COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF ZENEX LONG DISTANCE, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE COMPETITIVE INTRASTATE TELECOMMUNICATIONS SERVICE	)	CASE NO. 96-305

O R D E R

On July 25, 1996, Zenex Long Distance, Inc. ("Zenex") filed a letter requesting to withdraw its application for authority to provide intrastate telecommunications services within Kentucky. Based on the letter, the Commission HEREBY ORDERS that:

1. This docket is terminated without prejudice.

2. In the event that Zenex decides to provide telecommunications services within Kentucky in the future, Zenex shall comply with the provisions of the Commission's June 21, 1996 Order in Administrative Case No. 359, Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones, attached hereto as Appendix A.

Done at Frankfort, Kentucky, this 20th day of August, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 96-305 DATED AUGUST 20, 1996

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EXEMPTIONS FOR INTEREXCHANGE CARRIERS, LONG-DISTANCE RESELLERS, OPERATOR SERVICE PROVIDERS AND CUSTOMER-OWNED, COIN-OPERATED TELEPHONES	)	ADMINISTRATIVE CASE NO. 359

O R D E R

Pursuant to KRS 278.512 and 278.514, the Commission, on its own motion, hereby initiates this proceeding to determine whether it should exempt interexchange carriers ("IXCs"), long-distance resellers, operator service providers and pay phone providers also called customer-owned, coin-operated telephones ("COCOTs") from certain regulatory requirements. The telecommunications toll market in Kentucky has advanced to the point that there are approximately 200 providers of long-distance toll services and approximately 300 COCOT providers in the Commonwealth. The diversity and number of providers indicates that Commission consideration of the exempting of these utilities from certain regulations and statutes is timely.

Because of the plethora of carriers, none exercise market power. The absence of market power appears to make the current regulatory oversight unnecessary. The streamlined process identified herein will enable these utilities to provide service more rapidly with fewer resources.

When evaluating the reasonableness of regulatory exemption, the Commission is bound by KRS 278.512 and 278.514. The Commission may exempt or reduce the

regulation of telecommunications services and products if it determines that exemption or alternative regulation is in the public interest. KRS 278.512 identifies criteria to be considered by the Commission and permits consideration of any other factor deemed in the public interest.

The Commission considers the extent to which competing telecommunications services are available in the relevant market, the existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available, and the number and size of competitive providers. In approximately 15 years the toll market segments have expanded from one provider to approximately 200 providers. Customers may easily change providers. They have abundant options. Further, the intraLATA toll market is swiftly migrating to full equal access.

The overall impact of the proposed regulatory change on the availability of existing services at reasonable rates is considered by the Commission. The exemptions provided herein should allow quicker responses to market conditions. Adequate services and reasonable rates should, moreover, remain available to customers by virtue of the sheer number of competitors.

The Commission also must consider the impact that exempting toll services will have upon universal service. The reduction of resources dedicated to regulatory issues should have a positive impact on service availability and a negligible impact on universal service. Continued regulation of toll service may actually hamper utilities' ability to compete in a competitive market environment.

APPLICATIONS FOR INITIAL OPERATIONS

Pursuant to KRS 278.020, the Commission has required utilities operating for the first time within the Commonwealth to submit an application consistent with our regulations, detailing the utility's intended services, management, financial condition and other items. The Commission believes this should no longer be necessary. Instead, the Commission tentatively finds that IXCs, long-distance resellers, and operator service providers intending to serve the Commonwealth should supply only a proposed tariff to be effective 30 days from the date of filing, with a cover letter notifying the Commission of its intent to operate in Kentucky.

This cover letter would include the following information: (1) the name and address of the company; (2) articles of incorporation or partnership agreement; (3) name, street address, telephone number and fax number (if any) of the responsible contact person for customer complaints and regulatory issues; (4) a notarized statement by an officer of the utility that the utility has not provided or collected for intrastate service in Kentucky prior to filing the notice of intent or, alternatively, a notarized statement by an officer that the utility has provided intrastate services, that it will refund or credit customer accounts for all monies collected for intrastate service; and (5) a statement that the utility does not seek to provide operator assisted services to traffic aggregators as defined in Administrative Case No. 330[1] or, alternatively, that the utility does seek to

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[1] Administrative Case No. 330, Policy and Procedures in the Provision of Operator-Assisted Telecommunications Services, Order Dated March 27, 1991.

provide operator assisted service to traffic aggregators but that in so doing it is complying with the Commission's mandates in Administrative Case No. 330.

An original and four copies of this cover letter and tariff would be filed with the Commission and sent to the attention of the Executive Director. If neither these items nor any prescribed corrections to the proposed tariff have been supplied within 30 days of the original filing date, the utility's proposed tariff would be rejected by letter.

TARIFF ADDITIONS AND REVISIONS

IXCs and long-distance resellers may file additions and revisions to their tariffs with one day's notice and without customer notice. Thus, the Commission reaffirms its decisions in Case No. 94-286[2] and Case No. 94-500,[3] except as specified herein regarding operator, pay phone, credit card and debit card service providers. The Commission tentatively finds that it should alter the decision in these cases to the extent that operator, pay phone, credit card and debit card service providers should also be permitted to modify their existing tariffs with one day's notice and without customer notice. These rates should also be accepted as presumptively valid.

However, operator service providers are subject to the complaint process specified herein. If there is a customer complaint about a rate for operator services, and it is

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2 Case No. 94-286, Joint Petition of AT&T Communications of the South Central States, Inc., MCI Telecommunications Corporation, Sprint Communications Company L.P., and LDDSMetroMedia Communications, Inc. to Reduce the Tariff Filing Notice Period for Interexchange Carriers.

3 Case No. 94-500, Petition of AT&T Communications of the South Central States, Inc. to Reduce the Tariff Filing Notice Period Applicable to Special Service Promotions Made Available to Kentucky Customers.

found that the rate is greater than 15 percent above the average rates of AT&T Communications of the South Central States ("AT&T"), MCI Telecommunications Corporation ("MCI"), and Sprint Communications Company L.P. ("Sprint") for comparable service, the utility should then be required to produce cost justification for its rate. If the rate should be found not to be cost justified, then the carrier should be required to reduce its rate on a prospective basis. Finally, refunds or credits should be made to those customers complaining of the excessive rate. The refunds or credits should include those monies collected that were in excess of 15 percent above the average rate of AT&T, MCI, and Sprint for comparable service.

Though operator service providers do exhibit certain monopoly characteristics, the Commission tentatively finds that the procedure specified herein will ensure that public interest is maintained while acknowledging the growing competitive market.

APPLICATIONS FOR TRANSFER OF OWNERSHIP OR CONTROL

Under KRS 278.020(4) and (5), IXCs and long-distance resellers, operator service providers and COCOTs are required to seek prior approval for authority to transfer their operations through a sale of assets or transfer of stock. However, given the competitive nature of the markets in which these utilities operate, this prior approval no longer appears necessary. Based upon its experience, the Commission is reasonably certain that toll providers have the necessary managerial, technical and financial capabilities to provide service. Furthermore, should a toll provider cease to operate, ratepayers in Kentucky have numerous options readily available.

Accordingly, the Commission tentatively finds that IXCs and long-distance resellers need only to supply a letter to the Commission stating a description of the transfer and providing an adoption notice pursuant to 807 KAR 5:011, Section 11, for the tariff with one day's notice. A utility that ceases to operate shall advise the Commission by letter requesting withdrawal of its tariff.

An original and four copies of this transfer letter would be filed with the Commission and sent to the attention of the Executive Director.[4]

FINANCING

Pursuant to KRS 278.300, utilities are required to seek prior approval for issuance of securities or evidences of indebtedness, or prior to assuming any obligation or liability in respect to the securities or evidences of indebtedness. This requirement no longer appears necessary for IXCs, long-distance resellers, and operator service providers for

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[4] The Commission cautions all utilities that the sale by a utility of part of its customer base, even though the utility will still provide the same line of business furnished to the customers whose accounts were sold, is not a transfer pursuant to KRS 278.020 [See Case No. 96-078, Application of MidCom Communications, Inc. and GE Capital Communications Services Corporation, d/b/a GE Exchange and d/b/a GE Capital Exchange for Approval of a Transfer of Assets, Order dated May 7, 1996]. Where the utilities do not obtain the customer's authorization for the transfer of the customer's service to another utility, an unauthorized preferred interexchange carrier ("PIC") change has occurred. This is an unreasonable practice pursuant to KRS 278.260 and will not be authorized by this Commission. The sale of an entire line of business, or of an entire utility, is authorized. Clearly it makes no sense to attempt to force a carrier to continue to provide service it no longer wishes to provide simply because its customers do not want to change their PIC. However, where the transferring utility will continue to provide precisely the same service it currently provides to the customer(s) whose PIC designation it is selling to another, it commits an unreasonable practice by that sale within the Commonwealth of Kentucky. Accordingly, such a sale is not sanctioned by the regulatory exemption provided herein.

the protection of the public interest, given the competitive nature of the toll market. The Commission tentatively finds that financial decisions such as assuming evidences of indebtedness should be made by the utility in response to market conditions and the availability of capital resources. Public interest no longer dictates that the financial viability of each and every provider of toll service should be maintained. Should a toll provider cease to operate due to financial mismanagement or other reasons, ratepayers in Kentucky have numerous providers available for toll service.

