

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| PETITION OF COMPSOUTH PURSUANT |) | |
| TO KRS 278.512 FOR AN EXEMPTION |) | CASE NO. |
| FOR COMPETING LOCAL EXCHANGE |) | 2007-00084 |
| CARRIERS AND INTEREXCHANGE |) | |
| CARRIERS FROM THE REQUIREMENTS |) | |
| OF 807 KAR 5:006, SECTION 3 |) | |

O R D E R

On March 28, 2007, the Commission issued an Order holding in abeyance the requirement that all Kentucky competitive local exchange carriers (“CLECs”) and interexchange carriers (“IXCs”) file an annual report by March 31, 2007.¹ That Order stemmed from a petition by Competitive Carriers of the South, Inc. (“CompSouth”) on behalf of its members, wherein it requested that CLECs be permanently exempted from filing annual reports² with the Commission. In holding the matter in abeyance, the Commission ordered that the docket would remain open to allow the Commission to investigate the issues and effects of a permanent exemption for all CLECs and IXCs.

A copy of the Commission’s March 28, 2007 Order was served upon the Attorney General and all Kentucky CLECs, IXCs, and incumbent local exchange carriers (“ILECs”). The Commission ordered that any interested person or party would have

¹ The annual report due on March 31, 2007 provides data for the 2006 calendar year.

² The Commission is authorized to require utilities to file an annual report under 807 KAR 5:006, Section 3 and KRS 278.230(3).

until April 30, 2007 to file comments in this matter. On April 30, 2007, Qwest and Verizon³ each filed comments in support of CompSouth's petition. Having reviewed the petition and the supplemental comments, the Commission will grant the petition in part and deny it in part.

DISCUSSION

Under KRS 278.512(2), the Commission may exempt telecommunications providers from any requirements under Chapter 278 and related regulations if the Commission finds by clear and satisfactory evidence that it is in the public interest to grant such an exemption. KRS 278.512(3) provides that when the Commission is determining what qualifies as the public interest, the Commission will consider a number of factors, including, but not limited to, the number and size of competitive providers of service, the overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates, and the overall impact on customers of a proposed change to streamline regulatory treatment of small or non-profit carriers. Annual reports are required of utilities pursuant to 278.230(3), which states:

Every utility, when required by the commission, shall file with it any reports, schedules, classifications or other information that the commission reasonably requires. The commission shall prepare and distribute to the utilities blank forms for any information required under this chapter. All such reports shall be under oath when required by the commission.

³ The exact business name of each organization is as follows: Qwest Communications Corporation ("Qwest") and MCI Communications Services, Inc. d/b/a Verizon Business Services, MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, Teleconnect Long Distance Services and System Company and TTI National, Inc. (collectively called "Verizon").

Within its petition, CompSouth outlined a number of arguments in favor of the annual report exemption for non-dominant telecommunications providers. Namely, CompSouth argued that Kentucky's oversight of the operations of non-dominant carriers has decreased during recent years, such as with the Commission granting an exemption for proof of demand for service before allowing facility construction and giving non-dominant carriers an exemption from seeking permission before issuing securities or evidences of indebtedness.⁴ In Administrative Case Nos. 359 and 370,⁵ the Commission reduced and streamlined several service provision requirements on IXCs and CLECs. CompSouth argues, "[g]iven that lack of necessity to exercise oversight over a non-dominant carrier's financial decisions, construction decisions, or fiscal condition in general, there does not seem to be any public interest imperative that is served by the continued filing by non-dominant carriers of annual reports containing details of their physical facilities and business affairs."⁶

In their respective petition and comments, CompSouth, Qwest, and Verizon each note that with the adoption of HB 337,⁷ the General Assembly provided dominant carriers with the ability to opt out of a number of reporting requirements, most notably

⁴ CompSouth Petition at 4, paragraph 3 and footnotes 6, 7.

⁵ Administrative Case No. 359, Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones, and Administrative Case No. 370, Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers.

⁶ CompSouth Petition at 4.

⁷ "HB 337" stands for House Bill 337, which was introduced into Kentucky's General Assembly during the 2006 Legislative Session. HB 337 was codified at KRS 278.541, et seq. It was signed into law on April 22, 2006 and became effective on July 12, 2006.

financial reports. Since the passage of that bill, Kentucky's largest incumbent carriers, AT&T Kentucky, Cincinnati Bell, and Windstream,⁸ as well as wireless carriers, are now each exempt from filing their respective annual reports.

