COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN INVESTIGATION OF TOLL AND ACCESS CHARGE PRICING AND TOLL SETTLEMENT AGREEMENTS FOR TELEPHONE UTILITIES PURSUANT TO CHANGES TO BE EFFECTIVE JANUARY 1, 1984	)))))	CASE NO. 8838 PHASE II

O R D E R

In its Order in this matter, dated November 20, 1984, the Commission directed that Universal Local Access Service ("ULAS") tariffs be filed not later than 30 days from the date of that Order. On December 20, 1984, South Central Bell Telephone Company ("SCB") filed its proposed tariff. By further Order dated December 20, 1984, Cincinnati Bell Telephone Company ("Cincinnati Bell") was granted an extension of time and subsequently filed its proposed ULAS tariff on January 21, 1985.

By further Order dated February 22, 1985, a technical conference was scheduled to consider the ULAS tariff filed by SCB, and Cincinnati Bell. The technical conference was held on March 18, 1985. Parties participating in that conference were SCB, Cincinnati Bell, the Division of Consumer Intervention of the Attorney General's Office ("AG"), AT&T Communications ("ATTCOM"), MCI Telecommunications ("MCI"), and GTE Sprint ("Sprint"). Subsequent to the conference and a further Commission Order dated March 21, 1985, SCB filed a revised ULAS tariff on March 25, 1985. The various parties filed written responses

to the revised proposed tariff and SCB subsequently conducted an informal meeting on April 4, 1985, in Louisville, Kentucky. The purpose of the informal meeting was to attempt to settle differences among the parties and clarify tariff language where possible. On April 9, 1985, a public hearing was held to present testimony relative to the unsettled issues. Each of the parties provided testimony at the hearing, with the exception of Cincinnati Bell.

DISCUSSION

The general areas of disagreement concerning the proposed ULAS tariff remaining after the April 4, 1985, settlement meeting, center upon the following specific concerns:

1) Sprint and MCI contend that the proposed ULAS tariff should not assess a flat rate channel charge based upon voice equivalent capacity. Both parties allege that the charge is discriminatory and is not in compliance with the requirements of the Modified Final Judgment ("MFJ"). The two parties propose instead that the ULAS charges should be allocated on the basis of busy hour minutes of capacity ("BHMC");

2) Sprint and MCI contend that the proposed ULAS tariff inappropriately treats channels used for private line the same as channels used to provide switched services. The two parties propose instead that a standard allocation factor be applied to private lines. This factor would in theory be based upon the intrastate usage of those private lines;

3) Sprint and MCI contend that the proposed ULAS tariff imposes charges on facilities and services allegedly beyond the

Commission's jurisdiction, such as Digital Termination Systems ("DTS"), interstate Foreign Exchange ("FX"), and Common Control Switched Arrangements ("CCSA"). The two parties propose that such services should be exempted from ULAS charges;

4) Sprint and MCI contend that the ULAS tariff penalizes Other Common Carriers ("OCCs") by including as channel terminations, originating and terminating points at intermediate switching facilities. Thus the configuration of their networks may result in an overallocation of NTS costs to OCCs. The two parties propose that the definition of the "extreme point" of channel terminations be interpreted to exclude intermediate switching facilities of the interLATA carrier;

5) Sprint and MCI contend that the provisions of the ULAS tariff regarding liability for payments on leased channels should be deleted, thereby placing the responsibility for facilities leased to another carrier upon the lessor;

6) Sprint and MCI have proposed that intrastate, intraLATA minutes of use should not be included in the jurisdictional allocation to determine charges assessed pursuant to the ULAS tariff; and

7) ATTCOM has objected to the late payment penalty factor of approximately 24 percent, compounded on an annual basis, on the ground that it is excessive.

The Commission has determined that each of these contentions should be rejected at this time. The basis for that determination is as follows:

1) The BHMC proposal may have merit. However, the Commission is of the opinion that all parties should gain some experience with the proposed ULAS tariff prior to making changes such as would be required to implement BHMC charges.

At this time no party has produced evidence to demonstrate the impact of the proposed tariff, much less the impact of a BHMC based tariff. This information would be essential for the Commission to make an informed judgment concerning the relative merits of flat channel charges as opposed to BHMC charges. Those parties supporting the BHMC charge as opposed to channel charges should have the obligation to provide clear evidence that the BHMC concept would provide a fairer assessment of charges among carriers and to demonstrate that these benefits would offset the additional administrative costs incurred by the Local Exchange Carriers and ATTCOM.

