

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COMPLAINT PURSUANT TO KRS 278.260 AND)	
EMERGENCY MOTION FOR AN INVESTIGATION)	
OF BUZZ TELECOM, CORP. WITH A HEARING)	
TO REVOKE THE CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2007-00068
PROVIDE TELEPHONY SERVICES OF)	
BUZZ TELECOM, CORP. AND TO IMPOSE)	
CIVIL PENALTIES PURSUANT TO KRS 278.990)	

O R D E R

On February 2, 2007, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention ("AG"), filed with the Commission a complaint in which he requested the Commission to: (1) investigate the activities of Buzz Telecom, Corp ("Buzz"); (2) revoke Buzz's Certificate of Public Convenience and Necessity; and (3) impose civil penalties pursuant to KRS 278.990. The Commission has reviewed this complaint pursuant to 807 KAR 5:001 and finds that the complaint fails to state a claim upon which relief may be based. The AG should have an opportunity to respond to this Order and attempt to state a *prima facie* case.

BACKGROUND

Business Options, Inc. ("BOI"), a reseller of long-distance services, was founded in 1993 in Illinois. In 2000, Kurtis Kintzel a/k/a Kurtiz Kintzel and his brother, Keanan Kintzel, became the sole principals of BOI. In 1996, BOI requested a Certificate of Public Convenience and Necessity to operate in Kentucky. The Commission granted

the certificate on June 11, 1996.¹ On May 18, 2005, BOI informed the Commission, via letter, that it was transferring its customer base to Buzz, a business also owned by the Kintzels. On May 31, 2005, the Commission deemed BOI inactive.

Beginning in late November of 2006, there was a significant increase in the volume of complaints filed against Buzz. The complaints alleged that Buzz had unlawfully switched telecommunications providers of the complainants or that the complainants were receiving bills from Buzz for services never received. According to the AG's pleading, several other states have initiated proceedings to investigate similar occurrences relating to Buzz.

On January 11, 2007, Buzz informed the Commission that it was closing and requested that the Commission cancel Buzz's certificate to provide interLATA, intraLATA, and interstate long-distance in Kentucky.² This complaint followed.

DISCUSSION

Under the first count of the complaint, the AG alleges that the service rendered by Buzz is "unreasonable, insufficient and inadequate," and, because of that, the Commission should investigate and revoke Buzz's certificate and impose civil penalties pursuant to KRS 278.990.³ The AG argues, *inter alia*, that Buzz is required to offer adequate, efficient, or reasonable service pursuant to KRS 278.030(2), and that "[i]n the

¹ Case No. 1996-00093, Application of Business Options, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold Intrastate Telecommunications Services (Ky. PSC Jun. 11, 1996).

² In some other states, it appears that Buzz informed the relevant regulatory bodies that it was transferring all of its holdings to UMCC Holdings, Inc. It does not appear that UMCC is registered with the Secretary of State to do business in Kentucky.

³ Complaint at 2.

absence of the ability of Buzz to provide **any** telephony service . . . the company can not meet its statutory mandate as a utility.”⁴ Therefore, the AG concludes, the Commission should not cancel the certificate, but should “revoke the certificate, but must refrain from doing so until such time as it has addressed Buzz’s illegal switching of customer’s accounts in order to insure its continuing jurisdiction over Buzz. . . .”⁵ The AG argues that it is essential that the Commission revoke (as discussed above) rather than cancel the certificate because merely cancelling the certificate would allow Buzz to “discard its financially plundered customers and thumb its nose at the Commission.”⁶

Count I of the complaint fails to state a claim upon which relief can be based. As a threshold issue, telecommunications utilities, for the past decade, have been exempt from many of the requirements that govern other utilities. In 1996, the Commission specifically exempted long-distance resellers, such as Buzz, from the certificate requirements of KRS 278.020.⁷ Long-distance resellers had to supply only a proposed tariff to be effective with 30 days’ notice and a cover letter notifying the Commission of its intent to operate in Kentucky. Moreover, in the same Order, the Commission exempted long-distance resellers from the requirements of KRS 278.020(4) and (5), which require prior Commission approval of a transfer of ownership. Long-distance resellers are only required to submit a letter to the Commission describing the transfer

⁴ Id. at 7 (emphasis in original).

⁵ Id.

⁶ Id.

⁷ Administrative Case No. 359, Exemptions of Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones (Ky. PSC (Jun. 21, 1996). Attached as Appendix A.

and provide an adoption notice of the tariff with one day's notice. Long-distance resellers that ceased to operate in Kentucky were required to send a letter to the Commission advising of the closing of the business and requesting removal of its tariff.

Although BOI did receive a certificate to operate in Kentucky, the need for the certificate became moot upon the Commission's actions in Administrative Case No. 359. When BOI transferred its assets to Buzz, no certificate transferred. Thus, there is no certificate to cancel and the Commission cannot prevent Buzz from seeking to stop providing service in Kentucky.

