

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)
Cincinnati Bell Telephone Company LLC)
For Declaration of Compliance with) Case No. 2009-00029
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 Cincinnati Bell Telephone Company's ("CBT") request for a declaration that KRS 278.543(6) does not require the company to publish its telephone directory by way of a hardcopy. The Attorney General defers to the Commission on the argued supersession or application of 807 KAR 5:061, Section 5. However, he makes the following remarks in support of CBT's petition.

Following the 2006 Regular Session of the General Assembly, HB 337 was enacted 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. If a company elected to "opt-out," many of the provisions of Chapter 278 no longer applied as well as the regulations promulgated pursuant thereto. KRS 278.543. CBT did file its

election to opt-out with the Commission effective July 12, 2006 pursuant to KRS 278.543(1).

Prior to the enactment of HB 337, telephone companies were required to provide annual published directories for their subscribers pursuant to 807 KAR 5:061, Section 5 by way of authorizing authority under KRS 278.280(2). However, following the enactment, the “opted-out” companies were required under **statute** to provide “a standard alphabetical directory listing that includes names, addresses, and telephone numbers **at no additional charge.**” KRS 278.541(1)(c) 6. (Emphasis added.) Because there now is a specific statute pertaining to the directory, where there was none before, the General Assembly has itself spoken by defining the meaning of directory.

More importantly, a telephone company which opts-out under KRS 278.543 is exempt from KRS 278.280, which is the statutory authority for 807 KAR 5:061. KRS 278.543(6) states as follows:

(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. The utility shall also be exempt from any rules, orders, or regulations of the commission requiring the retention or filing of financial reports, classifications, depreciation or other schedules, or any other information not required by the Federal Communications Commission. (Emphasis added.)

See also KRS 278.544(4) which states:

(4) Notwithstanding any provision of 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 278.541 to 278.544. (Emphasis added.)

Thus, at least for its non-basic customers, CBT does not appear to be required to provide a directory at all. This may be an unintended consequence of the opt-out provision which the Commission may wish to revisit.

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 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

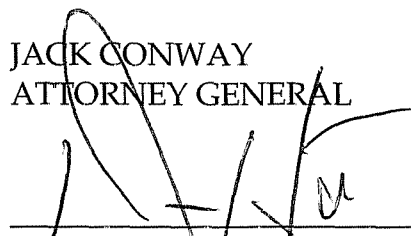
such as police and fire protection, instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company offices appropriate to the area served by the directory. Accordingly, CBT will be providing essential telephone numbers in the event of an electrical outage.

All of the above activities by CBT related to the implementation of the electronic directory will occur with a comprehensive educational campaign. This will facilitate as smooth of a transition as possible. 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.

WHEREFORE, the Attorney General supports CBT's petition based on the above comments.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



DENNIS G. HOWARD, II
ASSISTANT ATTORNEY GENERAL
1024 CAPITAL CENTER DRIVE,
SUITE 200
FRANKFORT KY 40601-8204
(502) 696-5453
FAX: (502) 573-8315

Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing 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:

Mark A. Romito
Director - Government Relations
Cincinnati Bell Telephone Company
201 E. 4th St.
P. O. Box 2301
Cincinnati, OH 45201-2301

Hon Mark W. Guilfoyle
Deters, Benzinger and Lavelle, PSC
2701 Turkeyfoot Road
Covington, KY 41017

this 20th day of March, 2009



Assistant Attorney General