The Commission additionally notes that the BHMC concept would require the use of statistical distribution tables such as the Poisson conversion, the Neal Wilkerson Table, or the Ehrlang B Table. These tables are used to convert trunking capacity to BHMC, based at least in part upon assumptions related to blocking levels. The Commission's Regulations, specifically 807 KAR 5:061, Section 19, allow a maximum blockage level of 0.03 for toll connection and interexchange trunks. Non-dominant carriers are not necessarily required to adhere to this standard pursuant to the Commission's Order in Administrative Case No. 273.[1] Since

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[1] An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

different blocking levels within this requirement (e.g., 0.01, 0.02, and 0.03) would result in different BHMC for the same trunk groups, it would also be necessary to require the carriers to adhere to specific blocking levels in order to determine the correct BHMC for each carrier. If BHMC were adopted, some of the flexibility currently available to non-dominant carriers relative to blocking levels could be affected. Issues such as this would of necessity dictate further hearing prior to implementing a BHMC charge.

Finally, the Commission has considered Sprint's and MCI's contention that the ULAS, as proposed, discriminates against small carriers and violates the MFJ. These parties have argued that because they have fewer voice equivalent channels than a large carrier (ATTCOM) they cannot achieve the same trunking efficiencies. Thus, they argue a ULAS tariff would result in a higher charge per unit of traffic carried by the OCCs.

The Commission is not convinced that a higher ULAS charge per unit of traffic delivered will in fact result. Dr. Johnson testified that although a tendency for such an occurrence may exist, it would not take place in each instance.[2] Furthermore, since those carriers have available alternative means of handling overflow traffic other than their own trunking capacity, even assuming that it would generally result in a higher ULAS charge per unit of traffic delivered, there are offsetting considerations such as the relatively greater flexibility of the

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[2] Transcript of Evidence ("T.E."), April 9, 1985, page 126.

OCCs to act to minimize ULAS payments compared to ATTCOM. ATTCOM's network is largely already in place while the OCCs are in the process of developing theirs.[3] This leads the Commission to conclude that even if differences in the amount of the ULAS charge per unit of traffic delivered exist between large and small carriers the difference is not an unreasonable one which KRS 278.030 or KRS 278.170 would preclude.

The Commission is likewise not persuaded that the ULAS violates the MFJ's provision requiring equal charges per unit of traffic for traffic-sensitive local transport charges. The costs being recovered via the ULAS are non-traffic-sensitive costs; thus the Commission is not constrained by the MFJ from adopting the ULAS scheme. Taken to its logical extreme, MCI's and Sprint's argument would prevent the lawful imposition of any access charge on a flat rate basis. This would directly contradict MCI's and Sprint's position before the Federal Communications Commission ("FCC") that interstate non-premium access should be assessed on a flat-rate basis rather than on a usage-sensitive basis.[4] Certainly MCI and Sprint would not advance such a position before the FCC if they believed that the MFJ barred the use of flat rate charges in all circumstances.

2) Relative to the treatment of private line channels, no party was able to offer evidence, other than statements of the FCC, that private line channels necessarily carry less traffic

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[3] Ibid., page 139.

[4] Order released April 23, 1985, CC Docket No. 78-72, Phase I.

than switched facilities. Thus, the use of the percentage of billed conversation minutes which are intrastate for originating switched access as a proxy for unmeasured private line usage appears reasonable. In fact, an argument could logically be made that efficiently designed private line networks could carry volumes of traffic even in excess of that carried over switched facilities.

However, in the future consideration of the BHMC concept, the parties will have the opportunity to provide evidence relative to the treatment of private lines if the BHMC charge is found to be a superior method of assessing costs to interexchange carriers. There is simply no evidence at present which would support an artificial allocation factor for private line channels.

3) The Commission finds no merit in the argument that the proposed ULAS tariff imposes charges on facilities and services allegedly beyond the Commission's jurisdiction. None of the authority cited by MCI and Sprint convinces the Commission that the FCC has taken preemptive action that would bar the implementation of the ULAS tariff as proposed. SCB's tariff as currently proposed provides exemptions for private line facilities that are wholly interstate in nature. Interstate private line services which do not originate or terminate any intrastate communications, and are so certified by the customer, are exempted by the provisions of J 4.1.A.2(a) of the ULAS tariff.

Concerning the provision of DTS service, the Commission finds no conflict between its decision to assess a portion of the

NTS costs of access for the intrastate use of such facilities and the FCC decision to preempt inconsistent state regulation of technical standards, market entry conditions, and rates and tariff regulations of all carriers using DTS facilities, as stated in Digital Termination Systems, 86 F.C.C. 2d 360 (1981), at 389-390. The Commission is imposing no such regulation of DTS or CCSA, but rather is requiring a payment for potential use of local NTS facilities caused by the intrastate use of any such DTS facilities. No charge is being imposed on any specific channel included in the count under the ULAS tariff.