The Commission's jurisdiction over telecommunications service providers was reduced when, on July 12, 2006, the Kentucky Legislature enacted KRS 278.541, KRS 278.542, KRS 278.543 and KRS 278.544. The effect of these statutes was to

deregulate much of the telecommunications industry in Kentucky, except for “basic service” and other, very limited instances such as “slamming” or “cramming.”⁸

Buzz offered “nonbasic service” in Kentucky. As defined by KRS 278.541(5), “nonbasic service” is:

[A]ll retail telecommunications services provided to a residential or business customer, all arrangements with respect to those services, and all packages of products or services; provided, however, nonbasic service includes basic local exchange service only if the customer chooses to purchase a package that includes basic local exchange service as a component of the package.

In KRS 278.544(4), the Legislature exempted the services offered by Buzz, and essentially all other telecommunications providers in Kentucky, from numerous statutes

⁸ KRS 278.541(1) states:

(1) “Basic local exchange service” means a retail telecommunications service consisting of a primary, single, voice-grade line provided to the premises of residential or business customers with the following features and functions only:

(a) Unlimited calls within the telephone utility’s local exchange area;

(b) Dual-tone multifrequency dialing; and

(c) Access to the following:

1. Emergency 911 telephone service;

2. All locally available interexchange companies;

3. Directory assistance;

4. Operator services;

5. Relay services; and

6. A standard alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.

With respect to local exchange carriers, basic local exchange service also shall include any mandatory extended area service routes accessible as a local call within that exchange area on or before July 12, 2006. Basic local exchange service does not include any features or functions other than those listed in this subsection, nor any other communications service, even if such service should include features and functions listed herein.

that the Commission historically used to ensure that utilities offer adequate, reasonable, and sufficient service in Kentucky. KRS 278.544(4) states:

Notwithstanding any provision of the law to the contrary, nonbasic services offered pursuant to the provisions of this section shall be set by the marketplace and are not governed by **KRS 278.030** and administrative regulations promulgated thereunder. The nonbasic services are exempt from action or review by the commission under KRS 278.160, 278.170, 278.180, 278.190, 278.192, 278.200, 278.230(3), 278.250, 278.255, **278.260**, 278.270, 278.280, 278.290 and 278.300 and administrative regulations promulgated thereunder, except as specifically stated in KRS 78.541 to KRS 278.544. (emphasis added.)

The text of the statute is clear: a telecommunications utility in Kentucky, including Buzz, because it is exempt from the requirements of KRS 278.030, is not required to offer nonbasic services that are adequate, reasonable, or sufficient. Even if it could revoke the authority of a telecommunications utility to operate in Kentucky, the Commission would not be able to do so for violations of KRS 278.030.

Those nonbasic services also are exempt from review under KRS 278.260. If nonbasic services are exempt from review under KRS 278.260, it is unclear how the AG may bring this complaint. We do not reach the answer to the question at this time, but will allow the AG to address the question in his response to this Order.

The AG also alleges several violations of KRS 278.535, the Commission's "slamming" statute. "Slamming" is generally described as the unauthorized switching of a customer's telecommunications provider. When a dispute arises concerning whether a switching of service was authorized, "the burden of proof to show that the customer knowingly authorized the change shall be on the provider that claims to have obtained customer authorization for the switch." KRS 278.535(2). As of the date of this Order,

Buzz has not responded to either Commission Staff or the AG regarding inquiries about alleged slamming. The AG argues that Buzz's failure to respond to his or Commission Staff's inquiries is a *de facto* violation of KRS 278.535.

Notwithstanding Buzz's failure to respond, the Commission's initial review of the allegations of slamming indicates that, in all of the instances, there was not a switching of telecommunications providers. Rather, it appears that Buzz was sending bills for services it never rendered, to people who were not its customers. This appears to be a fraudulent billing practice squarely within the AG's jurisdiction, not the Commission's. KRS 367.170. If the AG wishes to provide additional evidence to support his conviction that "slamming" occurred, he may include it in his response to this Order.

DECISION

The Commission finds that, based on the foregoing, the complaint fails to state a *prima facie* case. The Commission further finds that the AG shall have an opportunity to respond to this Order and present additional evidence or legal arguments in support of his complaint.


IT IS THEREFORE ORDERED that:

1. This complaint is rejected for failure to state a *prima facie* case.
2. Within 20 days of the date of this Order, the AG may file a response to this Order in which to provide any additional legal arguments or evidence to support his complaint.

Done at Frankfort, Kentucky, this 6th day of March, 2007.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00068 DATED March 6, 2007.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

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. 330¹ or, alternatively, that the utility does seek to 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. 94-286² 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.

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

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.

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 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

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.

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 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

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

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 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