In its comment submitted in this matter, Qwest contends that annual reports no longer serve as a meaningful regulatory benefit and that eliminating them could benefit carriers and their customers.⁹ Qwest states that the requirements for filing annual reports are part of a carrier's expense for the provision of service and that by granting such an exemption, the Commission would allow those carriers to avoid such costs.¹⁰

CONCLUSION

Accordingly, to serve the best interests of the citizens of the Commonwealth, the Commission must know who these carriers are and have a general understanding of the range of their service. Based on the number of entities that function as competitive carriers in the state, the Commission would be remiss in its regulatory duties if it did not seek to maintain control of a basic reporting method by which it can obtain and manage corporate information on those particular telecommunications companies. For these reasons, the Commission finds that at least some parts of the annual reports are construed to yield necessary information.

⁸ AT&T Kentucky's operations, prior to merger, were formerly BellSouth Telecommunications. Windstream Communications, prior to a recent corporate spin-off and merger, was formerly known, in part, as Alltel.

⁹ Comments of Qwest at 2, filed April 30, 2007.

¹⁰ The current annual report form for telephone utilities requires information on the number of central office switches, as well as details on access lines in service by technology, access lines in service by customers, and telephone call types.

Therefore, the Commission will grant CompSouth's petition, in part, by exempting all Kentucky CLECs and IXCs from having to file annual reports. However, this exemption shall not begin until January 1, 2008, thereby alleviating the requirement to file an annual report for the 2007 calendar year and all years going forward. However, the Commission shall require all CLECs¹¹ to file the 2006 annual reports that were originally due on March 31, 2007. In accordance with the Commission's March 28, 2007 Order in this matter, all Kentucky CLECs, including CompSouth members, shall have 90 days from the date of this Order to file the 2006 annual reports if they have not already done so.¹²

However, despite this exemption, the Commission finds that portions of the annual reports require information necessary for this agency to maintain a general knowledge of the number of providers in the state and the extent of their service. Therefore, the Commission shall deny the CompSouth petition to the extent that CLECs shall still be required to report information on the names of counties in which they furnish telephone service and the statewide number of customer access lines, both residential and business.

¹¹ In a joint Order issued on August 8, 2000 in Administrative Case Nos. 359 and 370, the Commission stated that IXCs and CLECs were required to continue filing annual reports, gross operating reports, accident reports, and other service quality reports, as requested. However, the Commission notes that IXCs have not routinely filed annual reports since that Order. The Commission has not issued any subsequent Order granting an IXC exemption; however, in spite of this omission, the Commission finds no substantive basis for excluding IXCs from the request outlined in the CompSouth petition.

¹² This requirement will not apply to IXCs, as stated in fn. 10.

To ensure standard and fair reporting of this particular information, the Commission shall modify the current gross operating revenue report form for CLECs.¹³ All CLECs shall be required to provide data on the counties served and customer access lines in that report for the 2007 calendar year and all years going forward, effective January 1, 2008.

IT IS HEREBY ORDERED that:

1. CompSouth's petition is granted in part and denied in part.
2. The abeyance issued on March 28, 2007 regarding the filing of the 2006 annual reports by Kentucky CLECs is now lifted. All CLEC annual reports originally due on March 31, 2007 must be filed with the Commission within 90 days of the date of this Order, if not already submitted.
3. As outlined in this Order, the abeyance issued on March 28, 2007, as applied to IXCs, shall be deemed permanent.
4. As of January 1, 2008, Kentucky CLECs shall not be required to file annual report forms with the Commission. No annual reports shall be due for the 2007 calendar year and all years going forward.
5. As of January 1, 2008, Kentucky CLECs shall be required to provide data on the counties served and the number of residential and business customer access lines within the entire state in their gross operating revenue report due on March 31 of each year. This requirement shall apply to the report for the 2007 calendar year and all years going forward.

¹³ The Commission is authorized to require utilities to file a gross operating revenue report under KRS 278.140.

6. A copy of this Order shall be served upon the Attorney General through his Office of Rate Intervention.

7. A copy of this Order shall be served upon all CLECs and IXCs registered to provide service in Kentucky.

Done at Frankfort, Kentucky, this 20th day of August, 2007.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director