or not to have their unpublished or unlisted listing included in the E911 database.

In the Order, the Commission directed that expenses incurred as a result of implementing the notification and waiver procedure should be recovered through the rates charged to local government customers receiving E911 services. The alternative procedures proposed by SCB will not include such a procedure. Rather, SCB proposes to notify nonpublished subscribers that their confidential listings are going to be released to an E911 provider as a part of the database to be included in the E911 system. The Commission finds that the cost of such a notification process should be paid by the E911 provider requesting the information. Further, the costs incurred by the LECs to develop and maintain software and procedures attributable to these alternative procedures should be included in the price charged to the E911 provider.

Finally, the Commission finds that there is no compelling reason to exempt CBT from the requirements imposed by this Order.

Having considered the record of evidence and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. The motion of SCB for leave to deviate from the Commission's Order of December 14, 1989 is granted except for the following:

a. Subscribers currently subscribing to nonpublished or unlisted service or those who subscribe to such services within 30 days of the date of this Order and whose listing would otherwise be released to E911 providers shall be given an opportunity to request that their listing be deleted from the data base supplied to the E911 provider.

b. Customers requesting nonpublished or unlisted service after 30 days from the date of this Order shall be advised at the time of the request that it is possible that the listing may be released to an E911 provider.

2. The motion of Contel is granted.

3. The request for exemption of CBT is denied.

4. All LECs shall concur in the procedures proposed by SCB and offer E911 service in accordance with these procedures if applicable.

5. All LECs shall file, within 30 days from the date of this Order, revised tariffs to reflect the offering of E911 service in accordance with the proposed procedures.


6. Any expenses incurred by the LECs in connection with the development of software or administrative procedures necessary to implement the procedures adopted by this Commission shall be included as a part of the price of the service. Expenses incurred


in connection with the notification procedure shall be borne in direct charges by the E911 provider.


7. Each LEC shall maintain sufficiently detailed records to substantiate the costs incurred as a result of the implementation of this Order and shall provide upon request such records to the Commission or the E911 provider.

Done at Frankfort, Kentucky, this 29th day of May, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director