4) Sprint's and MCI's proposal to eliminate intermediate switching facilities from the definition of Extreme Points for the purpose of counting channel terminations does not have merit. To the extent that a given amount of revenue will be collected under the ULAS tariff, elimination of intermediate switching would result in a larger per-channel charge for each interexchange carrier. Therefore no substantial reallocation of charges would result from such action. Since intermediate switches are capable of both adding and deleting traffic from trunk groups, the channel count would become more difficult to administer, if the definition of Extreme Points excluded intermediate switches.

Finally, Sprint's and MCI's argument that the inclusion of intermediate switches in determining channel count will encourage inefficient network design was not substantiated by the evidence. However, even if this were a possibility, it would only be true to the extent that the ULAS tariff charges are a major influence in network design. Such charges would normally be one of many

factors which might influence network design, and there is simply no evidence that this one factor is so important as to promote inefficient network design.

5) As currently proposed, the responsibility for channel charge payments rests with the carrier actually operating the facility. The Commission is aware of no legitimate reason at this time to place the burden of payment upon the owner of the facility as opposed to the operator, as long as ATTCOM is required to render reports of the number of channels leased to other carriers. Once leased, a facility becomes the operational responsibility of the lessee, who is in the position of determining the use and capacity of the leased facility. Therefore it is reasonable that the lessee, which controls the facility, should be responsible for ULAS tariff charges associated with that facility.

In today's environment, the situation generally is that ATTCOM leases facilities to other interexchange carriers. By requiring ATTCOM to render reports to the Pool Administrator of the number of channels it has leased to other carriers, the problem of bypass can also be somewhat mitigated. Since channel charges would then be generally assessed on those facilities, and made the responsibility of the lessee, the incentive to bypass to avoid ULAS tariff charges should be minimized.

Finally, some of the parties have expressed concern over the possibility that WATS resellers and other carriers who only provide interstate services could become subject to the ULAS tariff. The Commission does not intend at this time that pure

WATS resellers be subject to this tariff. Additionally, those carriers who only provide interstate services and who are therefore not certificated in Kentucky to provide intrastate, inter-LATA services will be exempted from the ULAS tariff. This should resolve any administrative concerns which have been expressed by the parties.

6) No reasonable argument was presented to support the concept of excluding intraLATA minutes of use from the intrastate allocation factor. To allow this would be directly contradictory to the Commission's actions in Administrative Case No. 273, wherein intraLATA competition was prohibited for the present and also wherein the Commission has been actively working to minimize intraLATA traffic, whether incidental or otherwise. To allow intraLATA traffic to reduce a carrier's intrastate allocation factor, with a resulting decrease in ULAS traffic payments, would be totally unfair to all carriers. Since intraLATA traffic is expected to be kept to a minimum through customer education and advertising, inclusion of intraLATA traffic should not significantly affect any individual carrier's channel count. Therefore, intraLATA minutes of use will be counted toward each carrier's intrastate allocation factor.

7) Regarding the late penalty factor applied to late payments, which amounts to approximately 24 percent, compounded on an annual basis, the Commission is of the opinion that it is both within the legal limit in Kentucky on interest charges and is also consistent with the late payment penalty charges in other access service tariffs.

FINDINGS AND ORDERS

The Commission, having considered this matter and being advised, is of the opinion and finds that:

1) SCB's current proposed ULAS tariff, as filed with the Commission on April 9, 1985, is reasonable and should be approved effective on and after June 1, 1985;

2) The various proposals for change to the ULAS tariff as presented at the public hearing on April 9, 1985, should be denied;

3) Parties desiring to file testimony and/or proposed forms of tariffs relative to BHMC should file that information with the Commission not later than August 1, 1985, for consideration as a further phase of this proceeding.

4) ATTCOM should be required to file reports with the Pool Administrator relative to the number of channels leased to other carriers, as the Pool Administrator finds necessary to administer the ULAS tariff; and

5) Cincinnati Bell should refile its ULAS tariff to reflect the modifications agreed to in the settlement conference and as ordered by the Commission in this proceeding.

IT IS THEREFORE ORDERED that the ULAS tariff as filed by SCB on April 9, 1985, be and it hereby is approved effective on and after June 1, 1985.

IT IS FURTHER ORDERED that the proposals for change to the ULAS tariff presented at the April 9, 1985, hearing be and they hereby are denied.

IT IS FURTHER ORDERED that parties desiring to file testimony and/or proposed forms of tariffs relative to the BHMC concept shall file such information with the Commission, and parties of record, not later than August 1, 1985, and that this information shall be considered as a further phase of this proceeding.

IT IS FURTHER ORDERED that ATTCOM shall file reports with the Pool Administrator relative to the number of channels leased to other carriers, as the Pool Administrator finds necessary to administer the ULAS tariff.

IT IS FURTHER ORDERED that Cincinnati Bell shall refile its ULAS tariff to reflect the modifications agreed to in the settlement conference and as ordered by the Commission in this proceeding.

Done at Frankfort, Kentucky, this 1st day of May, 1985.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary