

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CINCINNATI BELL)	
TELEPHONE COMPANY LLC FOR)	CASE NO.
DECLARATION OF COMPLIANCE WITH)	2009-00029
DIRECTORY REQUIREMENTS APPLICABLE)	
TO ELECTING TELEPHONE COMPANIES)	
PURSUANT TO KRS 278.541 TO 278.544)	

O R D E R

On January 26, 2009, Cincinnati Bell Telephone Company LLC ("CBT") filed a petition seeking a declaratory ruling from the Commission that CBT's new plan for the provision of a white pages directory to its telephone customers is in compliance with current Commission statutes. CBT expects to implement this plan starting with the 2009 White Pages Directory, which is normally made available to every CBT subscriber in June of each year. CBT intends to make its white pages directory primarily available to its subscribers through electronic publication on the internet and to discontinue the distribution of a printed white pages directory to its subscribers unless a printed copy is specifically requested by a subscriber.

The issue presented before this Commission is whether CBT's proposal satisfies the statutory requirements for electing carriers to provide "access" to a white pages directory, pursuant to KRS 278.541(1). This is an issue of first impression for this Commission and, having reviewed the petition and applicable law and having considered all other relevant issues, the Commission finds that CBT's plan for the

provision of an internet-based electronic white pages directory, with the option of allowing subscribers to receive a paper copy of a directory upon specific request, equals “access” to a standard, alphabetical directory listing as required under KRS 278.541. CBT’s proposal is, therefore, compliant with state law.

CONTENT OF PROPOSAL

CBT is an incumbent local exchange company (“ILEC”) providing residential and commercial basic local exchange telephone service in Boone, Campbell, Gallatin, Grant, Kenton, and Pendleton counties in Northern Kentucky. CBT also provides service within Ohio, primarily within Cincinnati, Dayton, and the surrounding areas.¹ The traditional method used by incumbent carriers, including CBT, for distributing a directory to Kentucky landline telephone subscribers has been to print and publish an alphabetical listing of all customers, their phone numbers, and addresses and to deliver a copy to every individual customer. CBT seeks to alter this method by making a free, internet-based directory the preferred and primary option for delivering directory listings. Under the proposal, no printed directories will be delivered automatically and only those subscribers who affirmatively request a printed version will receive one. Customers will be able to visit a CBT retail store² to pick up a copy of a published directory, or CBT will ship or deliver a copy to the customer without charge.

¹ On October 31, 2008, CBT filed an application with the Public Utilities Commission of Ohio seeking a waiver of Ohio’s administrative rules governing the supply of directories to subscribers. On January 7, 2009, the Ohio Commission issued its Finding and Order granting CBT’s application.

² According to CBT’s website, it has 24 retail store locations, two of which are located in Northern Kentucky. See Cincinnati Bell Telephone, <http://www.cincinnati-bell.com/customer_support/locations/> (accessed March 30, 2009).

In support of its plan, CBT states that, with the traditional method of directory distribution, the printed directory is often out of date before it is even published due to changes to subscriber listings between the time CBT closes the directory listings, which normally occurs every March, and the time of actual distribution, which normally occurs every June. CBT argues that the book becomes increasingly dated as the year progresses.³ Although CBT provides no direct evidence in support of these findings, it states that most customers seldom use the White Pages and that a “sizeable and growing number of customers find the paper directory unnecessary.”⁴ CBT also states that the annual publication and distribution involve a significant use of paper, ink, and associated energy for production. CBT states that it periodically reviews its services to adapt them to current technology and investigates methods by which to conserve natural resources and energy, and, therefore, the annual printed directory became a likely focus for review.⁵

As for the provision of the internet-based white pages directory, CBT states that the electronic version will be updated daily with subscriber listing changes and additions and will be searchable, accessible, and free to anyone using the internet. As to the issue of the number of its subscribers with regular and continual internet access, CBT states that 30 percent of its Kentucky customers subscribe to CBT’s broadband internet access service, ZoomTown, or its dial-up counterpart, FUSE.⁶ It states that “[w]ith

³ Petition at 4.

⁴ Id.

⁵ Id.

