COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CUSTOMER BILLING AND NOTICE REQUIREMENTS FOR WIRELINE TELECOMMUNICATIONS CARRIERS PROVIDING SERVICE IN KENTUCKY	)) CASE NO. 2002-00310)

O R D E R

On August 26, 2002, the Commission established this proceeding to consider the continued reasonableness of billing requirements established for local exchange carriers (LECs) in 1991 in Administrative Case No. 306.[1] On November 1, 2002, the Commission determined that carriers would no longer be required to bill regulated and non-regulated charges on separate customer billing sheets. Moreover, no particular font size or message is required on a customer bill; however, non-regulated charges and the notice stating that non-payment of non-regulated items will not result in disconnection of regulated service must be clearly and conspicuously indicated on the consumer bill. The Commission maintained its requirement established in 1991 that customers shall not be disconnected from regulated services for failure to pay unregulated charges.

Still pending in this proceeding are other issues identified by the Commission s August 26, 2002 Order that were not addressed in the November 1, 2002 Order. Thus, we have yet to address the appropriate procedures for notifying end-users when a competitive LEC (CLEC) ceases to serve in Kentucky, whether through bankruptcy

[1] Administrative Case No. 306, Detariffing, Billing and Collection Services, Orders dated September 5, 1991 and December 19, 1991.

or other cause. We also have yet to address appropriate procedures for an incumbent LEC (ILEC) to follow when it disconnects for failure to pay carrier charges or other items. It is to these issues we now turn.

An informal conference was held December 4, 2002, during which BellSouth Telecommunications, Inc. (BellSouth), Cincinnati Bell Telephone Company (CBT), and Kentucky ALLTEL, Incorporated (ALLTEL) discussed these issues. BellSouth presented its emergency continuation tariff, which is in effect in Florida. BellSouth noted that the exiting provider should advise its own customers. However, because many such carriers have failed to do so, BellSouth provides a continuation plan so that customers may avoid losing telephone service. BellSouth indicated that it would file the same tariff for consideration in Kentucky. On January 7, 2003, the Commission suspended BellSouth s proposed tariff to offer an emergency service continuity plan so that its policy implications could be considered and so that other LECs may comment on its reasonableness.

The emergency service continuity plan proposed tariff filed by BellSouth allows customers to continue to receive service once this Commission has determined that a CLEC has effectively abandoned its customers or some other emergency exists to justify the implementation of this tariff. This tariff permits BellSouth to provide telephone service to those customers whose carrier has ceased to operate. BellSouth will provide telecommunications service for a minimum of 14 days allowing the customer to select a carrier. To provide this emergency service, BellSouth must obtain permission from customers or through a Commission Order to use customer service record information of the abandoned customers. Moreover, BellSouth must receive a waiver from the

Commission for requirements regarding verification of customer change. When a customer selects a new provider, BellSouth will bill that new provider for rates equipment to a two wire loop found in the provider s interconnection agreement for the period of time in which BellSouth provided service to the abandoned customer. If the abandoned customer selects BellSouth, then BellSouth will charge the customer applicable rates from the time it began to provide this emergency continuity service.

The Commission received comments on BellSouth s proposed emergency service continuity plan tariff from ALLTEL, CBT, the Frankfort Electric and Water Plant Board (Frankfort Plant Board), and AT&T Communications of the South Central States, Inc. (AT&T). ALLTEL indicates that it supports the overall concept of continuity of service procedures. However, it believes that carriers should retain the authority to determine an appropriate methodology and to examine whether market circumstances would necessitate such a plan. ALLTEL argues that such plans should be flexible. ALLTEL does not want BellSouth s proposed tariff to be imposed on any other carrier.

CBT asserts that neither a tariff nor state regulations are required to address the discontinuance of service by a CLEC. CBT argues that the FCC s rule, 47 CFR § 63.71, should be applicable on an in-state basis, as such customer continuity issues would be addressed. CBT also argues for flexibility to address unique circumstances of particular discontinuance of service. No generalized tariff should be required for each carrier in the state according to CBT. CBT asserts that it has worked appropriately with the Commission under these circumstances, providing the Commission with notice of discontinuance of services to CLECs and other similar issues.

The Frankfort Plant Board asserts that it is a facilities-based provider and would not, therefore, be obligated to pay BellSouth for the 14 days of service BellSouth may provide to an abandoned customer who then selects the Frankfort Plant Board. The Frankfort Plant Board further argues that since it was not the provider of service to the customer during that time which BellSouth was providing emergency continuity service, that it could not bill its customer for charges that BellSouth may assess against it. The Frankfort Plant Board also asserts that allowing BellSouth to use confidential customer service records to provide emergency continuity service would give BellSouth an unfair advantage. The Frankfort Plant Board argues that all CLECs operating in a market where a carrier has abandoned service should be given the same access to client information.

