COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| 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 I |
| and | | |
| DETARIFFING BILLING AND COLLECTION SERVICES | ) | ADMINISTRATIVE CASE NO. 306 |

O R D E R

The above-styled matter is before the Commission on rehearing. The Commission is reconsidering ordering paragraph 2, ordering paragraph 6, and ordering paragraph 7 of its Order dated March 1, 1988. Also reconsidered is the discussion related to these ordering paragraphs. Ordering paragraph 2 of the March 1, 1988 Order provides as follows:

> An LEC should be permitted to disconnect local service for nonpayment of Kentucky jurisdictional carriers' interstate and intrastate toll and other related services when the LEC also provides the intrastate billing and collection service for the customer to be disconnected.

Ordering paragraph 6 states that:

> No LEC should collect for service offerings on behalf of any utility for service offered in Kentucky for any rate or charge not contained in a tariff, or special contract, approved by the Commission. Moreover, no LEC should collect for service offerings on behalf of any utility for any interstate rate or charge not tariffed by the FCC. If LECs' tariffs need modification to reflect this decision, tariffs should be filed within 20 days of the date of this Order.

Ordering paragraph 7 states that:

> Local disconnect should not be permitted for non-utility service, including Information Access Service. If LECs' tariffs need modification to reflect this decision, tariffs should be filed within 20 days of the date of this Order.

PROCEDURAL BACKGROUND OF REHEARING

Initially, rehearing of the March 1, 1988 Order was sought by South Central Bell Telephone Company ("South Central Bell") and Cincinnati Bell Telephone Company ("Cincinnati Bell") on March 21, 1988. American Operator Services, Inc. ("AOSI") sought intervention in the matter, as did Operator Assistance Network ("OAN"). On April 8, 1988, the Commission granted the motions of South Central Bell and Cincinnati Bell for rehearing. At the same time, ordering paragraph 6 of the March 1, 1988 Order was suspended, pending rehearing. AOSI was granted intervention by the same Order, and OAN was granted intervention on May 18, 1988. On May 5, 1988, International Telecharge, Inc. ("ITI") filed a motion to intervene. ITI's motion was granted on May 19, 1988. A procedural schedule was established on June 2, 1988 which provided for discovery and prefiled testimony. On July 1, 1988, VeriCall, Inc. ("VeriCall") filed a motion for full intervention. VeriCall's motion was granted on July 6, 1988.

Prefiled testimony was filed by representatives of the following parties: OAN, AOSI, South Central Bell, Cincinnati Bell, and GTE South Incorporated ("GTE").

Testimony was provided at the hearing by South Central Bell, Cincinnati Bell, GTE, OAN, and AOSI. OAN filed a post-hearing

brief. AOSI filed a letter setting forth the position of AOSI with respect to the rehearing issues.

## ISSUES PRESENTED

The Commission is presented with four main issues:

1. Should the Commission modify or delete the requirement that no LEC should collect for service offerings on behalf of any utility for any interstate rate or charge not tariffed by the FCC?

2. Should the Commission modify or delete the requirement imposed in the March 1, 1988 Order that no LEC should collect for service offerings on behalf of any utility for service offered in Kentucky for any rate or charge not contained in a tariff, or special contract, approved by the Commission?

3. Should the Commission's decision to permit disconnection of local service for nonpayment of Kentucky jurisdictional carriers' interstate and intrastate toll and other related services be clarified to include certain non-tariffed services, such as interstate services of a non-dominant carrier or a cellular provider?

4. Should the Commission permit LECs to provide billing and collection services to IXCs who obtain such services through intermediaries?

The first two issues have been raised by all parties who sought rehearing, and by all intervening parties since the March 1, 1988 Order. The third issue was raised primarily by Cincinnati Bell. The fourth issue is somewhat peculiar to OAN.

## ANALYSIS AND DETERMINATIONS

### General Discussion

All discussion of billing and collection services within this Order is meant to relate only to billing and collection services provided by LECs, to IXCs or their billing intermediaries, for IXC messages. For purposes of this Order, an IXC is defined to include carriers such as AT&T, and the other common carriers, as well as WATS resellers and AOS providers.

### Regulation of LEC Billing and Collection Services Applicable to Interstate Messages

The most difficult issues before the Commission relate to billing for both intrastate and interstate IXC messages. The LECs generally object to the notion that they must serve as watchdogs for the Commission. As the ultimate billing agents, LECs were to bear responsibility for ensuring that the Commission Orders were followed by the carriers.