⁶ Cincinnati Bell Telephone Company’s Response to the Attorney General’s Initial Request for Information, Item 1. Filed February 27, 2009.

changes in technology and more widespread internet access, many customers prefer having directory listings in electronic form”⁷ CBT argues that, by delivering printed directories to only those customers who affirmatively request a copy, “resource usage will be paired more efficiently with customer needs and desires—only those who want paper directories will request and receive them, avoiding the unnecessary waste of paper, energy and other resources that are consumed to produce, distribute, discard and/or recycle hundreds of thousands of books.”⁸

INTERVENOR’S POSITION

On February 19, 2009, the Attorney General, through his Office of Utility and Rate Intervention (“AG”), moved for intervention. The Commission granted intervention by Order dated March 6, 2009. With his motion, the AG also submitted an Initial Request for Information and a Motion to Set a Procedural Schedule. On February 27, 2009, CBT submitted its answers to the AG’s request for information.

An informal conference was held in this matter on March 17, 2009, wherein the parties discussed the AG’s motion to set a procedural schedule and CBT’s answers to the AG’s request for information. On March 20, 2009, the AG submitted comments on CBT’s petition. On March 23, 2009, the AG moved for withdrawal of his motion for a procedural schedule. In his comments, the AG discussed the effect of House Bill 337, Kentucky’s most recent telecommunications legislative change, which “essentially deregulated what was left of . . . telephone regulation.”⁹ However, the AG noted that,

⁷ Id. at 5.

⁸ Id.

⁹ AG’s Comments at 1. Filed March 20, 2009.

prior to House Bill 337, telephone companies were required to provide published directories based solely on the Commission's administrative regulation, but, due to House Bill 337, a specific statute now exists regarding the provision of directories. The AG stated that, by enacting this statute, the General Assembly has "itself spoken by defining the meaning of directory."¹⁰ The AG noted that, while the record in this proceeding "does not reflect that all subscribers of basic local service have a computer, let alone access to the internet, [CBT] will provide telephone books to any subscriber who requests one at *no cost*."¹¹ The AG asked CBT to provide details regarding the continued published access to information about contacting emergency services, instructions concerning placing local and long-distance calls, calls to repair and information services, and the location of telephone company offices appropriate to the area served by the directory in the yellow pages book distributed within CBT's Kentucky service area. On March 18, 2009, CBT provided evidence of the portions of the most recent edition of the community and customer guide with the yellow pages directory.¹² CBT stated that such information has been placed in the yellow pages directory for a number of years and no changes to the yellow pages are anticipated with the exception of new and updated listings in the normal course of business.¹³ CBT stated that the

¹⁰ Id. at 2.

¹¹ Id. at 3. Emphasis included in original pleading.

¹² CBT stated that it does not publish the yellow pages directory or receive revenue from it. CBT stated that the yellow pages directory for the Northern Kentucky area is owned and distributed by CBD Media Finance LLC. See Supplemental Response of Cincinnati Bell Telephone Company LLC to the Attorney General's Supplemental Request for Information. Filed March 18, 2009. See also Response of Cincinnati Bell Telephone Company LLC to the Attorney General's Initial Request for Information, Items 2 and 10. Filed February 27, 2009.

¹³ See Supplemental Response of Cincinnati Bell Telephone Company LLC to the Attorney General's Supplemental Request for Information. Filed March 18, 2009.

yellow pages directory will continue to be distributed by its publisher to all of CBT's subscribers. At the conclusion of his comments submitted on March 20, 2009, the AG stated that "it appears that the requirement of access has been met."¹⁴

STATUTORY ANALYSIS

In 2006, the Kentucky General Assembly passed House Bill 337, which substantially changed the way many telephone carriers are now regulated in Kentucky. The description of the Bill read in part that it would:

[L]imit Public Service Commission jurisdiction over telephone service beyond some consumer service areas and FCC-delegated oversight of wholesale transactions; allow telephone utilities to elect alternative regulation plans which reduce PSC oversight; eliminate most regulation of nonbasic services provided by telephone utilities.