EXEMPTIONS FOR COCOTS

Pursuant to Administrative Case No. 337,[5] COCOTs are required to file tariffs with the Commission prior to serving Kentucky. The tariffs are also required to contain rates that are no greater than those of AT&T for interLATA services, or the local exchange carrier in the territory in which the COCOT provides intraLATA services. However, due to the number of COCOT providers and the general availability of options for telecommunications services, the Commission tentatively finds that (1) COCOTs should not be required to file rates with 30 days' notice to the Commission; (2) COCOTs should be permitted to file rates with one day's notice and then rates should be accepted as presumptively valid; (3) if, however, the Commission receives customer complaints regarding a COCOT's rates, and it is found that its rates are greater than 15 percent above the average rates of AT&T, MCI, and Sprint for comparable service, the COCOT should be required to produce cost justification for its rates; if the rates are not cost

[5] Administrative Case No. 337, The Investigation and Review of Customer-Owned, Coin-Operated Telephone Regulation.

justified, then the COCOT should reduce its rates on a prospective basis; (4) finally, refunds or credits should be made to those customers complaining of the excessive rates. The refunds or credits should include those monies collected that were in excess of 15 percent above the average rates of AT&T, MCI and Sprint for comparable service.

Furthermore, the Commission tentatively finds that COCOTs should be permitted, at their discretion, to include a statement in their tariffs to the effect that the COCOT toll rates are no greater than the existing rates of the COCOT's underlying toll carrier, such as AT&T, MCI or any other IXC. Moreover, the Commission tentatively finds that the COCOT should be permitted to state in its tariff that it concurs with the rates for 1+ and 0+ calls of its underlying toll carrier. If such a statement is included in the COCOT tariff, it should state the underlying toll carrier's name. If either of the foregoing options is chosen, the actual rates of the COCOT should not be required to appear in the COCOT's tariff.

CONCLUSION

The Commission does not contemplate extending any of the exemptions provided herein to services provided by incumbent local exchange carriers ("LEC"), competitive access providers ("CAP") or wireless carriers. The competitive nature of the toll market should provide adequate safeguards to protect customers from unfair treatment, poor service quality, or excessive prices. However, regardless of the extent of the exemptions eventually granted in this proceeding, all customers may continue to exercise their option of filing complaints regarding the exempt services with the utility and the Commission.

The Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514. Toll providers shall continue to fulfill all requirements of KRS Chapter 278 and Commission regulations and orders not specifically exempted herein.

A copy of this Order shall be served on the Attorney General of the Commonwealth of Kentucky and all telecommunications providers in Kentucky. The procedures and exemptions prescribed in this Order shall be effective July 31, 1996 unless the Commission receives from interested persons comments indicating disagreement with any exemption described herein.

IT IS THEREFORE ORDERED to be effective July 31, 1996 unless further proceedings are ordered herein, that:

1. IXCs, long-distance resellers, and operator service providers shall no longer provide initial operation applications pursuant to KRS 278.020(3); or applications for prior approval of transfers pursuant to KRS 278.020(4) or (5); or applications for securing evidences of indebtedness pursuant to KRS 278.300.

2. Operator, pay phone, credit card, and debit card service providers shall modify existing tariffs with one day's notice and no customer notice, with the operator service providers subject to the complaint process established herein.

3. COCOTs shall no longer be required to file a tariff with 30 days' notice to the Commission prior to serving in Kentucky. COCOTs shall file tariffs with one day's notice, subject to the customer complaint process established herein.

4. Toll providers shall submit an initial proposed tariff with the prescribed information in a cover letter to the Commission at least 30 days prior to the date they plan to serve Kentucky.

5. Toll providers shall provide a letter to the Commission describing any transfer and shall file an adoption notice of its tariff.

6. A utility that ceases to operate shall notify the Commission by letter and shall seek withdrawal of its tariff.

7. This Order is inapplicable to incumbent LECs, CAPs and wireless carriers.

8. The effective date of this Order shall be August 1, 1996 unless any petition for a hearing is filed by July 22, 1996. Such petition shall specify exactly those portions of this Order for which hearing is sought and the basis for such petition. Any portions of this Order for which hearing is not sought shall be effective August 1, 1996 without further Order of the Commission.

9. Pursuant to KRS 278.512(5), any exemption ordered herein may be vacated or modified if it is found to not be in the public interest.

10. A copy of this Order shall be served on all telecommunications providers in Kentucky and the Attorney General.

Done at Frankfort, Kentucky, this 21st day of June, 1996.

By the Commission

ATTEST:

Executive Director