In reviewing the issues associated with billing for interstate IXC messages, the Commission has considered whether ordering paragraph 6 placed unlawful burdens on interstate commerce or otherwise infringed on FCC jurisdiction and, if lawful, whether the restrictions are reasonable and appropriate. This Order first addresses the legal issue and then the reasonableness issue.

All LECs that have participated have suggested that ordering paragraph 6 of the March 1, 1988 Order may be unenforceable because the paragraph reaches billing and collection for certain interstate messages not subject to the jurisdiction of the

Commission. OAN suggests that the ordering paragraph is unenforceable because it aims at regulating billing and collection procedures, which have allegedly been preempted by Federal Communications Commission ("FCC") action, and infringes upon FCC jurisdiction over matters concerning interstate carriers. AOSI echoes OAN's argument. Both OAN and AOSI have cited two FCC rulemaking proceedings that arguably are implicated by the Commission's Order. In Detariffing of Billing and Collection Services, 102 F.C.C.2d 1150 (1986), the FCC found that billing and collection services are not communication services for the purposes of Title II Regulation. The FCC ordered that interstate billing and collection services be detariffed. In addition, the FCC preempted state rate regulation of interstate billing and collection services.

> State rate regulation of such billing and collection services is not required to protect interstate interexchange carriers and their customers from excessive billing and collection charges and might lead to excessive charges that would tend to frustrate the goals of the Communications Act. Therefore, we have decided to preclude such regulation.

Billing and Collection, 102 F.C.C.2d 1150, at paragraph 52 (emphasis supplied).

Clearly, in its billing and collection orders, the FCC preempted only state rate regulation of interstate billing and collection services. The FCC has not attempted to preempt state regulation of the range of interstate billing and collection services performed by LECs. The FCC has declined to invoke its ancillary Title I jurisdiction over billing and collection

services, which are financial and administrative services, rather than communication services.[1]

There is no conflict between the March 1, 1988 Order and prior FCC action, inasmuch as the Commission was not attempting to regulate rates for interstate billing and collection services. Therefore, the Commission sees no evidence that its action in the March 1, 1988 Order has been preempted by FCC action.

OAN and AOSI argue that a requirement that LECs collect only tariffed interstate charges is unenforceable for another reason. In the Competitive Common Carrier Services rulemaking, the FCC ruled that non-dominant IXCs are not required to file tariffs or seek certification for domestic interstate services. First Report and Order, 85 F.C.C.2d 1; see also Fifth Report and Order, 98 F.C.C.2d 1191. The Commission is aware that the FCC does not require that non-dominant IXCs file tariffs. Of course, the FCC permits such IXCs to file interstate tariffs. An FCC determination in its Sixth Report and Order of Competitive Common Carrier Services that non-dominant IXCs be forbidden from filing tariffs was reversed. MCI Telecommunications Corporation v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

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1 Billing and Collections, First Report and Order, 102 F.C.C.2d 1150, 1168-1169 ("[B]illing and collection services provided by local exchange carriers are not subject to regulation under Title II of the Act.") The FCC went on to find that the exercise of ancillary jurisdiction would require a record finding of need to protect or promote a statutory purpose. Id. The FCC made no such finding.

The Commission would have no concern with LECs providing billing and collection services for the interstate telecommunications services rates of IXCs, if the Commission were convinced that all such services were provided in a truly competitive marketplace. However, it is clear from the complaints received by this Commission and others, that significant numbers of ratepayers have been subjected to unfair practices and overcharged for interstate services. Although the FCC has issued a bulletin to consumers warning of possible "AOS" overcharging and encouraging consumers to file complaints, the FCC has declined to assert direct regulatory control over the rates of the various AOS companies.[2]

In conclusion, the Commission has the authority to restrict LEC billing and collection activities, regardless of the jurisdictional nature of the underlying messages, to ensure that only reasonable charges are collected by jurisdictional LECs. The above legal analysis leads the Commission to the conclusion that it could lawfully maintain the billing and collection restrictions specified in the March 1, 1988 Order.

In establishing the Order permitting billing and collection for tariffed interstate services only, the Commission was seeking a method to assure the ultimate customer that the amounts billed by the LEC were reasonable. The requirement did not ensure reasonableness, however, because the FCC does not require

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2 See FCC bulletin entitled "Consumer Information Bulletin Regarding Alternative Operator Services (AOS)" dated April 5, 1988 (No. 2428).

non-dominant carriers to file tariffs. Thus, the Commission's intentions in establishing the requirement were not met by the requirement and cannot be met if the Commission allows LECs to bill for interstate messages. The Commission finds interstate telecommunications of IXCs to be an appropriate use of the LECs billing and collection services. Therefore, the Commission will rescind ordering paragraph 6 of its March 1, 1988 Order and will permit LECs to bill and collect for interstate telecommunications services for IXCs whether tariffed at the FCC or not.

LECs may bill and collect intrastate messages from states other than Kentucky only when the IXC or its agent certifies to the LEC in writing that the rated messages comply with any applicable state tariffing or other regulatory requirement.

Regulation of LEC Billing and Collection Services Applicable to Intrastate Messages

Unlike the FCC, this Commission does require all jurisdictional carriers to file tariffs or special contracts for regulated services provided in Kentucky. Kentucky jurisdictional LECs may provide billing and collection services for Kentucky jurisdictional IXCs that have tariffs on file with the Commission. LECs should not provide billing and collection services for carriers operating without Commission approval. Moreover, LECs should not bill and collect for nontariffed services and products of regulated Kentucky jurisdictional IXCs unless permitted by application in a special case.[3]

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[3] In the past the Commission permitted LECs to bill and collect, but not disconnect for inside wire and certain CPE.

Cincinnati Bell specifically asked if it was permissible to bill and collect for cellular telephone services. Although not a part of traditional wire-line telephone service, in certain instances tariffs are on file which require the calling party to pay for the call to the cellular phone. Since the administrative cost of segregating these cellular charges probably outweighs the benefit, the Commission will permit billing and collection for interstate and intrastate cellular telephone messages.

Disconnection of Local Service

After reviewing the evidence in this record, the Commission finds that at present it will allow disconnection of local service for nonpayment of interstate IXC telecommunications charges as described above with the inclusion of interstate cellular telephone charges when the LEC also provides the intrastate billing and collection service for the customer. The Commission will also permit the disconnection of local service for nonpayment of tariffed Kentucky intrastate regulated telecommunications services and includes in that definition cellular telephone services when the LEC also provides the intrastate billing and collection service for the customer. The Commission will not permit local disconnection for nonpayment of nonregulated services billed for other regulated intrastate carriers.

Partial payments of telephone bills should first be applied toward the payment of services for which disconnection is permitted. Therefore, if the amount of the partial payment is sufficient to pay for these services, no disconnection will be permitted.

The Commission will, therefore, affirm ordering paragraph 2 of its March 1, 1988 Order as set forth above, pending the outcome of Administrative Case No. 334 issued the date of this Order. Ordering paragraph 7 of its March 1, 1988 Order remains in full force and effect and the Commission further clarifies the intended meaning by explaining that any service not described herein as being appropriate for disconnection is, in the Commission's opinion, for purposes of disconnection, a "non-utility" service.

IXCs Use of Billing Intermediaries

The least controversial issue involves the use of intermediaries, i.e. non-utility billing clearinghouses such as OAN, to serve as agents for various IXCs to transmit the IXCs billing data to LECs performing billing and collection services.

OAN provides billing and collection services to regional IXCs, including alternative operator service ("AOS") companies, and enhanced service providers.[4] OAN does not determine the rates to be billed for its customers' calls, but rather consolidates their call records and submits these records to the appropriate LEC for billing.

Since IXCs entering the operator service business must have the ability to utilize LEC billing services on a nationwide basis,

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[4] Shatteen prefiled testimony, (OAN), page 2. OAN supplied a list of its customers to the Commission. The list was granted confidential treatment. The Commission attempted to seek additional information from OAN's customers, in order to better understand the type of messages OAN might seek to bill. These requests went largely unanswered. Notably, not all of OAN's customers are IXCs. OAN's customers include a tandem switch manufacturer and two companies that sell automated call processing equipment, sometimes referred to as "AOS in a box."

the use of an intermediary with established billing and collection contracts presents an obvious economy. In addition, some IXCs may lack the message volume that would permit them to meet monthly billing minimums for certain LECs. The Commission agrees with OAN's explanation concerning the need for intermediaries; therefore, IXCs will be permitted to use agents such as OAN. However, since the Commission believes that LEC billing for IXCs is the issue at hand, the approval for IXC use of such agents for billing and collection services extends only so far as applicable to telecommunications messages. Therefore, LECs should take whatever steps are necessary to ensure that all messages transmitted by intermediaries such as OAN are indeed IXC messages.

Since South Central Bell, GTE and Cincinnati Bell do not provide direct billing services for non-IXC traffic aggregators, the Commission does not believe that such service should be provided for an agent of a traffic aggregator, e.g. a hotel or payphone-owner using automated equipment to process "calling card calls" and create call detail records. Billing and collection tariffs should apply only to IXCs authorized to provide service in Kentucky and not to such entities as hotels or private payphones.

