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SECRETARY

**GENERIC PROCEEDING TO CONSIDER
IMPLEMENTATION OF THE COMMUNICATIONS
REFORM ACT OF 2005**

DOCKET 29733

SECOND IMPLEMENTATION ORDER

I. INTRODUCTION AND BACKGROUND

BY THE COMMISSION:

On November 29, 2006, the Commission issued its first Implementation Order in this docket for purposes of providing clarity regarding the Communications Reform Act of 2005 (the "Act"). Since the promulgation of the initial Implementation Order, additional questions have arisen with regard to telecommunications carrier requirements for compliance with various provisions of the Act. This Order supplements the first Implementation Order and provides additional clarity with respect to noted provisions of the Act.

II. TARIFF REQUIREMENTS

Perhaps the most frequent inquiry received by the Commission in relation to compliance with the Act deals with the subject of tariffs and the services that remain subject thereto. At the outset, we note that the Act's provisions affect only retail communications services.¹ The Commission, therefore, retains jurisdiction over wholesale services. Tariff requirements for access services thus remain unchanged while contract service arrangements involving access

¹ See *Code of Alabama*, 1975 §§37-2A-3 and 37-2A-11(b)(5).

services will continue to be governed by the procedures outlined in the Alabama Telecommunications Regulation Plan ("ATRP").²

The Commission also retains jurisdiction over basic telephone service ("basic service") and optional telephone features for residential customers as well as business customers subscribing to four (4) or less lines of basic telephone service.³ Optional Telephone Features as defined in the Act include "[t]hose central office-based features that were tariffed by a Local Exchange Carrier ("LEC") on or before February 1, 2005."⁴ We herein interpret the quoted language of §37-2A-(2)(16) to mean that the Commission's jurisdiction over optional telephone features extends to any and all optional telephone features that were included in a Commission-approved tariff as of February 1, 2005 and which otherwise meet the requirements of Code §§37-2A-2(16)(a)-(c).

Each LEC that offers basic service and optional telephone features on a stand alone basis must continue to submit tariffs to the Commission for those services. Even though bundled offerings⁵ are no longer subject to Commission jurisdiction, LECs may not include basic service and/or optional telephone features in their bundled offerings unless those services are included, on a stand alone basis, in a tariff on file with the Commission.⁶ Tariffs incorporating basic service and optional telephone features should include definitions of terms, general regulations, rates for basic service and optional telephone features, connection charges and service charges applicable to the tariffed services as well as emergency reporting services ("911").

² *In re: Proposed Revisions to the Price Regulation Local Competition Plan*; Docket 25980; Order Approving Alabama Telecommunications Regulation Plan (Alabama Public Service Commission, December 7, 2004) at Part I, §8, Part II, §6 and Part III, §8.

³ As explained in our first Implementation Order in this cause at pp. 2 and 3 (fn. 4 and 5).

⁴ See Code §37-2A-(2)(16).

⁵ See Code §37-2A-2(3).

⁶ See Code §37-2A-8(3).

LECs offering access services must have a tariff on file with the Commission for those services. Additionally, LECs must maintain tariffs with the Commission for any service included in contract offerings effective prior to September 1, 2006⁷ until the expiration of such contracts.⁸ Notably, §37-2A-4(e) of the Act references August 1, 2006 as the start date for new contract offerings. In contrast, *Code* §37-2A-2(15) defines new contract offerings as "any contract offering executed after September 1, 2006." Given the apparently conflicting start dates for new contract offerings in the Act, the Commission will defer to the September 1, 2006 date established in the definition provision of *Code* §37-2A-2(15) as controlling.

For those services remaining under the Commission's jurisdiction, the controlling tariff filing procedures are those set forth in the applicable provisions of the ATRP.⁹ In addition to filing such tariffs in accordance with the electronic and paper copy filing requirements of the Commission's Administrative Division, LECs shall also assist the Commission's Telecommunications Division in ensuring the accuracy of their tariffs. Those LECs that maintain their tariffs online via the Internet shall provide the Commission with a URL to the website where the applicable tariffs are made available. Those LECs who do not maintain their tariffs online via the Internet shall provide the Telecommunications Division with an updated version of their complete tariff in Adobe® PDF format on the effective date of any tariff revisions. Updated tariffs may be provided to the Telecommunications Division via email attachment or by compact disc.

Any tariffs submitted in order to comply with the jurisdictional provisions of the Act will be included under the docket number established for this matter, Docket 29733. Such jurisdictional compliance tariffs shall be limited to those removing portions of a tariff currently on file or any rearrangement of a currently filed tariff. LECs will ensure that proposed changes to any rates,

⁷ See *Code* §§37-2A-2(15).

⁸ See *Code* §§37-2A-4(h).

⁹ See ATRP Part I at §6; Part II at §4; Part III at §6; Part IV at §6; and Part V at §3.

terms, or conditions not required by the Act are submitted separately. Our intent is to maintain those tariff changes related exclusively to the Act's revised jurisdictional provisions under one Docket so that they may be easily retrieved and administered. Such filings made strictly for compliance purposes shall require no further Commission action.

Many LECs have not yet filed revised tariffs and many IXCs have not yet requested that tariffs no longer subject to the jurisdiction of the Commission be withdrawn pursuant to Act. We hereby establish a deadline of June 1, 2007, for such tariff revisions to be submitted to the Commission.

For those tariffs that remain on file at the Commission solely for purposes of complying with the Act's provisions concerning contract offerings in effect before September 1, 2006, we herein require that LECs report the active contract offerings that remain under the Commission's jurisdiction and the scheduled termination date for each active contract offering. These reports may be made electronically to the Commission's Telecommunications Division. The initial report is due by September 1, 2007, and annually thereafter by September 1 of each succeeding year until all contract offerings that remain under the Commission's jurisdiction in accordance with the Act have expired. Upon the expiration of all contract offerings implemented prior to September 1, 2006, LECs shall request that tariffs maintained at the Commission for purposes of compliance with the contract offering provisions of the Act be withdrawn.

III. JURISDICTIONAL ISSUES

Some carriers have incorrectly interpreted the Act to mean that they are no longer subject to any regulation by the Commission. We herein note that while the Act modifies the Commission's jurisdiction with regard to pricing for most retail services and other matters for carriers subject to the Act, it does not otherwise alter the general regulatory authority of the

Commission except as specifically noted therein.¹⁰ In particular, the Commission retains jurisdiction over basic telephone service, optional telephone features, federal universal service programs,¹¹ standards for new entrants,¹² and any and all emergency reporting services.¹³ Accordingly, even carriers subject to the Act must continue to pay supervision and inspection fees to the Commission.¹⁴

It is also important to note that the Commission retains exclusive complaint jurisdiction pursuant to *Code* §37-1-83 except as specifically modified by the Act. As such, the Commission's traditional billing and complaint jurisdiction regarding the services of carriers not subject to the Act; basic telephone services and optional telephone features as defined by the Act;¹⁵ universal service matters;¹⁶ and emergency reporting services as defined by the Act remain unchanged.¹⁷ Even with regard to residential services that are otherwise deregulated, by the Act, including stand alone, bundled and contract residential offerings, the Commission has nonetheless retained exclusive, albeit more defined, jurisdiction over complaints involving such services.¹⁸

IV. REPORTING REQUIREMENTS

A. OVERVIEW

Reporting requirements are also an area that merit further clarification. The Act includes the following language regarding reporting requirements:

The commission shall not impose or establish information or reporting requirements or a uniform system of accounts on any carrier that is subject to this chapter that exceeds in degree or differs in kind from the requirements of the Federal Communications Commission.¹⁹

¹⁰ See *Code* §§37-2A-11(b)(1).

¹¹ See *Code* §§37-2A-7.

¹² See *Code* §§37-2A-9.

¹³ See *Code* §§37-2A-11(b)(6).

¹⁴ See *Code* §§37-2A-10.

¹⁵ See *Code* §§37-2A-2(1) and 37-2A-4(f).

¹⁶ See *Code* §37-2A-7.

¹⁷ See *Code* §37-2A-11(b)(6).

¹⁸ See *Code* §37-2A-4(c).

¹⁹ See *Code* § 37-2A-4(i).

Narrowly interpreted, the above provision severely restricts the Commission's authority to require carriers subject to the Act to report data that differs from the reports required by the Federal Communications Commission (the "FCC"). Nevertheless, the Commission remains statutorily obligated to ensure that Alabama consumers are adequately served with satisfactory telecommunications services by providers who are financially viable except as the Act specifies to the contrary:

The Public Service Commission shall have general supervision of all persons, firms and corporations operating utilities mentioned in this title, shall inquire into the management of the business and shall keep itself informed as to the manner and method in which the business is conducted. It shall examine such utilities as often as may be necessary to keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipment and other property are owned, leased, controlled, managed, conducted and operated, not only with respect to adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this title, and any other law or laws, with the orders of the commission, and with the charter and franchise requirements. It shall assemble and keep on file, available for the use of the public, full statistics on the foregoing, as well as on all other matters or things connected with such utilities as is necessary to a full knowledge of their business and affairs.²⁰

In attempting to square the Act's reporting provision with the statutory obligation of the Commission noted immediately above, it should be observed that the FCC's limited reporting requirements only mandate the submission of Automated Reporting Management Information System ("ARMIS") reports for certain carriers. Indeed, the FCC's ARMIS webpage states that "No ARMIS reports are required of the approximately 1200 small companies with annual revenues below the current threshold of \$129M."²¹ Currently, only 52 of the approximately 1200 carriers nationwide are required to file ARMIS reports with the FCC and only 3 of those 52 are certified in Alabama. The remaining Alabama LECs are not required to submit reports to the FCC.

