COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY TELEPHONE CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE RESALE OF TELECOMMUNICATION SERVICES AND FACILITIES WITHIN KENTUCKY	)	Case No. 10319

O R D E R

On July 18, 1988, Kentucky Telephone Corporation ("Kentucky Telephone") filed its application for a Certificate of Public Convenience and Necessity to provide resale of telecommunication services within Kentucky.

On August 1, 1988, AmeriCall Systems of Louisville ("AmeriCall") filed a motion for full intervention in the proceeding by reason of it being a potential competitor of Kentucky Telephone. This motion was granted by Order dated August 5, 1988.

On September 2, 1988, South Central Bell Telephone Company ("South Central Bell") also filed a motion for full intervention. In its motion, it indicated its belief that Kentucky Telephone would be completing intraLATA[1] calls which should be handled by South Central Bell or some other local exchange carrier. In addition, South Central Bell believed that there are other public interest concerns raised by the filing which should be examined

[1] Local Access and Transport Area.

by the Commission. South Central Bell was granted full intervention in this case by Order dated September 8, 1988.

On August 15, 1988, AmeriCall filed a motion for a procedural schedule.

On September 8, 1988, the Commission issued an Order requesting further information from Kentucky Telephone and also provided a procedural schedule in response to AmeriCall's request. Kentucky Telephone filed its response on September 20, 1988.

On September 16, 1988, AmeriCall requested an extension of time in which to file its information requests to Kentucky Telephone. Kentucky Telephone filed a motion in opposition to AmeriCall's motion on the basis that it was untimely and that AmeriCall's information requests were not germane to the proceeding or were duplicative of information requested by the Commission. The Commission granted AmeriCall's motion because in the opinion of the Commission, the granting of the motion was unlikely to prejudice Kentucky Telephone. Kentucky Telephone responded to AmeriCall's information request on September 29, 1988.

On September 29, 1988, an informal conference was held to discuss the application. All parties were represented and members of the Commission Staff were present. A memorandum summarizing the discussions at this conference was made a part of the record, after allowing the parties the opportunity to offer corrections. Information requested at the conference was filed on October 13, 1988.

The Commission is of the opinion that it has allowed sufficient opportunity for all parties to state their concerns and that as a hearing has not been requested, none is required.

Kentucky Telephone intends to provide the resale of long distance telephone service to business and residential subscribers by reselling WATS[2] and WATS-like services obtained from South Central Bell and MCI Telecommunications Corporation ("MCI"). Although there does not seem to be an industry standard definition of a WATS-like service, the Commission considers this to be a service which has reduced rates for bulk traffic, typically rated on the basis of hours rather than minutes. Kentucky Telephone believes that a considerable savings could result from its resale of WATS/WATS-like services, because individual customers may not have sufficient traffic in order to take advantage of volume discounts. Kentucky Telephone intends to aggregate traffic which would enable it to qualify for volume discounts and presumably pass along a portion of the savings to its customers.

Kentucky Telephone proposes to lease switching capacity from TMC of Louisville ("TMC"), and has indicated that this switch will be electronically partitioned in order to segregate Kentucky Telephone's traffic from TMC's, thereby avoiding the sharing of transport services. The services that Kentucky Telephone proposes to resell are South Central Bell WATS for intraLATA traffic and MCI's Prism I service for the interLATA market.

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[2] Wide Area Telecommunications Service.

Kentucky Telephone also intends to order access services, specifically Feature Groups A and D, from South Central Bell. Ordinarily, traffic originating via Feature Group A access cannot be jurisdictionally identified, since it lacks the automatic number identification feature of Feature Groups C and D.[3] Kentucky Telephone has indicated that Feature Group A access will only be utilized in Louisville and that since all calls originating on Feature Group A must be from Louisville, this information combined with the terminating telephone number is sufficient to enable the switch to route the traffic to the appropriate carrier.

The ownership and management of Kentucky Telephone is essentially the same[4] as that of Independent Telephone Company, Inc. ("Independent"), which was certified by the Commission as a WATS reseller in 1984. In Case No. 10158, The Joint Application of Kentucky Telephone Corporation and Independent Telephone Company, Inc., to Transfer the Assets of Independent Telephone Company, Inc., to Kentucky Telephone Corporation, the Commission found that the application did not constitute a transfer of control and the case was dismissed. However, because the management of Kentucky Telephone is essentially the same as Independent's, the Commission is of the opinion that it is

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[3] In order to determine the jurisdictional nature of a call, it is necessary to know the points of origination and termination.

[4] Thomas E. Terwilliger is currently the sole shareholder of Kentucky Telephone. Mr. Terwilliger was the president and majority shareholder of Independent. He has, or had, management control of both utilities.

appropriate to consider Independent's performance record when evaluating Kentucky Telephone's application.