Apparently, bills rendered by LECs reflect OAN as the "carrier" for which the charges are billed.[5] OAN's witness modified her prefiled testimony at the hearing to indicate that OAN would prefer that LEC bills reflect the underlying carrier's

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5 Shatteen prefiled testimony, page 3.

name, instead of, or in addition to, that of OAN.[6] The Commission believes that such a change is necessary to make ratepayer identification of charges reasonable. It will impose this requirement on the LECs immediately and will require all future telephone bills to so reflect the underlying carrier's name. A customer who deals with "XYZ long-distance company" is likely to be confused if the ultimate bill reflects OAN as the IXC. This requirement should eliminate concerns related to possible customer confusion arising from the underlying carrier name not appearing on customer bills.

Investigation of Local Disconnection

Although in this Order and its prior Orders, the Commission has established some customer protection from disconnection, we remain concerned that the potential for abuse of customers may outweigh the benefits of a disconnection feature. Since the time the Commission permitted local disconnection for IXC services in 1985, the telecommunications industry has changed dramatically and many of these changes and potential changes in the future have caused or may cause disconnection of local service in instances not contemplated in the Commission's original decision. The proliferation of new services and new service providers is staggering, and with each change, the basic premise that local service is somehow linked to the enhanced service becomes more tenuous. The Commission is constantly faced with the need for

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6 Transcript, page 51.

further clarification of which services qualify for disconnection and which do not.

When the Commission first established its policy, the question was whether failure to pay basic IXC toll charges should result in disconnection of local services. This decision was made prior to the emergence of alternative operator services and the 900 services. New services have obviously emerged and the problems of determining if disconnection is appropriate for nonpayment for these new services have expanded on an intrastate level. On the near horizon are additional information services and open network architecture which will increase these problems also. While some control of regulated services is afforded intrastate, the interstate is an open arena since FCC oversight is very limited.

The LECs argue that it is administratively burdensome to separate types of charges; yet, they want to keep the ability to disconnect. It is surprising to the Commission that one LEC in this proceeding actually chastised the Commission for attempting to have LECs monitor the charges presented on their bills.

The Commission reminds the LECs that they have accepted an obligation as a public utility to serve the public. Issuing faulty or unreasonably high bills to customers, especially given the power to disconnect phone service for nonpayment, is irresponsible.

The Commission believes that given the changes and potential changes in the industry, it is important to re-evaluate the decision to permit disconnection of local service. Therefore,

simultaneous with issuing this Order, the Commission is issuing an Order opening an administrative case to investigate this issue. Prior to a ruling in that docket, the LECs shall adhere to the Orders in this and other Commission Orders.

The Commission HEREBY ORDERS as follows:

1. Billing and collection services are to be provided only to IXCs, cellular telephone utilities, or their authorized agents.

2. The requirement in ordering paragraph 6 of the Commission's Order of March 1, 1988 that billing and collection for interstate messages be limited only to tariffed rates should be rescinded as described in this Order.

3. LECs are permitted to bill and collect intrastate messages from states other than Kentucky for IXCs only when the IXC or its agent certifies that the rated messages comply with any applicable state tariffing or other regulatory requirement.

4. Billing and collection services provided for Kentucky intrastate messages shall be provided only to utilities having tariffs on file with the Kentucky Public Service Commission and only for the tariffed services.

5. Ordering paragraph 2 of the March 1, 1988 Order is hereby affirmed.

6. Local service may be disconnected for nonpayment of IXC interstate messages or intrastate IXC tariffed services.

7. Disconnection shall not be permitted for any services not provided for herein including any nonregulated or nonutility services not described in this Order.

8. Partial payment of bills by a customer shall first be applied to all services for which disconnection is permitted.

9. IXCs may use billing and collection intermediaries for the processing of call records provided to LECs.

10. Billing and collection intermediaries shall certify in writing to each LEC with which they contract that all IXC messages transmitted to the LEC have been produced by IXCs.

11. An LEC's bill shall identify the actual carrier (IXC) of each call being billed as described herein.

12. Except for the modifications described herein, the Commission's Order of March 1, 1988 remains in full force and effect.

Done at Frankfort, Kentucky, this 30th day of April, 1990.

PUBLIC SERVICE COMMISSION

Chairman

Robert M. Davis
Vice Chairman

Commissioner

ATTEST:

Executive Director