

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BELLSOUTH)	
TELECOMMUNICATIONS, INC. D/B/A AT&T)	CASE NO.
KENTUCKY FOR DECLARATION OF)	2009-00480
COMPLIANCE WITH DIRECTORY)	
REQUIREMENTS APPLICABLE TO ELECTING)	
TELEPHONE COMPANIES PURSUANT TO)	
KRS 278.541 TO 278.544)	

O R D E R

On December 8, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") filed an Application for Declaration of Compliance with Directory Requirements Applicable to Electing Telephone Companies pursuant to KRS 278.541 to 278.544. AT&T Kentucky requests the Commission confirm that its new initiative for the distribution of its residential white pages directory satisfies KRS 278.541(1), which requires an electing carrier to provide access to a standard, alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge as part of the electing carrier's basic local exchange service. AT&T Kentucky states that under the new initiative, scheduled to start in the latter half of 2010, it intends to make its residential white pages directory available to its end-users primarily through electronic publication on the internet and discontinue the distribution of printed white pages to its end-users unless a printed copy is specifically requested by an end-user.

AT&T Kentucky is an incumbent local exchange carrier providing residential and commercial basic local exchange telephone service to 77 of Kentucky's 120 counties. In a separate proceeding concerning the distribution of residential white pages by another incumbent carrier, the Commission held that, pursuant to KRS 278.543(6), an electing carrier is exempt from KRS 278.280 and any administrative regulations promulgated thereunder.¹ KRS 278.280 defines the Commission's authority to promulgate administrative regulations related to the performance of utility services. In furtherance of its authority under KRS 278.280(2), the Commission had promulgated 807 KAR 5:061, Section 5, which outlines the requirements for incumbent carriers to publish and distribute printed telephone directories. Due to the enactment of KRS 278.543 and its companion statutes, the Commission held in the CBT White Pages Order that electing carriers were no longer required to follow the mandates of 807 KAR 5:061, Section 5, which requires the annual publication and distribution of a printed white pages directory.² An analysis of these statutes and the relevant regulation will be addressed in a separate portion of this Order.

On December 9, 2009, the Attorney General, by and through his Office of Rate Intervention ("Attorney General") moved for full intervention. The Attorney General also moved for the establishment of a procedural schedule on December 9, 2009. On December 16, 2009, the Attorney General submitted comments on the petition wherein

¹ Case No. 2009-00029, Application of Cincinnati Bell Telephone Company LLC for Declaration of Compliance with Directory Requirements Applicable to Electing Telephone Companies Pursuant KRS 278.541 to 278.544, at 7 (Ky. PSC Apr. 20, 2009) (hereinafter, "CBT White Pages Order").

² CBT White Pages Order at 7, 8.

he stated that he supported AT&T Kentucky's request. The motion for intervention and the issuance of a procedural schedule were granted by Commission Order on December 22, 2009. On December 21, 2009, Commission Staff issued an information request to AT&T Kentucky and responses to that request were submitted on January 29, 2010. The Commission received no additional motions to intervene and received no written public comments on the petition.

CONTENT OF PROPOSAL

AT&T Kentucky expects to begin the implementation of its Residential White Pages Consumer Choice Initiative ("RWPCCI") as of September 2010 and will continue the RWPCCI every year thereafter.³ In support of its proposal, AT&T Kentucky states that there is an overall decrease in the use of the printed residential white pages directories by customers but that there is a growing reliance upon technology to retrieve directory information.⁴ Additionally, AT&T Kentucky contends that there is, generally, a large drive toward environmentally friendly initiatives. Each of these factors contributes to AT&T Kentucky's position that a change to the white pages directory distribution plan is in order.⁵ AT&T Kentucky is seeking a declaration from the Commission that the RWPCCI is in statutory compliance. The company intends to apply the initiative to all of

³ Petition at 7.

⁴ Such as telephone number storage through Caller ID (on wireline and wireless phones) and the publication of "specialty directories" for work, schools, places of worship, civic associations, and similar organizations. See Petition at 5.

⁵ Id.

its Kentucky markets;⁶ however, the company's initial plan is to implement the initiative for the Louisville directory, which is its largest directory published in Kentucky and is distributed to the exchanges in Jefferson and Oldham counties.⁷ AT&T Kentucky states that it expects to continue its Kentucky "co-bound" directories and will notify the Commission if and when the company decides to discontinue publication of the white pages portions of any of the "co-bound" directories.⁸ AT&T Kentucky states that it delivers directories to all telephone service subscribers, regardless of the carrier, within AT&T Kentucky's incumbent market.⁹ AT&T Kentucky states that, for the immediate

⁶ Petition at 7. See also AT&T Kentucky Responses to Commission Staff's Information Request at Response 4. Filed January 29, 2010.

⁷ Petition at fn. 5. The Louisville directory is published as a white pages-only directory, which includes residential listings as well as a business listings section. The Louisville Real Yellow Pages directory is published and distributed separately.

