

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOTICE OF AT&T COMMUNICATIONS OF THE)	
SOUTH CENTRAL STATES, LLC AND)	CASE NO.
BELLSOUTH TELECOMMUNICATIONS, INC.,)	2007-00215
D/B/A AT&T KENTUCKY, OF PARTIAL)	
DISCONTINUATION OF LOCAL RESIDENTIAL)	
SERVICE AND WAIVER REQUEST)	

O R D E R

On May 31, 2007, AT&T Communications of the South Central States, LLC (“AT&T South Central”) and BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky (“AT&T Kentucky”) (collectively “the companies”) jointly submitted notice to the Commission that AT&T South Central planned to discontinue offering local residential service in the states served by the former BellSouth Telecommunications (“Notice”).¹ Kentucky customers currently having service with AT&T South Central will have the choice of selecting a new provider or, if the customers take no action, they will be “automatically migrated” to AT&T Kentucky, which would then serve as their local

¹ The Commission approved the merger of AT&T, Inc. and BellSouth Telecommunications, Inc. by Order dated July 25, 2006 in Case No. 2006-00136, Joint Application for the Approval of Indirect Transfer of Control Relating to the Merger of AT&T Inc. and BellSouth Corporation. AT&T states that similar notices and applications will be filed or have been filed in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

exchange carrier.² This “automatic migration” period is expected to occur from October 29, 2007 to December 28, 2007. In their notice, the companies stated that this plan will affect approximately 8,000 residential customers in the Commonwealth of Kentucky.³

In filing their notice, the companies specifically requested that the Commission grant a waiver of certain state telecommunications statutes and regulations. The companies have requested an exemption from KRS 278.535(2) and KRS 278.542(h), which are Kentucky’s statutes prohibiting telecommunications carriers from changing a customer’s provider without explicit consent and prohibiting carriers from placing unauthorized charges or services on a customer’s account. These statutes are commonly referred to as the “anti-slamming” and “anti-cramming” provisions. Under KRS 278.512(2), the Commission has the authority to exempt a telecommunications carrier from certain requirements outlined in KRS Chapter 278. Prior to granting an exemption or waiver, the Commission must find that, by clear and satisfactory evidence, such a decision would be in the public interest.

Appended to their notice to the Commission, the companies provided drafts of the written notices that will be sent to AT&T South Central residential customers to

² “Automatic migration” is the phrase used by the companies to describe the planned transfer of local residential customers in Kentucky. See *generally* Notice of AT&T Communications of the South Central States, LLC and BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, filed in this matter on May 31, 2007.

³ AT&T South Central contends that although it will cease providing local residential service in Kentucky, it will continue to provide interexchange service to residential customers and both local and interexchange services to business customers. This migration plan will not change a customer’s long-distance carrier. See Notice at 1.

inform them of the impending discontinuance of local residential service.⁴ Customers will be given the option of responding to the change in two ways. First, customers will be notified of their right to select a different local exchange carrier. Secondly, customers will be notified that they may voluntarily change to a new service plan under AT&T Kentucky. The draft letters state that if customers desire to switch to a local exchange carrier other than AT&T Kentucky, they should do so within 30 days of the date of notification to avoid the automatic migration to AT&T Kentucky.

In their notice, the companies state that if a customer voluntarily selects to switch to AT&T Kentucky, that customer may select a new local residential calling plan. The companies acknowledge that, although AT&T South Central and AT&T Kentucky have substantially similar plans and services, there may be varied differences in options and costs. Within the notification letters, customers will be advised that if they do not choose a new local carrier or do not voluntarily elect to take service with AT&T Kentucky and choose a new plan, they will be automatically transferred to AT&T Kentucky and assigned to a service plan that is most comparable in service and in pricing to the customer's current local plan with AT&T South Central.

As stated in the petition, under the migration plan, current customers who do not elect any changes in plans or providers will be migrated to the most comparable service plan offered by AT&T Kentucky. Customers will receive automatic, recurring credits on their monthly bills if the automatic migration results in a higher cost for service under

⁴ Exhibit A of the notice, as filed on May 31, 2007.

AT&T Kentucky or changes in the types of services that are provided.⁵ No fees or charges will be issued to customers associated with the automatic migration. Due to the possibility that customers will have services or costs added to their bills that they did not specifically authorize or request, such could potentially be considered violations of Kentucky's slamming and cramming statutes; thus, the companies contend that a waiver from those statutes is necessary. However, the companies contend that this automatic migration process is necessary to ensure that residential customers maintain local service and access to emergency services without interruption.⁶

On June 29, 2007, Commission Staff held an informal conference with representatives of AT&T Kentucky. During the course of this informal conference, AT&T Kentucky elaborated on the procedures that will be followed by both companies during and after the commencement of the automatic migration. Among other issues, Commission Staff and AT&T Kentucky discussed the methods by which customer deposits will be handled and how AT&T Kentucky will address outstanding customer complaints filed or raised with AT&T South Central prior to or during the course of the transfer. On July 3, 2007, the Attorney General's Office of Rate Intervention filed a notice of no objection to the companies' automatic migration plan and request for waiver.

