

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

In the Matter of the Application of)
BellSouth Telecommunications, Inc.)
d/b/a AT&T Kentucky For)
Declaration of Compliance With) Case No. 2009-00480
Directory Requirements Applicable to)
Electing Telephone Companies Pursuant)
to KRS 278.541 to 278.544)

ATTORNEY GENERAL'S
COMMENTS

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, hereby provides his comments to BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T") request for a declaration that that the availability of an electronic copy of a Residential White Pages directory satisfies the requirements of KRS 278.541(1)¹ as access to a standard, alphabetical directory listing that includes names, addresses and telephone charges at no additional charge and that KRS 278.543(6) does not require the company to publish its telephone directory by way of a hardcopy^{2,3}. Based on the following comments the Attorney General supports AT&T's application.

¹ See Application at pages 1 and 2.

² See Application at page 3.

³ AT&T will continue, however, to provide the traditional hardcopy phone book if a customer requests it. See Application at pages 9, 11, and 12.

Comments

On 8 December 2009, AT&T filed its application in the above matter requesting the Commission to confirm the Company's position that its availability of an electronic copy of a Residential White Pages directory, via the internet, satisfies the requirements of KRS 278.541(1) as access to a standard, alphabetical directory listing that includes names, addresses and telephone charges at no additional charge. In addition, the company requests that the Commission declare that KRS 278.543(6) does not require the company to publish its telephone directory by way of a hardcopy.

As background, pursuant to KRS 278.543(1), AT&T Kentucky elected to be subject to KRS 278.541 to 278.544, effective July 12, 2006, making it an "electing utility" as defined in KRS 278.541(2). KRS 278.541(1)(c) requires a local telephone exchange company to provide:

- (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.

This same declaration was filed by another company, Cincinnati Bell Telephone Company (“CBT”), earlier this year⁴. In particular, on or about 26 January 2009, CBT requested the Commission to find that the company was no longer required to provide consumers with a hardcopy of the telephone book because of recent statutory changes from the Regular Session of the 2006 General Session. Specifically, the General Assembly enacted HB 337 as KRS 278.541 to KRS 278.544. The bill essentially deregulated what was left of the telephone regulation thus enabling telephone companies which provided “non-basic local service” to opt-out of Commission jurisdiction except for very limited circumstances. KRS 278.542.

In that case, the Attorney General closely scrutinized the recently enacted statutes and the effect on the existing regulations. Ultimately, he concluded that telephone companies were no longer required to provide annual published directories for their subscribers previously mandated by 807 KAR 5:061, Section 5. Succinctly stated, the regulation was promulgated pursuant to 278.280(2) which no longer applied to electing companies. KRS 278.543. However, the Attorney General stated as follows:

Nonetheless, and assuming the Commission determines that the regulation has been superseded or does not apply in this instance, it must determine whether CBT has complied with KRS 278.541(1)(c)6. Specifically, the Commission must determine that CBT is providing “Access to ... A standard alphabetical directory...” While the record in the

⁴ See *In the Matter of the Application of Cincinnati Bell Telephone Company, LLC For Declaration of Compliance With Directory Requirements Applicable to Electing Telephone Companies Pursuant To KRS 278.541 to 278.544* Case No. 2009-00029

instant matter does not reflect that all subscribers of basic local service have a computer, let alone access to the internet, the company will provide telephone books to any subscriber who requests one at **no cost**. Thus, it appears that the requirement of access has been met.

Moreover, hard copies of the yellow pages will still be published and distributed. These books contain information pertaining to emergency numbers such as police and fire protection, instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company offices appropriate to the area served by the directory. Accordingly, CBT will be providing essential telephone numbers in the event of an electrical outage⁵.

The Attorney General ultimately supported the company's request⁶.

The Commission did conclude that the regulation no longer applied to an electing company but that essential access to a directory, as would be provided by CBT in the future, would meet the requirements of KRS 278.541(1)(c).

AT&T has offered a similar approach and petition with the only difference being that it will not have hard copies of the phonebook at its retail outlets⁷; rather, it will only mail them to its customers who request same at no charge⁸. This approach will suffice because the disabled, or those with limited transportation, will be able to obtain a traditional hardcopy when requested. Accordingly, AT&T has complied with the requirements of KRS 278.541(1)(c).

⁵ The Attorney General was able to reach this conclusion after the company responded to his discovery requests.

⁶ The Attorney General adopts and incorporates his comments filed in the CBT case on 20 March 2009 into this case.

⁷ AT&T does not currently offer the White Pages at its retail locations. See Application at page 12.

⁸ AT&T's public education campaign on the new directory differs somewhat from CBT. However, because there will be three different inserts in the upcoming Real Yellow Pages distribution, bill messages and media releases, the Attorney General believes the notice to the public will be satisfied. See Application at pages 9 and 10.

Moreover, the migration to, and availability of, an electronic copy of a directory is the reality of the current technological evolution of our society. As the Attorney General noted in the CBT case:

While the Attorney General points out that there will likely be some difficulty with some of CBT's customers accepting this transition, it is inevitable in the current electronic age. In addition, the Attorney General must point out the obvious positive environmental impact had by reducing this voluminous use of paper. It is estimated that 35% of municipal solid waste by weight consists of paper products. Even with recycling programs targeted specifically to phone books we suspect large numbers end up in landfills. The Attorney General is supportive of the industry's efforts to protect the environment. Indeed, even state government no longer publishes a hard copy of all of the state offices' numbers.

In its order the granting the CBT application, the Commission stated as follows:

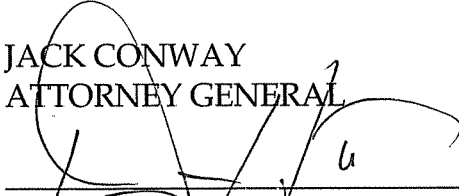
[T]he Commission finds that CBT's plan for the provision of an internet-based electronic white pages directory, with the option of allowing subscribers to receive a paper copy of a directory upon specific request, equals 'access' to a standard, alphabetical directory listing as required under KRS 278.541. CBT's proposal is, therefore, compliant with state law."

To conclude, given the facts that the Commission has previously ruled on the same request for declaration by another company and that AT&T's petition contains virtually identical measures to address the requirement of "access" to the proposed electronic directory, the Attorney General supports the company's request.

WHEREFORE, the Attorney General supports AT&T's petition based on the above comments.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



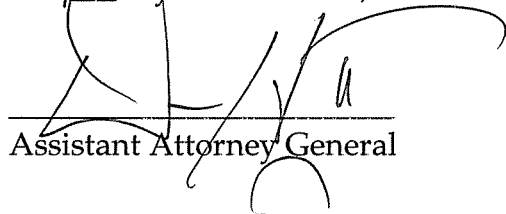
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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of this Attorney General's Comments were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Hon. Mary Keyer
General Counsel/Kentucky
BellSouth Telecommunications, Inc. dba AT&T
601 W. Chestnut Street, Room 408
Louisville, Kentucky 40203

this 16th day of December, 2009.



Assistant Attorney General