House Bill 337 became effective on July 12, 2006 and is codified at KRS 278.541 to KRS 278.544. On July 12, 2006, CBT notified the Commission of its election to adopt the price regulation plan outlined in KRS 278.543. KRS 278.543(6) provides:

- (6) An electing utility's rates, charges, earnings, and revenues shall be deemed to be just and reasonable under KRS 278.030 and administrative regulations promulgated thereunder upon election. Except as set forth in KRS 278.542(1)(a) and (b), an electing telephone utility shall be exempt from KRS 278.190, 278.192, 278.200, 278.230(3), 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder.

Emphasis added.

Under KRS 278.543, a telephone utility could elect to be subject to the price regulation plan enumerated in the statute. An election is effective immediately upon written notification to the Commission. An electing utility's rates, revenue charges and

¹⁴ Id. at 3.

earnings, with the exception of basic local exchange service and certain wholesale access rates, are all deemed to be just and reasonable and not subject to Commission review pursuant to Commission statutes or regulations promulgated under those statutes. Additionally, KRS 278.543(6) specifically eliminated the requirement that electing telephone carriers follow rules and regulations promulgated by the Commission pursuant to the Commission's authority under KRS 278.280. KRS 278.280(2) provides:

The [C]ommission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility, and, on proper demand and tender of rates, the utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules.

In furtherance of its authority under KRS 278.280(2), the Commission had promulgated 807 KAR 5:061, Section 5, which states:

- (1) Telephone directories shall be published at least yearly for each exchange listing the name, location, and telephone numbers of all customers
- (2) Upon issuance, a copy of each directory shall be distributed by each utility to all of its subscribers served by that directory, and a copy of each directory shall be furnished to the commission.

In analyzing the effect of KRS 278.543(6), the Commission finds that this statute prohibits the Commission from applying KRS 278.280 and any administrative regulations promulgated thereunder to an electing carrier. As CBT has elected to be regulated under the provisions of KRS 278.543, CBT no longer has the obligation to follow the mandates of 807 KAR 5:061, which requires annual publication and distribution of a printed white pages directory to every subscriber. With the passage of

House Bill 337, the only obligation CBT has with regard to directories is found within the definition of Basic Local Service under KRS 278.541. KRS 278.541(1) provides, in part:

“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:

...

(c) Access to the following:

...

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

Under this statute, electing carriers who are providing basic local exchange service must provide access to a standard alphabetical directory. KRS 278.541(1) does not specifically define what efforts by a carrier would qualify as giving its subscribers “access” to an alphabetical directory. However, the statute states that such a directory must include names, addresses, and telephone numbers at no additional charge. Under a common dictionary definition, “access” is defined as “the right or opportunity to reach or use or visit”.¹⁵ CBT proposes that, in lieu of a printed directory, it would automatically provide the ability of its subscribers to reach, use or visit an electronic directory on the internet, while additionally giving subscribers the alternative to receive a free paper directory upon affirmative request.

¹⁵ The DK Illustrated Oxford Dictionary, Oxford University Press, Inc. (1998).

FINDINGS

The Commission finds that the substance of CBT's proposal qualifies as "access" to a standard, alphabetical directory under KRS 278.541, given that CBT subscribers will have the option of continuing to receive a printed directory upon request and at no charge and would not have to exclusively rely upon the electronic version. By the provision of a directory via internet access, the subscribers will have an additional method by which they can obtain directory listings.

The Commission is aware that other carriers are closely monitoring the decision on this proposal and that those carriers may possibly seek to file future petitions to institute the same proposal as CBT's. All carriers should be conscious that each filed proposal will be carefully evaluated on a carrier-by-carrier basis, as the Commission will seek to ensure adherence to statutory requirements for subscriber access to a standard white pages directory and protections for those subscribers who may not have regular or continual internet access. The Commission will carefully evaluate the size and needs of each company's subscriber base, among other considerations, in rendering any final decisions on future proposals.

In the petition, CBT alleges that a sizeable and growing number of customers find the paper directory unnecessary. CBT provided no evidence to support this statement. The Commission does not readily accept such a large and sweeping generalization about the needs and uses of Kentucky's telephone subscriber base. Most states, including Kentucky, are far from having 100 percent continuous and ubiquitous internet access for their citizens. If not every telephone subscriber can access the internet at times when he or she is most likely to need white pages listings,

such as during emergencies, then printed directories become essential and crucial. The Commission is cognizant of the likelihood that a number of telephone customers still use the white pages and depend on their availability. The Commission therefore believes it is obligated to ensure that carriers make the best effort to continue making printed white pages available in some manner to their subscriber bases.