In Case No. 9703, AT&T Communications of the South Central States, Inc., vs. Independent Telephone Company, Inc., AT&T Communications of the South Central States, Inc. ("AT&T"), filed a complaint against Independent on the basis of its belief that Independent was unlawfully engaged in the resale of intrastate foreign exchange circuits provided by AT&T. Independent admitted that it was reselling foreign exchange services, but denied that this practice was unlawful. Prior to the Commission's ruling in that case, the Commission was notified that Independent had ceased its business operations because of the termination of interLATA services by AT&T. AT&T had alleged that Independent had failed to pay some outstanding bills for foreign exchange service. Although Independent had ceased its operations, the Commission determined that the public interest would best be served by a ruling on this controversy, and found that the resale of foreign exchange services had not been approved and was in violation of AT&T's tariffs. Independent was directed, should it resume normal business operations, to refrain from the resale of foreign exchange services. This directive applies to Kentucky Telephone, as it does to all resellers.

In Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky, the Commission established a two-tiered regulatory structure for long distance carriers. Dominant carriers are subject to full regulation by the Commission, while nondominant carriers are subject to an abbreviated form of regulation. However, nondominant carriers were required to provide 30 days notice to the Commission, and proof that its customers were notified, prior to discontinuing service. It is recognized that Independent ceased its operations because of the termination of service by AT&T, and that AT&T's allegation of unpaid bills is the subject of a dispute between AT&T and Independent. Nevertheless, the Commission is of the opinion that a utility's obligations to provide reasonable service to its customers should transcend other considerations and that Independent should have taken any steps necessary to avoid being unable to provide service to its customers. As the dispute between AT&T and Independent has yet to be resolved, the Commission is of the opinion that it would be inappropriate for this dispute to be considered as an adverse reflection on Kentucky Telephone's management abilities. However, Kentucky Telephone is put on notice that it has the obligation to provide reasonable service to its customers and that it should avoid unnecessary service interruptions.

Kentucky Telephone is also cautioned that the Commission's authorization to provide resold telecommunications services does not allow Kentucky Telephone to ignore any of the provisions of the tariffs of its underlying carriers, particularly those pertaining to resale restrictions and disconnection for nonpayment.

Kentucky Telephone is also expected to provide intraLATA service in a manner that uses only authorized intraLATA services and only those services that have been authorized for resale. This is of particular importance because Kentucky Telephone intends to resell MCI's Prism I service, which has not been approved for intraLATA use. In Case No. 9928, MCI's Tariff Filing to Establish Prism Plus, Prism I, and Prism II Services, the Commission required MCI to implement procedures to measure and report interstate and intrastate jurisdictional usage and interLATA and intraLATA usage, and to inform prospective customers that the use of this service to complete intraLATA calls is not authorized by this Commission. MCI was also informed that the Commission will consider appropriate means for compensating local exchange carriers for unauthorized intraLATA traffic that results from this tariff. It was expected that intraLATA usage would be incidental; however, as a reseller of intrastate services, it is possible that Kentucky Telephone's usage characteristics could differ substantially from other users of the service. Therefore, Kentucky Telephone is expected to neither make it impossible for MCI to comply with the Commission's requirements, nor to cause distortions in MCI's usage reports. The call screening method described in this Order is a reasonable effort to insure this.

Kentucky Telephone has supplied to the Commission, in the form of an executed financing agreement, evidence of its ability to sustain operations as required in Administrative Case No. 273. The aforementioned financing agreement has been accorded confidential treatment.

Findings and Orders

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

1. Kentucky Telephone has the technical, financial, and managerial abilities to provide reasonable service.

2. Kentucky Telephone should be granted authority to resell intrastate telecommunications services to the public.

3. Kentucky Telephone should provide intraLATA service in a manner that uses only authorized intraLATA services and only those services that are authorized for resale.

4. Kentucky Telephone's proposed rates and tariffs are reasonable and should be approved.

IT IS THEREFORE ORDERED that:

1. Kentucky Telephone be and hereby is authorized to resell intrastate telecommunications services to the public.

2. Kentucky Telephone shall provide intraLATA service in a manner that uses only authorized intraLATA services and only those services that are authorized for resale.

3. Within 30 days of the date of this Order, Kentucky Telephone shall file its tariff sheets in accordance with 807 KAR 5:001.

Done at Frankfort, Kentucky this 22nd day of December, 1988.

PUBLIC SERVICE COMMISSION

Chairman

Robert M. Davis

Vice Chairman

Squire N. Williams, Jr.

Commissioner

ATTEST:

Executive Director