⁵ Monthly credits will continue as long as a customer stays enrolled in the comparable service plan assigned during automatic migration to AT&T Kentucky. See Exhibit A of the notice, as filed on May 31, 2007.

⁶ The companies state that this integration of local services will allow AT&T Kentucky to serve the state's residential customers on a single, operational platform and provide new products, offers, and services offered by AT&T, Inc.

FINDINGS

The Federal Communications Commission's ("FCC") regulations under 47 C.F.R. § 64.1120 outline streamlined rules for the transfer of customers between carriers. Generally, with such transfer, the new carrier would need to obtain an affirmative authorization for transfer from each individual customer, pursuant to 47 C.F.R. § 64.1120(c), as well as pursuant to KRS 278.535(2), Kentucky's authorization rule. These rules and regulations effectively prohibit a carrier from submitting or executing an order to change a customer's carrier without complying with the prescribed procedures.

However, 47 C.F.R. § 64.1120(a) provides that state commissions are allowed to enforce FCC procedures regarding the verification of orders for changing intra-state telecommunication services. Section 64.1120(e) of 47 C.F.R. is commonly referred to as the "Bulk Transfer" rule. Under this rule, a telecommunications carrier may acquire, through sale or transfer, either a portion or the entirety of another carrier's customer base without obtaining each customer's authorization and verification. In addition to providing notice to the applicable regulating agency, under this rule, an acquiring carrier must give at least 30 days advanced and written notice to the affected customers in a manner that ensures the protection of their interests.⁷ The written notice must include the following details:⁸

⁷ 47 C.F.R. § 64.1120(e)(3) states that the acquiring carrier must provide advance subscriber notice in a manner consistent with 47 U.S.C. § 255 and the FCC's rules regarding accessibility to blind and visually impaired customers. Those rules are outlined in 47 C.F.R. §§ 6.3 and 6.5. AT&T Kentucky, as the acquiring provider, did not outline details as to its compliance with this provision. The Commission will require an affirmative demonstration of compliance with this portion of the regulation.

⁸ Here the term "acquiring carrier" refers to AT&T Kentucky. The term "transferring carrier" refers to AT&T of the South Central States.

- The timeline for the customer transfer.
- The rates, terms, and conditions of the services that will be provided by the acquiring carrier after the customer transfer.
- Statement that the acquiring carrier will be responsible for any charges associated with the customer transfer.
- Statement that the customer has the right to select a different, preferred telecommunications carrier, if one is available.
- Statement that customers with “carrier freezes” will be transferred to the acquiring carrier, unless those customers select different carriers before the transfer date; customers must request new “carrier freezes” after the transfer date, if so desired.⁹
- Statement of whether the acquiring carrier will be responsible for handling complaints filed or raised with the transferring carrier prior to or during the transfer.
- Provision of a toll-free customer service telephone number for the acquiring carrier.

The Commission has thoroughly reviewed the companies’ notice, request for waiver, and appended draft notices for the local residential customer base. In accordance with the authority delegated to the states to enforce the provisions of 47 C.F.R § 64.1120, the Commission finds that the proposed notices that the companies intend to submit to current AT&T South Central local residential customers substantially comply with the FCC’s Bulk Transfer rule. The proposed automatic migration plan and the proposed customer notices provide satisfactory evidence that Kentucky customers will not suffer the burden of a potential loss in the provision of local telephone services or experience unauthorized, higher costs in being placed with a new local carrier.

⁹ A “carrier freeze” is an option available to customers to prevent changes to their preferred carrier selection without the consent of the customer. A “carrier freeze” can be placed on local, intra-LATA, inter-LATA, or international telecommunications services.

In finding that the companies' proposed plan and notices comply with the FCC's Bulk Transfer requirements, the Commission finds that it is not necessary to issue an express exemption under KRS 278.512(2) from the requirements of KRS 278.535 and KRS 278.542, and, therefore, the Commission declines to do so. However, the Commission has no objection to the proposed automatic migration plan between AT&T South Central and AT&T Kentucky. The Commission finds that, given that AT&T South Central intends to end its participation in the provision of local residential services, this plan will protect and benefit the 8,000 customers in Kentucky by ensuring that there is not an interruption of local service and, most importantly, that there is not an interruption of a customer's ability to access vital emergency services.

IT IS HEREBY ORDERED that:

1. In lieu of receiving an exemption under KRS 278.512(2) from KRS 278.535 or KRS 278.542, AT&T Kentucky and AT&T of the South Central States shall adhere to the requirements of the FCC'S Bulk Transfer regulations, as provided in 47 C.F.R. § 64.1120(e).

2. Within 30 days of the date of this Order, AT&T Kentucky shall provide, by demonstrative exhibit, evidence of compliance with the FCC's Bulk Transfer rules regarding advance customer transfer notices to blind and visually impaired customers.

3. The companies shall immediately notify the Commission of any material changes to the automatic migration plan or its execution.

4. The companies shall be required to fulfill the obligations for the provision of service, as set forth in the notices sent to customers outlining the terms of the automatic migration, as well as in the notice filed with the Commission on May 31, 2007.

5. The Attorney General, through his Office of Rate Intervention, shall be served a copy of this Order.

Done at Frankfort, Kentucky, this 23rd day of July, 2007.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director