

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO UNIVERSAL ) ADMINISTRATIVE  
SERVICE AND FUNDING ISSUES ) CASE NO. 360

O R D E R

In its November 16, 1998 Order ("Order"), the Commission directed all incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs"), and wireless providers to contribute to the low-income portion of the Universal Service Fund ("USF") by implementing a five-cent charge per access line on all customer bills by January 1, 1999. On December 3, 1998, BellSouth Telecommunications, Inc. ("BellSouth") filed a motion for clarification and a request for deviation from the Commission's Order. The Commission's Order at ordering paragraph 1 states that the charge will be "five cents per month per bill." BellSouth requests that the Commission clarify that the five-cent charge is to be billed per access line, per month. The Commission agrees with BellSouth and clarifies the language in ordering paragraph 1 to read, "five cents per month per access line."

BellSouth also noted that the Order does not provide a definition of an access line. BellSouth suggested that billing the Lifeline charge on a per access line basis that is consistent with the manner in which it applies to the Federal Subscriber Line Charge ("SLC") would be most appropriate. The Commission agrees with BellSouth that the Order be clarified on this issue. The five-cent Lifeline charge should be applied to each access line to which a SLC has also been applied.

BellSouth also asks that netting of the funds collected and the monies that are due to the company be permitted. The Executive Director issued a letter on December 15, 1998 that did not permit this practice. This Order reconfirms the determinations stated in the December 15, 1998 letter. Netting may be reconsidered after the fund, including the high cost portion, has been functioning for a while and enough experience has been gained in fund operation.

On November 30, 1998, Cincinnati Bell Telephone ("CBT") notified the Commission by letter that it would not be able to meet the January 1, 1999 Lifeline implementation deadline. Due to the manner in which its billing system is updated, March 29, 1999 is the earliest possible date for implementing the charge. CBT states that when the charge is implemented, customers will be retroactively charged back to January 1, 1999. CBT also states the implementation problems will have no impact on the availability of the end-user Lifeline services.

On December 1, 1998, GTE Communications Corporation ("GTECC") also informed the Commission by letter of its inability to implement the Lifeline charge by January 1, 1999. GTECC will not be able to modify its billing system until the second quarter 1999, but has limited customers at this time.

In its December 7, 1998 filing, BellSouth also requested deviations from the Order on two issues. At ordering paragraphs 1 and 2, the Commission has ordered that the Lifeline charge be billed as of January 1, 1999 and noted on customer's bills as "Kentucky Lifeline Charge." BellSouth informs the Commission that it will not be able to bill the Lifeline charge to its customers until February 9, 1999. The charge, when applied, will be retroactive back to January 1, 1999 but not appear on the bill until after

February 9, 1999. However, though it will implement the charge on February 9, 1999, BellSouth will not be able to identify the Lifeline charge on its customers' bills as the Commission has directed until July 1999. In order to meet the February 9, 1999 implementation date, BellSouth must use a billing mechanism designed for another state. The line item description on the bill would read as follows:

Residence	Subscriber intrastate line charge, Single line customer
Single Line Business	Subscriber intrastate line charge, Single line customer
Multiline Business	Subscriber intrastate line charge, Business multiline

The Commission finds that CBT's, GTECC's, and BellSouth's requests for deviation are reasonable and should be granted. CBT should implement the Lifeline charge on March 29, 1999 and inform the Commission of any changes in its implementation schedule. GTECC should implement the Lifeline charge as soon as its billing system can be modified, but no later than April 30, 1999. The charge should be billed to GTECC's customers retroactively to January 1, 1999. BellSouth should implement the Lifeline charge on February 9, 1999 using its proposed language. Commensurate with the July 1999 implementation of the high-cost portion of the USF, BellSouth should begin using the Commission's required language to identify the Lifeline charge on its customers' bills.

On November 25, 1998, Wireless 2000 PCS informed the Commission by letter that it would be unable to draft and file a tariff by the Commission's December 1, 1998 deadline. Wireless 2000 PCS requested a 90-day extension to obtain counsel to draft

and file a tariff with the Commission. The Commission finds that this request is reasonable and should be granted.

AT&T Communications of the South Central States, Inc. and AT&T Wireless Services, Inc. ("AT&T") filed a request for waiver from the Order on December 15, 1998. AT&T argues that it will collect less than \$500 per month as a result of the Order, but that it will cost thousands of dollars to revise its billing systems. Revisions to the billing system will also require a substantial commitment in terms of personnel and resources. AT&T requests a limited waiver, such that it will contribute its fair share to the USF, but that it only be required to alter its billing systems after the amount collected is greater than the associated administrative costs. Also, AT&T informs the Commission that even if required to change its billings systems now, it will not be able to comply with the January start date. Further, AT&T questions the Commission's authority to require wireless companies from recovering USF assessments from their end-users, arguing that is tantamount to rate regulation.

