

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO LOCAL RESALE OF )  
EXCHANGE SERVICES BY STS PROVIDERS ) ADMINISTRATIVE  
AND COCOT PROVIDERS ) CASE NO. 293

O R D E R

On January 15, 1987, Mr. Pay Phone of Lexington, Inc., ("Mr. Pay Phone") filed a Motion to clarify the April 16, 1986, Order. Mr. Pay Phone asked that the effective date of the tariff reduction be April 16, and that Mr. Pay Phone be reimbursed for all excess money paid to local exchange companies in excess of a business, flat rate since the April 16 Order.

On January 30, 1987, South Central Bell Telephone Company ("SCB") filed its response to the Motion. SCB claims that conforming tariffs were filed on December 11, 1986, 30 days after the rehearing Order. Also, SCB stated it would review Customer Owned Coin Operated Telephone ("COCOT") providers' tariffs after December 11, 1986, to ensure that the Order had been properly implemented.

On February 18, 1987, General Telephone Company of the South ("GenTel") filed its response to the Motion. GenTel contends that the Commission stated in the November 11, 1986, Order for the first time that COCOTs were to be charged the business individual line rates.

After considering these Motions, and being advised, the Commission states that the effective date of the Shared Tenant Services ("STS") and COCOT tariffs is November 11, 1986, for the following reasons:

In the April 16 Order the Commission determined that business rates were appropriate for STS and COCOT service. It stated that it would "reject measured service rates for COCOT Service"<sup>1</sup> and also the Commission ordered that "STS and COCOT service shall be classified as business service."<sup>2</sup>

On May 16, 1986, the Commission issued an Order suspending ordering paragraph 8 of the April 16, 1986, Order until the Commission could rule on an application for rehearing. The paragraph which was suspended reads:

South Central Bell, Cincinnati Bell, and General shall file revised COCOT Service tariffs conforming with the terms and conditions of this Order within 30 days of the date of this Order.<sup>3</sup>

On rehearing, in an Order dated November 11, 1986, the Commission opined that it would not modify its original Order concerning the applicability of local measured service to STS and COCOT providers. The Commission felt that the rehearing record failed to support modification and therefore, "[t]he Commission's April 16, 1986, Order is reaffirmed as to the decision that local measured service rates would not apply to STS and COCOT

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<sup>1</sup> Administrative Case No. 293, Order dated April 16, 1986, p. 18.

<sup>2</sup> Ibid., p. 50.

<sup>3</sup> Ibid., p. 49.

providers."<sup>4</sup> Further, the Order stated that the Commission will "require that COCOTs be connected to the exchange network under applicable business individual line rates."<sup>5</sup>

Thus, the applicable rate for COCOT and STS providers was established as a business line rate by the April 16 Order. The Commission further specified in the November 11 Order that the type of business line rate to be charged was individual.

KRS 278.160(2) states that "[n]o utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules." This statute prohibits companies from charging rates other than those approved by the Commission. The intent of this type of restriction was explained in City of Cleveland, Ohio v. Federal Power Com'n., 525 F.2d 845 (D.C. Cir. 1976). That Court held that the prohibition against charging rates other than those in filed schedules is based on:

[P]reservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant.

The Commission's decision to implement the rate specified in the November 11 Order violates neither of these reasons for the prohibition. Also, those companies which requested rehearing, SCB, Cincinnati Bell and GenTel, should not be permitted to

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<sup>4</sup> Administrative Case No. 293, Order dated November 11, 1986, p. 11, Ordering paragraph 2.

<sup>5</sup> *Ibid.*, p. 7.

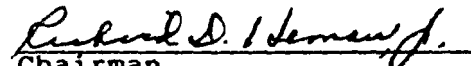
unduly benefit by the time lapse mandated by rehearing, where the Commission reaffirmed its Order.


Because the decision to charge STS and COCOT providers a business line rate was reaffirmed and the stay for filing the tariffs was effective only until the rehearing application could be ruled upon, the rates specified in the November 11 Order were effective upon the entering of the Order. Thus, once the Commission established the business individual rate, it became the legal rate and should have been charged immediately.

IT IS THEREFORE AFFIRMED by this Order that the effective date for the STS and COCOT tariffs is November 11, 1986.

Done at Frankfort, Kentucky, this 8th day of May, 1987.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

Executive Director