As this is an issue of first impression and will result in a massive change to one of the more essential and public ways in which a telecommunications provider relates to its subscriber base, the Commission, while finding that CBT's plan is in compliance with House Bill 337, will place requirements upon CBT and its implementation of this plan to ensure that the subscriber base is adequately notified and protected during the course of this change. The Commission's requirements upon CBT are as follows:

1. CBT shall provide a printed white pages directory every year to each existing subscriber who affirmatively elects to receive a directory. The Commission finds that subscribers should not have to make the same request every year after making an initial request for a printed directory.

2. CBT should allow new subscribers to have the option of receiving a free, printed directory shipped or delivered to them each year upon affirmative election at the time that the subscriber initiates service.

3. CBT shall adhere to the statement in its petition that it will engage in an extensive informational campaign to educate its Kentucky subscribers on the availability of the electronic directory and their right to receive a free printed directory upon request, including free shipment or delivery.¹⁶ This campaign should include radio and television

¹⁶ Petition at 6.

advertisements, repeated billing inserts, e-mail notices, and text messages to CBT wireless subscribers.

4. CBT shall submit an original and five copies of a report to the Commission, with a copy to the AG, no later than June 30, 2010 with the following information:

a. The number of Kentucky subscribers who received free copies of the printed white pages directory from June 2009 to June 2010.

b. Details of the advertising campaign used by CBT to inform subscribers of CBT's electronic directory and the continuing availability of its printed directory.

c. Details of complaints made by CBT subscribers or competitive local exchange carriers directly related to CBT's change of the white pages directory distribution method.

5. Within 30 days of the date of this Order, CBT shall serve written notice to each competitive local exchange carrier in Kentucky with whom CBT has a current interconnection agreement. The notice shall include details of CBT's white pages proposal and CBT's interpretation of how the proposal affects the terms of the interconnection agreement related to white pages distribution. An original and five copies of each notice shall be filed with the Commission, with copies to the AG, within 10 days after the final notice is served.

6. Existing CBT customers must be asked if they would like to receive printed directories whenever they submit a change-of-service address to CBT.

7. A customer who has waived the right to receive a printed directory must be allowed to request a printed directory at any time.

8. CBT shall make free printed directories available in all of its retail branch locations. CBT shall make best efforts to also make free printed directories available in non-CBT locations, specifically in the Northern Kentucky service area.

9. CBT shall continue to make all best and reasonable efforts to ensure that the yellow pages directory distributed within CBT's Kentucky service areas contains emergency contact numbers, government contact numbers, instructions concerning placing local and long-distance calls, and other customer and community information currently provided in that directory.

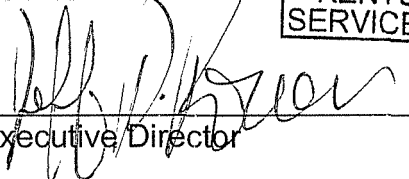
IT IS HEREBY ORDERED that:

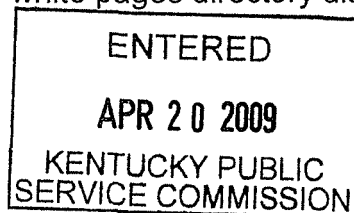
1. The AG's motion to withdraw his motion to set a procedural schedule is granted.

2. CBT's proposal for distribution of its white pages directory, as enumerated within this Order, satisfies KRS 278.541(1) requiring an electing carrier to provide access to a standard, alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.

3. CBT shall follow the requirements, as enumerated herein, for the implementation of its white pages directory distribution proposal.

ATTEST:


Executive Director



By the Commission

Honorable Mark W Guilfoyle
Attorney At Law
Deters, Benzinger & Lavelle, P.S.C.
2701 Turkeyfoot Road
Covington, KY 41017

Mr. Dennis Howard
Assistant Attorney General
1024 Capital Center Drive
Frankfort, KY 40601

Mark A Romito
Director - Government Relations
Cincinnati Bell Telephone Company
201 E. Fourth Street
P. O. Box 2301
Cincinnati, OH 45201-2301