The Commission understands AT&T's de minimus argument. However, the high-cost portion of the USF will be implemented in 1999 and billing systems will have to be adjusted at that time. Since the implementation times of the low-income and the high-cost portions of the USF are relatively close together, the Commission finds that no serious harm will be done by requiring billing systems to be adjusted at this time. AT&T should make the necessary changes to its billing systems soon, but no later than April 30, 1999, and bill its customers retroactively back to January 1, 1999.

On December 4, 1998, Ameritech Cellular, on behalf of Cincinnati SMSA Limited Partnership ("Ameritech"), informed the Commission by letter that it will follow the

Commission's directives in the Order, but that it will not file a tariff. Ameritech argues that the Commission does not have the authority to require cellular companies to file its rates in tariffs.

On December 10, 1998, GTE Wireless Incorporated ("GTE Wireless") filed comments arguing that states are preempted from regulation of rates charged by commercial mobile radio service ("CMRS") providers, including prescribing, setting or fixing rates. States are only permitted to regulate the terms and conditions of service of CMRS providers. GTE Wireless is willing to comply in full with the Commission's interim low-income fund contribution mechanism based on a five-cent per subscriber assessment, but argues that it can recover its USF assessment in the manner of its own choosing. Also, GTE Wireless does not offer any Lifeline services and will not file any tariffs in connection with the Order.

The Commission finds that AT&T's, Ameritech's and GTE Wireless's reasoning is misplaced regarding Commission authority to impose a USF assessment on end-users and line items on end-user bills. The Telecommunications Act of 1996 ("the Act") clearly places the burden of implementing an intrastate USF with the states. States have clear authority to collect such intrastate funds as necessary to meet their universal service obligations, including assessing end-users of regulated telecommunications services. Section 254(f) of the Act allows states to adopt intrastate universal service support mechanisms. The five-cent charge on customers' bills is just such a mechanism. Ameritech's and GTE Wireless's arguments are without merit because the USF assessment is being levied upon the end-users of telecommunications services, not telecommunications companies. In this instance, the companies are merely USF

collection agents. Also, the Commission has clear authority to regulate the content of end-user bills. Ameritech and GTE Wireless should bill their customers for the low-income portion of the USF. As soon as they are able to modify their billing systems and no later than April 30, 1999, the low-income USF assessment should appear on customers' bills and should be billed retroactively to January 1, 1999.

Additionally, the Commission offers further direction regarding deviations from the Commission's Order. Any other carrier that will not be able to comply with the Commission's Order should advise the Commission, provide the date at which a tariff will be filed, and the date at which collections from customers will begin. However, all tariffs must be filed and collections from customers commenced no later than April 30, 1999. Carriers should also contribute to the Lifeline support fund beginning in February per the Commission's schedule. Carriers will be allowed to draw from the fund as well. Carriers should retroactively bill customers when billing systems are in place, and notify customers by bill insert or billing message as to what the monthly charge is and why a retroactive charge is required.

On November 26, 1997, the Commission issued an order jointly in Administrative Case Nos. 355 and 360 which, among other things, discussed Lifeline and Link-Up support eligibility for low-income customers.<sup>1</sup> At page 4 of that Order, the Commission stated, "Lifeline and Link-Up support should be made available to recipients of any of the following assistance programs: Social Security Insurance, food stamps, Medicaid, federal public housing, low-income home energy assistance program ("LIHEAP"), and

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<sup>1</sup> Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and the Non-traffic Sensitive Access Rate.

temporary aid for needy families ("TANF")." Upon further consideration, TANF should not be on the list, and will not serve as a qualifying event for Lifeline or Link-Up assistance. Further, proof of participation in any of the remaining programs on this list is all that is necessary for low-income customers to qualify for Lifeline and Link-Up assistance. Some carriers have proposed by tariff that potential recipients be required to produce signed affidavits or other criteria as part of the certification process. These practices are unduly burdensome for potential recipients and should cease.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The November 16, 1998 Order is hereby clarified to the extent that the five-cent per month charge shall be assessed per access line as defined herein.
2. Netting of collections and disbursements of the low-income USF by the utilities is prohibited at this time.
3. The requests for extensions to implement the low-income charge shall be granted. All carriers shall implement the five-cent charge by no later than April 30, 1999.
4. All telecommunications carriers, including wireless carriers, shall file tariffs for the five-cent Lifeline charge and shall retroactively bill their customers back to January 1, 1999 as discussed herein.
5. All telecommunications carriers shall make the appropriate low-income contribution to the USF beginning January 1999, as described in the December 15, 1998 letter from the Executive Director.

6. The programs that determine Lifeline eligibility shall be altered as described herein.

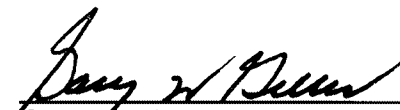
7. Eligibility for receipt of low-income assistance shall be satisfied upon demonstration of participation in any of the qualifying programs. No further requirement shall be imposed upon potential recipients.

Done at Frankfort, Kentucky, this 28th day of December, 1998.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director