AT&T, unlike the other carriers, asserts that the Commission should incorporate any provision for emergency continuity service into its rules and be applicable to all carriers. AT&T agrees that the ILEC would be the only carrier likely to have adequate resources and access to customer information to step in and notify affected customers. Such Commission rules should include, according to AT&T, a statement that the ILEC will not use customer information needed to provide emergency continuity service to market any other service during the time in which emergency continuity service is provided. AT&T also contends that the interval for the provision of emergency continuity service should be extended to 30 days to allow business customers, in particular, an opportunity to consider and evaluate alternatives. AT&T concurs with the Frankfort Plant Board in arguing that BellSouth s tariff provision to require a newly selected carrier to reimburse BellSouth for service during the emergency continuity time is inappropriate. The end-user customer who is receiving emergency continuity service should be billed by the ILEC for the service. Like the other commentors, AT&T believes that the Commission should follow 47 CFR § 63.71 as its procedures for notifying customers of a LEC s cessation of service in Kentucky.

BellSouth responded to AT&T s comments. BellSouth argues that the written notification requirement proposed by AT&T would be too costly. Additionally, ILECs may not even have adequate billing information to properly notify the customers. In response to AT&T s proposal that ILECs be prohibited from marketing their local or long-distance service while they are providing emergency continuity service, BellSouth asserts that the ILEC should have the opportunity to respond to questions from such customers who seek information from BellSouth regarding its services. To do otherwise, according to BellSouth, would be an unreasonable inhibition to BellSouth and create a hardship for customers. Regarding AT&T s suggestion that the continuity plan be in effect for 30 days rather than 14, BellSouth indicates that if it is able to recover its costs, then it would not object to the extension.

AT&T further asserts that ILECs providing emergency continuity service should bill end-users rather than the acquiring carrier. BellSouth responds that this would require the ILEC to establish a retail relationship with the customer and would involve additional costs for which no means of recovery was recommended. Finally, BellSouth argues that it must use customer information which it would not ordinarily be permitted to access because the emergency continuity plan is designed for those circumstances where the abandoning CLEC does not cooperate.

Duo County Telephone Cooperative (Duo) filed comments regarding issues covered by BellSouth s emergency continuity plan but did not comment on the plan specifically. Duo believes that the carrier that ceases to operate should have the burden of notifying its customers of a date-certain on which operations will stop and provide those customers sufficient time to select another carrier. An exception to this notice would be cessation of service due to bankruptcy. Where bankruptcy is the cause, a public service announcement rather than direct notice would be adequate. According to Duo, if a LEC fails to provide such customer notice, then the Commission should initiate a show cause proceeding. Duo contends that under no circumstance should the ILEC be responsible for providing service to abandoned customers. In support of its views, Duo contends that ILECs do not necessarily have billing addresses and other information needed to provide service, that ILECs should not be required to undertake the cost burden without compensation, and that such service may be viewed as anti-competitive.

Regarding the issue of what procedures an ILEC must follow when it disconnects a CLEC for failure to pay, Duo asserts that the ILEC should only be required to notify the CLEC pursuant to their agreements. Notifying the Commission and others should be the CLEC s responsibility.

Sprint Communications Company LP (Sprint) also filed general comments contending that customers whose carriers are ceasing to serve should be notified by the acquiring carrier.

The Commission has considered all comments and concludes that, in general, the FCC s rule 47 CFR § 63.71 should be followed in Kentucky. The primary responsibility for notifying customers when a carrier exits should be placed on the carrier serving that customer. The exiting carrier should also provide prior notice to the Commission and other relevant officials.

However, this proceeding was initiated for circumstances in which a carrier exiting a market has failed to notify its customers or lacks resources to do so. The Commission finds BellSouth s plan reasonable, and therefore adopts that plan for BellSouth only at this time. However, the Commission expects other ILECs, who are the carriers in a position to enable them to deal with emergencies of this nature, to provide similar service to customers in their service areas should the need arise. The Commission anticipates coordinating with ILECs as to the circumstances which create a need for emergency continuity service for customers who, through no fault of their own, face loss of dial tone.

In addition, when an ILEC prepares to disconnect a CLEC for failure to pay carrier charges or for any other reason, the ILEC must provide the Commission prior notice of the disconnection. The ILEC must also provide the Commission with a plan for addressing customer notice and service issues and should follow procedures similar to BellSouth s emergency continuity plan.

The Commission, having considered the comments in this proceeding and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth s proposed tariff for emergency continuity service is approved for implementation by BellSouth.

2. ILECs other than BellSouth shall notify the Commission on a case-by-case basis when carriers cease to serve in their relevant areas.

3. Prior to disconnecting a CLEC for failure to pay carrier charges or for other reasons, the ILEC shall notify the Commission in writing and shall propose a plan for addressing customer notice and service issues.

Done at Frankfort, Kentucky, this 20th day of May, 2003.

By the Commission

ATTEST:

Executive Director