

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF ABSOLUTE HOME)
PHONES, INC. FOR DESIGNATION AS)
AN ELIGIBLE TELECOMMUNICATIONS) CASE NO. 2009-00407
CARRIER IN THE COMMONWEALTH)
OF KENTUCKY)

O R D E R

By this Order, the Commission finds that the Applicant shall submit a response no later than 30 days from the date of this Order outlining legal arguments supporting the Commission's continued legal authority to grant certification to the Applicant for Eligible Telecommunications Carrier ("ETC") status under 47 U.S.C. §§ 254 and 214(e) and 47 C.F.R. §§ 54.101-54.207.

In the petition for designation as an ETC, the Applicant has stated that it will provide local exchange and exchange access services in the ETC-designated area through a combination of resale and Unbundled Network Elements ("UNEs") or UNE equivalents.

In an Opinion and Order issued on February 22, 2010 in BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission, Case No. 3:08-cv-00007-DCR,¹ the United States District Court for the Eastern District of Kentucky held

¹ On March 22, 2010, the Commission notified the District Court of its intent to seek review of this Opinion and Order before the United States Court of Appeals for the Sixth Circuit.

that regional Bell Operating Companies do not have affirmative, ongoing obligations to permit the commingling of certain elements under 47 U.S.C. § 251 and 47 U.S.C. § 271.²

The Applicant's ETC petition centers on the provision of services through "its own facilities or a combination of its own facilities,"³ which may consist of commingled elements. Under 47 C.F.R. § 54.201(f), the term "own facilities" includes, but is not limited to, facilities obtained as UNEs pursuant to 47 C.F.R. § 51.⁴

In responding to this Order, the Applicant shall provide legal arguments analyzing the effects of the Opinion and Order of the District Court upon the Applicant's proposed method for the provision of telecommunications services as an ETC. Applicant shall also outline proposals to the Commission as to the next procedural steps for review of and decision on the petition for ETC designation.

IT IS THEREFORE ORDERED that the Applicant shall, within 30 days of the date of this Order, submit its response as outlined within this Order.

² In preparation of the response, the Applicant should also review the findings of the United States District Court for the Eastern District of Kentucky in BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission, Case No. 3:06-cv-00065-KKC (Order dated September 18, 2007), and BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission, Case No. 3:08-cv-00033-DCR (Order dated May 1, 2009), regarding Commission jurisdiction over Section 271 elements and pricing.

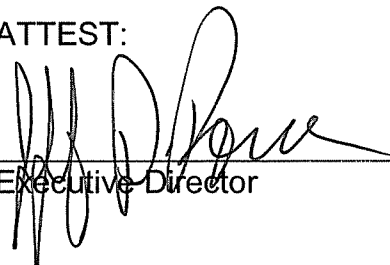
³ 47 U.S.C. § 241(e)(1)(A).

⁴ See 47 C.F.R. §§ 54.101 – 54.207.

By the Commission

ENTERED *ew*
APR 20 2010
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2009-00407

Honorable Douglas F Brent
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

Lance Steinhart
Attorney
1720 Windward Concourse, Suite 115
Alpharetta, GA 30005