⁸ AT&T Kentucky Responses to Commission Staff's Information Request at Response 4. Filed January 29, 2010. Unlike the Louisville White Pages and Real Yellow Pages, the remaining "co-bound" directories contain whites pages and yellow pages combined within one book.

⁹ AT&T Kentucky states that the RWPCCI will allow customers of competitive local exchange carriers providing service within AT&T Kentucky's incumbent service area to be treated in the same manner as AT&T Kentucky's customers regarding the availability or delivery of white pages directories. See Petition at 11. The provision of white pages directories is typically addressed within the interconnection agreements with competitors. AT&T Kentucky notes that the interconnection agreements generally provide that it will make white pages directories available to the customers of competitors at no charge. See AT&T Kentucky Responses to Commission Staff's Information Request at Response 8. Filed January 29, 2010. Interconnecting competitors will be notified by letter by AT&T Kentucky as to the RWPCCI within 30 days after this Order is issued. Id. at Response 10.

future, it intends to continue distributing a residential white pages directory to every customer in its other Kentucky service areas.¹⁰

AT&T Kentucky states that it will do the following after September 2010:

Update and print [five percent] . . . of the number of Louisville White Pages directories to be distributed to those customers who request a copy. The White Pages will contain residential listings, the Customer Guide and emergency numbers.

Print and distribute the Real Yellow Pages and Business White Pages to every residential and business subscriber. The Real Yellow Pages will contain the business and government listings, emergency numbers, and Customer Guide.¹¹

As a replacement to the annual mass distribution of the hard copy of the white pages directory in the Louisville area, AT&T Kentucky proposes to provide the content of the printed directory on a directory website, www.realpageslive.com.¹² The website will include all existing directory information, including residential white pages listings, business white pages listings, government listings, emergency numbers, and a "customer guide," which typically contains instructions on placing local and long-distance calls, calls to repair and information services, local service providers, and locations of telephone company business offices.¹³ Additionally, AT&T Kentucky states

¹⁰ Petition at fn. 5. See also Exhibit 1 to the Petition, which outlines the 32 Kentucky markets for which white pages directories are compiled and distributed by AT&T Kentucky. In that Exhibit, AT&T Kentucky stated that, with the exception of the Louisville area directory, all of its Kentucky directories have the white pages and yellow pages co-bound within one book. The Commission adopts, in part, AT&T Kentucky's Exhibit 1 and includes a listing of the directory markets, including "co-bound" directories, in the Appendix to this Order.

¹¹ Petition at 7.

¹² Petition at 8.

¹³ Petition at 6.

that residential listings in the white pages are also available at www.YellowPages.com. Lastly, AT&T Kentucky states that customers will be able to request free directories every year by calling its directory distribution center at 1-800-422-1955 or making a request through a dedicated website, www.mydirectories.att.com.¹⁴ Under the RWPCCI, AT&T Kentucky will continue to distribute the Real Yellow Pages and Business White Pages to every residential and business subscriber in AT&T Kentucky's service area, as it does today.¹⁵

AT&T Kentucky notes that the RWPCCI has been implemented in several other AT&T domestic markets within several other states.¹⁶ To notify its customers of the RWPCCI, AT&T Kentucky states that it will use billing inserts and media releases to advise subscribers of the changes to the white pages distribution plan. Additionally, the company states that it will place a message on the cover of the September 2010 Real Yellow Pages instructing customers as to how they may obtain a free hard copy of the white pages;¹⁷ it will include instructions in the customer guide of the Real Yellow Pages instructing customers as to how they may obtain a free hard copy of the white pages; and that a cardstock insert will be included in the September 2010 Real Yellow Pages to

¹⁴ Petition at 8, 9.

¹⁵ Petition at 6. An affiliate of AT&T Kentucky publishes and distributes the Real Yellow Pages, but the company says it will ensure that this information is included in the Yellow Pages on a going-forward basis. See Petition at 8, 9. The Commission does not have regulatory authority over the provision of and content of the yellow pages, as published by any carrier or third party.

¹⁶ Petition at fn. 8 and Exhibit 2.

¹⁷ This method is known as a "cover ribbon."

detail how customers may access the white pages or obtain a free hard copy.¹⁸ AT&T Kentucky notes that both new and existing customers will be able to order a residential white pages directory at any time by following the instructions contained within the Real Yellow Pages.¹⁹

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, AT&T Kentucky 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.)

¹⁸ Petition at 10.

¹⁹ Petition at 12.

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. With the exception of basic local exchange service rates and wholesale intrastate switched access service rates, an electing utility's rates, revenues, charges, and earnings under KRS 278.543 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 AT&T Kentucky has elected to be regulated under the provisions of KRS 278.543, it no longer has the

obligation to follow the mandates of 807 KAR 5:061, which mandates annual publication and distribution of a printed white pages directory to every subscriber. With the passage of House Bill 337, the only obligation AT&T Kentucky 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".²⁰ AT&T Kentucky proposes that, in lieu of a printed directory, it would automatically provide to its subscribers the ability to reach, use, or visit an electronic directory on the internet, while additionally giving subscribers the alternative to receive a free paper directory upon request.

²⁰ *The DK Illustrated Oxford Dictionary*, Oxford University Press, Inc. (1998).

FINDINGS

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

The Commission is aware that other incumbent carriers closely monitored the Commission's decision in the Cincinnati Bell Telephone white pages matter, as referenced earlier, and are closely reviewing this proceeding with the expectation that they may seek to file future petitions to institute white pages distribution programs that are somewhat similar in nature. 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 end-user access to a standard white pages directory and protections for those subscribers who may not have regular or continual access to the internet.

Like the Cincinnati Bell plan, AT&T Kentucky's distribution proposal is a dramatic change to an established segment of Kentucky's incumbent carrier telephone system. Due to this fact, the Commission believes this agency and the public would be best served by having knowledge about the progress of this plan and the effect upon end-users or others who previously relied upon traditional directories. Therefore, similar to the Commission's requirement of Cincinnati Bell, the Commission will require AT&T Kentucky to submit one original and five copies of a report to the Commission with a

copy to the Attorney General, no later than June 30, 2011, with the following information:

1. The number of Kentucky subscribers who requested and received free copies of the printed Louisville White Pages directory from May 1, 2010 to June 1, 2011; and

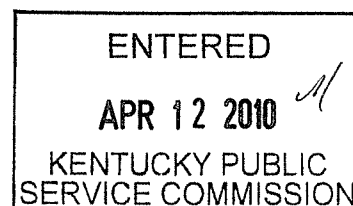
2. Details of complaints made to AT&T Kentucky from end-users or competitive local exchange carriers related directly to AT&T Kentucky's change of its Louisville White Pages directory distribution method. AT&T Kentucky shall summarize the nature of those complaints and shall summarize the company's response (or resolutions) to the complaints.

Additionally, as it relates to the publication and distribution of the "co-bound" directories, the Commission orders AT&T Kentucky to provide written notice to the Commission at least 60 days prior to changes to the whites pages publication and distribution plan for each specific market. This notice shall be in the form of a letter to the Commission's Executive Director and shall include a reference to this proceeding and case number and shall specifically name the market service area being affected. The purpose of this filing is to put the Commission on notice as to the next step in changes to Kentucky's traditional white pages system and to ensure that the Commission is adequately prepared to address any complaints or concerns that may be expressed by Kentucky telephone subscribers who may be dependent upon a printed white pages directory.

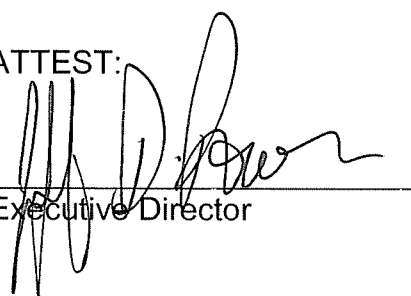
IT IS HEREBY ORDERED that:

1. AT&T Kentucky's RWPCCI proposal satisfies KRS 278.541(1), which requires an electing carrier to provide access to a standard, alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.
2. AT&T Kentucky shall follow the requirements as enumerated herein for subsequent reporting on the progress of its Louisville White Pages directory distribution program.
3. AT&T Kentucky shall follow the requirements as enumerated herein for submission of subsequent notices on changes to the white pages plan for its "co-bound" directory markets.
4. Any documents filed in the future pursuant to ordering paragraphs 2 and 3 herein shall reference this case number and shall be retained in the utility's general correspondence file.
5. This matter is closed and removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2009-00480 DATED **APR 12 2010**

AT&T Kentucky Market Directories

[AT&T Kentucky notes that all of its Kentucky market directories have the White Pages and Real Yellow Pages “co-bound” in one book with the exception of the Louisville directory. See AT&T Kentucky Exhibit 1 of Petition.]

Directories by Market

Bardstown-Springfield

Big Sandy Area (includes areas of Pikeville, Paintsville, Louisa, Prestonsburg, and Pike County, as well as Johnson and Floyd Counties)

Bowling Green

Carlisle

Carrollton

Christian, Todd and Trigg Counties

Corbin

Cynthiana

Ft. Knox-Muldraugh

Frankfort-Lawrenceburg

Georgetown

Harlan

Henderson, Union and Webster Counties (includes areas of Marion and Princeton)

Henry County

Jackson (includes Beattyville area)

Louisville (White Pages only)

Louisville (Real Yellow Pages only)

Madison (includes majority of Muhlenberg County)

Maysville

Middlesboro

Mt. Sterling

Ohio Valley Area (includes areas of Calhoun, Hardinsburg, Hawesville and Owensboro)

Owenton

Paris

Purchase Area (includes Benton-Gilbertsville, Calvert City, Clinton, Columbus, Fairdealing-Hardin, Fulton-South Fulton, Heath-Kevil, Hickman, Mayfield, Murray-Aurora, Paducah, Symsonia, and Ballard, Carlisle and Graves Counties)

Richmond

Shelby County

Taylorsville

Whitesburg

Wilderness Trace-Springfield

Winchester

Louisville companion (a miniature version of the Louisville Real Yellow Pages)

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