

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LDD, INC. FOR THE)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO OPERATE) CASE NO. 89-017
AS A RESELLER OF TELECOMMUNICATIONS)
SERVICES WITHIN THE COMMONWEALTH OF)
KENTUCKY)

O R D E R

On January 23, 1989, LDD, Inc. ("LDD") filed an application with the Commission seeking a Certificate of Public Convenience and Necessity to operate as a reseller of telecommunications services in the Commonwealth of Kentucky.

The application stated that LDD proposed to offer resold intraLATA and intrastate services through a digital microwave transmission system and through facilities leased from other carriers.

The Commission requested additional information by Orders dated March 8, 1989 and May 12, 1989. The responses were filed on March 27, 1989 and May 18, 1989, respectively.

On June 7, 1989, a telephone conference was held among the Commission staff, LDD, and the only intervenor in this case, South Central Bell Telephone Company. During this telephone conference, Staff advised LDD that the Commission's policies regarding facilities-based carriers, and inter- and intraLATA authority,

were announced in Administrative Case Nos. 261 and 273.¹ The Commission staff informed LDD that since LDD owns and uses its microwave facilities in Paducah, Kentucky, to carry its traffic, LDD is a facilities-based carrier, so it cannot be a WATS² reseller as requested. Furthermore, LDD was informed that because of its facilities-based status, it may only seek interLATA authority, because its request for authority to carry intraLATA traffic within the Owensboro LATA is contrary to current Commission policy.

On June 29, 1989, LDD filed a motion to amend its application. The amended application asserts that LDD will not utilize the microwave transmission facilities it owns in Paducah, Kentucky, and that all calls will be transported via transmission facilities leased from certified carriers under the appropriate tariffs. However, for the reasons discussed below the Commission does not believe that the assertions contained in the amended application are sufficient to allow LDD to be certificated as a WATS reseller.

The Commission is of the opinion that under LDD's current corporate structure it still is not appropriate to certificate it as a WATS reseller.

¹ Administrative Case No. 261, An Inquiry into the Resale of Intrastate Wide Area Telecommunications Service; Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and Related services Markets in Kentucky.

² Wide Area Telecommunications Service.

In Case No. 9830,³ the Commission certificated Long Distance Telephone Savers, Inc. ("LDTS") as a WATS reseller even though it was a wholly-owned subsidiary of SouthernNet Services, Inc. ("SouthernNet"), a common carrier which owns transmission facilities and provides switched long distance services in southeastern states. However, LDTS does not own any facilities itself. Pursuant to the Commission Order, LDTS was required to transport all calls via transmission facilities leased from certified carriers under appropriate tariffs. To the extent that LDTS was to use the transmission facilities of SouthernNet, SouthernNet would have to first be granted a certificate of public convenience and necessity by the Commission to provide interLATA telecommunications services to the public and be required to file tariffs. SouthernNet would then be regulated by the Commission and required to make its transmission facilities available to other WATS resellers at equal prices.

Similarly in Case No. 9066,⁴ Cincinnati Bell Long Distance, Inc. ("CBLD") was certificated to be a WATS reseller even though it was an affiliate of a telecommunications company that owned transmission facilities. CBLD did not have any facilities of its own. Its affiliate that does own transmission facilities is a

³ Case No. 9830, The Application of Long Distance Telephone Savers, Inc. for a Certificate of Public Convenience and Necessity to Provide Resale of Telecommunications Services and Operation of Facilities within Kentucky.

⁴ Case No. 9066, The Application of Cincinnati Bell Long Distance, Inc., 125 E. Court Street, 10th Floor, Cincinnati, Ohio 45202, for a Certificate of Public Convenience and Necessity to provide Intrastate Toll Telephone Service within the Commonwealth of Kentucky.

jurisdictional utility and offers its transmission facilities to other resellers under tariff and at the same prices that it charges CBLD.

Since LDD owns microwave transmission facilities, LDD cannot be classified as a WATS reseller. Furthermore, since LDD cannot be classified as a WATS reseller, it cannot be granted authority to offer resold intraLATA, intrastate services to the public. However, if LDD ~~was~~^{has} to form a subsidiary that did not own any microwave or other transmission facilities, LDD's subsidiary could seek authority to be certificated as a WATS reseller. LDD's subsidiary could use the transmission facilities of LDD at LDD's tariffed price which would be made available to other resellers.

The Commission is of the opinion that LDD should be granted a certificate of public convenience and necessity to provide interLATA telecommunications services to the public. This grant should be conditioned upon LDD's compliance with Orders in Administrative Case No. 273 and Case No. 8838.⁵ LDD is classified as a facilities-based, non-dominant, interLATA carrier.

IT IS THEREFORE ORDERED that:

1. LDD's request to operate as a reseller of telecommunications services is hereby denied without prejudice. LDD may refile in accordance with the discussions in this Order at any time in the future.

⁵ Case No. 8838, An Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements for Telephone Utilities Pursuant to Changes to be Effective January 1, 1984, as they apply to InterLATA Carriers.

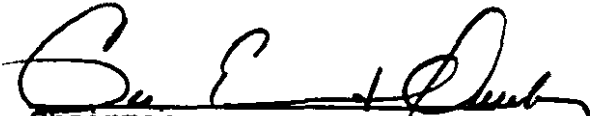
2. LDD's request to provide intrastate, intraLATA services to residents of Kentucky is hereby denied.


3. LDD be and it hereby is granted a certificate of public convenience and necessity to provide intrastate, interLATA telecommunications services to the public as a facilities-based, non-dominant interLATA carrier. LDD shall comply with the provisions of the May 25, 1984 and October 26, 1984 Orders in Administrative Case No. 273. LDD shall also comply with the November 19, 1984 Order in Case No. 8838.

4. Within 30 days of the date of this Order, LDD shall file its tariff sheets in accordance with 807 KAR 5:001 and the specific Orders herein.

Done at Frankfort, Kentucky, this 28th day of July, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director