²⁰ See Code § 37-1-32.

²¹ ARMIS Filing Requirements for Carriers, URL: <http://www.fcc.gov/wcb/armis/filereqt.html>

In light of the foregoing, we have grave concerns that the Commission cannot carry out its statutory obligation to ensure that the public is adequately served if federal "reporting requirements" are relied upon exclusively. The Commission needs more substantial information in order to monitor carrier financial and operational performance as envisioned by the Code regardless of whether that information is gleaned from a report or some other means. We thus conclude that even though the Act appears to limit what carriers are required to formally submit to the Commission, it does not relieve carriers of their obligation to have such information for regulated services available for the Commission's inspection:

The commission, by order, may require any utility or any officer or agent thereof to produce within the state, at such reasonable time and place as it may designate, any books, records, accounts or documents kept in any office or place without or within the state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter under investigation before the commission, in order that an examination thereof may be made by the commission, or by any person employed by the commission.

The commission shall examine and inspect, or cause to be examined and inspected, at reasonable times and in a reasonable manner, under its authority, the books, records, accounts, documents, plant, property and facilities of any utility, whether there is any proceeding by or against the utility then pending before the commission or not. Every utility, its officers and agents shall make all its books, records, accounts and documents available at its principal office or place of business in this state, for examination and inspection by the commission or its authorized representatives or employees, whenever the commission may deem it in the public interest that such examination or inspection should be made. Every utility, its officers and agents shall make available all and every part of its plant, property and facilities for examination and inspection by the commission or its authorized representatives or employees, whenever the commission may deem it in the public interest that such examination or inspection should be made; and any person shall produce, when so required, his authority from the commission to make such examination or inspection under the seal of the commission.²²

We therefore, ask that carriers voluntarily comply with our request to report limited financial and service quality information. Absent voluntary submission of the data necessary to fulfill our regulatory obligation, we will be required to exercise the authority granted under Code

²² See Code § 37-1-82.

§37-1-82 to require that carriers make available for inspection their books, records, accounts, documents, plant, property and facilities related to the provision of regulated services so that we may fulfill our statutory obligations.

B. Voluntary Financial Reports

With respect to financial reporting, the Commission's Telephone Rule T-3 (c)(1) states:

Each telephone utility shall maintain records of its operations in sufficient detail to permit review of its service performance upon request by the Commission, and shall file Annual Reports containing financial information as directed by this Commission.

We therefore request that all carriers certified by the Commission voluntarily submit the annual report envisioned by T-Rule T-3(c)(1) to the Commission. Pursuant to the Code, the annual reports of financial information shall be submitted to the Commission 90 days from the close of the selected accounting period (whether calendar or fiscal year basis).²³ For carriers who use a fiscal year accounting basis ending September 30, annual reports are due to the Commission by the succeeding January 1. For carriers who use a calendar year accounting basis ending December 31, annual reports are due to the Commission by the succeeding April 1.

C. Voluntary Service Quality Reports

The Commission further requests that all facilities-based LECs voluntarily submit to the Commission the following Alabama specific data for each calendar quarter (January-March, April-June, July-September, and October-December):

1. Total access lines by wire center;
2. Total trouble reports by wire center;
3. Repeated trouble reports by wire center;
4. Total company held applications.

²³ See Code § 37-1-58.

The reports should be submitted by the end of the month which follows the quarterly reporting period (April, July, October, and January), with the initial report due no later than July 31, 2007. The report should be submitted electronically to the Commission's Telecommunications Division.

Voluntary compliance by carriers with our request to submit service quality data should not be interpreted as relief from our routine inspections for service quality compliance. We will periodically make on-site inspections for purposes of verifying operational performance and/or to investigate any observed service related issues.

D. Competitive Local Exchange Carrier Reports

Pursuant to Order entered in Informal Docket U-3949 on January 11, 1999, the Commission required all providers of Competitive Local Exchange Carrier ("CLEC") Service in Alabama to file monthly reports detailing the level of service they provide in Alabama. The Commission has now determined that the aforementioned reports are no longer necessary and should be discontinued as of the effective date of this Order.

V. CONCLUSION

This Order is issued on the Commission's own motion for purposes of providing clarity regarding the Commission's authority and the regulatory requirements for carriers subject to the provisions of the Act. As further issues arise regarding the Act, the Commission will address such matters in the manner deemed most expedient.

IT IS SO ORDERED BY THE COMMISSION.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

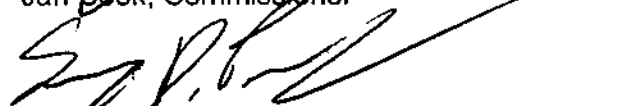
IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 4th day of April, 2007.

ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


Susan D. Parker, Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary