

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY FOR AT&T SOUTH, INC.,)
TO PROVIDE (1) SPECIALIZED CUSTOMER)
PREMISES EQUIPMENT FOR THE HEARING)
IMPAIRED AND OTHER DISABLED PERSONS,)
AND (2) CUSTOMER PREMISES EQUIPMENT)
USED IN CONNECTION WITH NATIONAL)
SECURITY AND EMERGENCY PREPAREDNESS) CASE NO. 8970
AND)
PETITION OF AT&T SOUTH, INC. TO)
DETARIFF SPECIALIZED TERMINAL)
EQUIPMENT FOR DISABLED CUSTOMERS)

O R D E R

INTRODUCTION

On December 29, 1983, AT&T South, Inc., ("AT&T South") filed a request for interim authority to provide (1) specialized customer premises equipment ("SCPE") used by the hearing impaired and other disabled persons, and (2) customer premises equipment used in connection with national security and emergency preparedness ("NSEP CPE"), effective January 1, 1984. On January 25, 1984, AT&T South filed correspondence to withdraw its request for interim authority to provide NSEP CPE. On June 13, 1984, AT&T South filed a petition to detariff SCPE.

On August 9, 1984, the Commission advised AT&T South that it should file an application for a certificate of public convenience and necessity. In addition, the Commission requested that AT&T South file a legal memorandum on certain issues. On December 13,

1984, AT&T South filed a legal memorandum on the issues specified by the Commission.

On January 17, 1985, the Commission, on its own motion, granted full intervention in this case to William B. Rogers, Executive Director, the Kentucky Commission on the Deaf and Hearing Impaired. On January 18, 1985, an informal conference was held, involving AT&T South, the Commission staff, and other interested parties. On March 14, 1985, AT&T South filed its response to a question raised by staff at the informal conference, concerning AT&T South's status as a public utility subject to regulation under Kentucky law.

On April 23, 1986, the Commission released an Order finding AT&T South to be a public utility subject to regulation under Kentucky law. In addition, the Commission deferred action on AT&T South's petition to detariff SCPE, pending the outcome of a generic investigation concerning the detariffing of SCPE.¹

On July 18, 1986, AT&T South requested another informal conference with the Commission staff to discuss the relationship of this case with the Commission's generic investigation concerning the detariffing of SCPE in Administrative Case No. 269. On October 10, 1986, AT&T South's motion for an informal conference was denied.

¹ Administrative Case No. 269, The Sale and Detariffing of Embedded Customer Premises Equipment, Phase 3.

No public hearing has been held in this case, as no party has requested a public hearing and, in the opinion of the Commission, a public hearing is not necessary.

DISCUSSION

On January 1, 1984, the American Telephone and Telegraph Company ("AT&T") divested South Central Bell Telephone Company ("SCB") and the other Bell Operating Companies ("BOCs"), as required by the Modification of Final Judgment ("MFJ").² Among other things, the MFJ and related Plan of Reorganization required the transfer of customer premises equipment ("CPE") provided by the BOCs to AT&T on January 1, 1984.

Prior to the MFJ, the Federal Communications Commission ("FCC") preempted state regulatory authority and ordered the detariffing of new CPE purchased after January 1, 1983.³ Furthermore, the FCC required that new CPE provided by the Bell System after January 1, 1983, be provided through a separate subsidiary of AT&T not engaged in common carriage. Under the terms of the FCC's decision, the BOCs ceased to provide new CPE after January 1, 1983, and new CPE provided by the Bell System after January 1, 1983, was provided through a separate subsidiary of AT&T, American Bell, Inc., which was the predecessor of American Telephone and Telegraph Information Systems, Inc.,

² The United States District Court for the District of Columbia, Civil Action No. 82-0192, the United States of America vs. the Western Electric Company, Inc., and the American Telephone and Telegraph Company.

³ FCC Docket No. 20828, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry).

("ATTIS"). However, also under the terms of the FCC's decision, the BOCs continued to provide embedded CPE purchased before January 1, 1983, under tariff regulation, until January 1, 1984, when embedded CPE provided by the BOCs was detariffed and transferred to ATTIS, with certain exceptions.

Subsequent to the MFJ, the FCC again preempted state regulatory authority and ordered the detariffing of embedded CPE provided by the BOCs coincident with divestiture on January 1, 1984, except SCPE and NSEP CPE.⁴ In the case of SCPE, as a result of its analysis of the Telecommunications for the Disabled Act of 1982,⁵ the FCC deferred decisions concerning the regulation of SCPE to state regulatory commissions.⁶ In the case of NSEP CPE, after several waivers and extensions of time, the FCC ordered the detariffing of embedded NSEP CPE provided by the BOCs, effective on January 1, 1985.⁷

In order to implement the requirements of the MFJ and FCC decisions, embedded CPE provided by the BOCs was detariffed and transferred to ATTIS on January 1, 1984, except SCPE and NSEP CPE. Embedded SCPE and NSEP CPE provided by SCB that remained subject to tariff regulation after January 1, 1984, was

⁴ Common Carrier Docket No. 81-893, Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry).

⁵ 47 U.S.C. Section 610(g).

⁶ Common Carrier Docket No. 83-427, Access to Telecommunications Equipment by the Hearing Impaired and other Disabled Persons.

⁷ Common Carrier Docket No. 81-893.

transferred to AT&T South. SCB formed AT&T South as a separate subsidiary to receive embedded SCPE and NSEP CPE assets that remained subject to tariff regulation after January 1, 1984. On January 1, 1984, SCB transferred its embedded SCPE and NSEP CPE assets to AT&T South and transferred stock ownership of AT&T South to AT&T.⁸

The issues in this case hinge on detariffing decisions involving embedded SCPE and NSEP CPE. First, in the case of embedded SCPE, AT&T South petitioned to detariff SCPE on June 13, 1984. On January 23, 1987, the Commission ordered the detariffing of embedded SCPE no later than December 31, 1987, and allowed detariffing before December 31, 1987, upon 30 days notice.⁹ Therefore, in the opinion of the Commission, AT&T South's petition to detariff SCPE should be granted, effective on the date of this Order.

Secondly, insofar as the FCC preempted state regulatory authority and ordered the detariffing of embedded NSEP CPE provided by the BOCs, effective January 1, 1985, a Commission decision concerning AT&T South's authority to provide NSEP CPE

⁸ Other BOCs formed similar separate subsidiaries to receive embedded SCPE and NSEP CPE assets that remained subject to tariff regulation after January 1, 1984, and transferred stock ownership of these separate subsidiaries to AT&T on January 1, 1984.

⁹ Administrative Case No. 269, Phase 3.

would be moot at this time. Therefore, although AT&T South's withdrawal of its request for authority to provide NSEP CPE was premature at the time of its filing, no ruling on this issue is now necessary.

Lastly, since the Commission will grant AT&T South's petition to detariff SCPE, effective on the date of this Order, and since embedded NSEP CPE was detariffed on January 1, 1985, AT&T South will have no assets subject to regulation. Therefore, in the opinion of the Commission, its finding of April 23, 1986, that AT&T South is a public utility subject to regulation under Kentucky law should be vacated and this case should be dismissed, as no certificate of public convenience and necessity is needed.

FINDINGS AND ORDERS

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. A public hearing is not necessary in this case.
2. AT&T South's petition to detariff SCPE should be granted, effective on the date of this Order.
3. The Commission's finding of April 23, 1986, that AT&T South is a public utility subject to regulation under Kentucky law should be vacated.
4. This case should be dismissed, as no certificate of public convenience and necessity is needed.

IT IS THEREFORE ORDERED that:

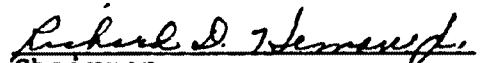
1. A public hearing is not necessary in this case.
2. AT&T South's petition to detariff SCPE be and it hereby is granted, effective on the date of this Order.

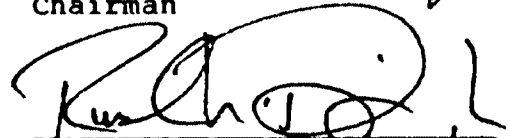
3. The Commission's finding of April 23, 1986, that AT&T South is a public utility subject to regulation under Kentucky law be and it hereby is vacated.

4. This case be and it hereby is dismissed, as no certificate of public convenience and necessity is needed.

Done at Frankfort, Kentucky, this 28th day of January, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director