

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EXEMPTIONS FOR PROVIDERS OF LOCAL) ADMINISTRATIVE
EXCHANGE SERVICE OTHER THAN) CASE NO. 370
INCUMBENT LOCAL EXCHANGE CARRIERS)

O R D E R

Pursuant to KRS 278.512 and 278.514, the Commission, on its own motion, hereby initiates this proceeding to determine whether providers of telecommunications service other than dominant incumbent local exchange carriers should be exempt from certain regulatory requirements.

When evaluating the reasonableness of regulatory exemption, the Commission is bound by KRS 278.512 and 275.514. The Commission may exempt or reduce regulation of telecommunications services and products if it determines that exemption or reduced regulation is in the public interest. One consideration in determining public interest is the reduction of resources dedicated to regulatory activities no longer required to protect the public.

Financing Applications

Pursuant to KRS 278.300, the Commission has required competitive local exchange carriers (ACLECs®) and wireless carriers to submit an application, consistent with our regulations, providing a complete description of securities proposed to be issued or indebtedness proposed to be incurred. This requirement was meant to ensure that the contemplated financings would not impair a local exchange carrier's ability to provide service at fair, just and reasonable rates.

CLECs and wireless carriers are not rate regulated by the Commission because they neither possess market power nor own local exchange bottleneck facilities. Therefore, there is no need to monitor their financial stability to ensure their continued existence. CLECs do not have carrier of last resort responsibilities and their failure as the result of bad financing decisions would have no impact on the availability of service as other carriers are available to supply service. Similarly, the wireless market is competitive, and thus oversight of their financing activities is no longer required.

Applications For Transfer of Ownership or Control

Under KRS 278.020(4) and (5), CLECs and wireless carriers are required to seek prior approval for authority to transfer their operations through a sale of assets or transfer of stock. However, there appears to be no need for the Commission to approve these types of transactions for the reasons discussed above. Accordingly, the Commission finds the CLECs and wireless carriers need only supply a letter to the Commission describing the transfer and providing an adoption notice pursuant to 807 KAR 5:011, Section 11, for the tariff with one day's notice.

An original and four copies of this transfer letter should be filed with the Commission and sent to the attention of the Commission's Executive Director. In Administrative Case No. 359,¹ the Commission prohibited a utility from selling its customer base where the utility would still provide the same line of business to new customers or customers whose accounts were not sold. Utilities must obtain a customer's authorization

¹ Administrative Case No. 359, Exemptions For Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin Operated Telephones at 6, footnote 1 (June 21, 1996).

before transferring his service to another carrier. Otherwise, an unauthorized preferred interexchange carrier change has occurred. Any transfer by a CLEC or wireless carrier also will be subject to this limitation.

Applications for Initial Operations for CLECs and Wireless Carriers

The lack of market power of CLECs and wireless carriers, together with the availability of competitive choices, makes it reasonable to require only a proposed tariff with 30 days' notice to the Commission and a cover letter setting forth certain information prior to CLEC or wireless entry into the Kentucky market.

The items to be addressed in the cover letter are: (1) the name and address of the company; (2) articles of incorporation or partnership agreement; (3) name, street address, telephone number and fax number (if any) or the responsible contact person for customer complaints and regulatory issues; (4) a notarized statement by an officer of the utility that the utility has not provided or collected for intrastate service in Kentucky prior to filing the notice of intent or, alternatively, a notarized statement by an officer that the utility has provided intrastate service and that it will refund or credit customer accounts for all monies collected for intrastate service; and (5) a statement that the utility does not seek to provide operator assisted services to traffic aggregators as defined in Administrative Case No. 330² or, alternatively, that the utility does seek to provide operator-assisted service to traffic aggregators but that in so doing it is complying with the Commission's mandates in Administrative Case No. 330.

² Administrative Case No. 330, Policy and Procedures in the Provision of Operator-

Conclusion

The existence of competitive alternatives with carrier of last resort obligations, together with Commission oversight of these carriers, should provide adequate safeguards to protect customers from unfair treatment, poor service quality, or excessive prices. However, regardless of the extent of the exemptions eventually granted in this proceeding, all customers may continue to exercise their option of filing complaints regarding the exempt services with the utility and the Commission. In addition, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514.

A copy of this Order shall be served on the Attorney General of the Commonwealth of Kentucky and all telecommunications providers in Kentucky. The procedures and exemptions prescribed in this Order shall be effective January 31, 1998 unless the Commission receives from interested persons comments indicating disagreement with any exemption described herein.

IT IS THEREFORE ORDERED, effective January 31, 1998 unless further proceedings are ordered hereafter, that:

1. CLECs and wireless carriers are exempted from filing applications for prior approval of transfers pursuant to KRS 278.020(4) or (5) or applications for securing evidences of indebtedness pursuant to KRS 278.300.

Assisted Telecommunications Services (March 27, 1991).

2. CLECs and wireless carriers are exempted from filing applications for initial operations and shall only file 4 copies of a cover letter as described herein with a proposed tariff.

3. The exemptions granted herein are applicable to all non-incumbent local exchange carriers, and wireless telecommunications providers.

Done at Frankfort, Kentucky, this 8th day of January, 1998.

By the Commission

ATTEST:

Executive Director