

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PROVISION OF OPERATOR SERVICES)
BY AMERICALL SYSTEMS OF LOUISVILLE) CASE NO. 89-132

O R D E R

On May 22, 1989, the Commission issued a Order to Cease and Desist against AmeriCall Systems of Louisville ("AmeriCall") from providing operator-assisted services. After a hearing held on May 24, 1989, the Commission vacated its Cease and Desist Order but continued its investigation of AmeriCall's provision of operator services and investigation to determine whether the current tariff of AmeriCall relating to operator services should be modified. The Commission held an evidentiary hearing on June 26, 1989 and August 8, 1989. On October 27, 1989, AmeriCall filed its answers to various requests made at the hearing. Additional information responding to hearing requests was filed on December 20, 1989.

The concern is that AmeriCall is providing operator services on an intraLATA basis when to date the Commission has not allowed any telecommunications carriers, other than local exchange carriers ("LECs"), to provide intraLATA operator services. Furthermore, as a result of this investigation the Commission has become aware of facts regarding AmeriCall's provision of services that have never previously been revealed to the Commission or known by the Commission. Specifically, the Commission was never

previously aware that AmeriCall owned facilities and that AmeriCall has charged and may be charging unauthorized rates. Additionally, the evidence presented in this matter indicates that AmeriCall's affiliate corporation, AmeriCall Dial-0 Services, Inc. ("Dial-0") is a utility as defined by KRS 278.010.

IntraLATA Operator Services

AmeriCall was issued a Certificate of Public Convenience and Necessity to Resell Intrastate Wide-Area telecommunications Services ("WATS").¹ This authority was granted in accordance with the Commission's Order in Administrative Case No. 261² which only authorized the resale of intrastate WATS obtained from existing regulated telephone utilities operating in Kentucky. AmeriCall filed amendments to its tariff on April 18, 1988 to include the provision of intrastate operator services. Notwithstanding the AmeriCall tariff, as amended, the Commission finds that AmeriCall is providing operator services on an intraLATA basis contrary to Commission policy. At the present time, subject to appropriate

¹ On December 11, 1986 in Case No. 9706, Joint Application of Multi-Com Systems, Inc., and AmeriCall Systems of Louisville to Transfer the Certificate of Public Convenience and Necessity of Multi-Com Systems, Inc., to AmeriCall Systems of Louisville Pursuant to KRS 278.020 and for Approval of the Assumption of Indebtedness Pursuant to KRS 278.300, the Commission authorized the transfer of Multicom's Certificate of Public Convenience and Necessity granted in Case No. 8972, The Application of Multi-Com Systems, Inc. for Certificate of Public Convenience and Necessity to Provide Resale of telecommunications Services and Facilities Within Kentucky, to AmeriCall.

² Administrative Case No. 261, Inquiry Into the Resale of Intrastate Wide Area Telecommunications Service.

certification, interexchange carriers, WATS resellers, and other common carriers can provide operator services on an interLATA basis. IntraLATA operator services are reserved to local exchange carriers.

The Commission allowed competition in the interLATA market in Administrative Case No. 273³ and, as indicated, WATS resale in Administrative Case No. 261. At the present time, the Commission is considering intraLATA competition in Administrative Case No. 323.⁴ Therefore, the Commission finds that it is inappropriate for AmeriCall to provide intraLATA operator services unless the Commission deems that intraLATA competition is appropriate in Administrative Case No. 323.

AmeriCall and Dial-O

AmeriCall Systems of Louisville is a Kentucky partnership formed in 1986 and is the utility that the Commission regulates. The Commission transferred the Certificate of Public Convenience and Necessity to resell intrastate WATS originally issued to Multicom Systems, Inc. to AmeriCall. AmeriCall sometimes refers to itself as AmeriCall Business Long Distance in advertising and marketing literature, but does not hold this out as its legal

³ Administrative Case No. 273, An Inquiry Into Inter and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

⁴ Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, an Appropriate Administrative Compensation Scheme for Completion of IntraLATA Calls By Interexchange Carriers, and WATS Jurisdictionality.

name. (See AmeriCall's response to hearing request No. 8) AmeriCall is affiliated with a Kentucky corporation named AmeriCall Dial-O Services, Inc. ("Dial-O") which was organized in 1987. The controlling interest in Dial-O is held by the AmeriCall partners. In response to the Commission's May 5, 1989 Order, AmeriCall states that Dial-O is the successor of VeriCall Services, Inc. ("VeriCall").

In Case No. 10162⁵ on February 11, 1988, VeriCall filed an application with the Commission for authority to provide intrastate operator-assisted telecommunications services. Subsequently, VeriCall moved the Commission to dismiss its application based upon the claim that it was not a "utility" within the meaning of KRS Chapter 278, because it would only provide services to enhance AmeriCall's provision of utility service to the public. The Commission granted VeriCall's motion and entered an Order finding that the provision of operator services by VeriCall to AmeriCall pursuant to a contract did not make VeriCall a utility within the meaning of KRS 278.010(3)(e). The Commission's Order states:

In its motion, VeriCall argues that the regulation of VeriCall as a utility would result in a duplication of Commission's effort. VeriCall compares its relationship with AmeriCall to that between other vendors that provide operator services to interexchange carriers, and such carriers. For example, National Data Corporation,

⁵ Case No. 10162, Application of VeriCall Services, Inc. for the Issuance of a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within the Commonwealth of Kentucky.

which provides operator services to US Sprint, is not a utility, and is not regulated by this Commission. VeriCall argues that the Commission may adequately protect Kentucky ratepayers through the regulation of AmeriCall, over which the Commission has proper jurisdiction.

The evidence presented in this record establishes that Dial-O's operations and its relationship with AmeriCall are unlike those represented by VeriCall to the Commission in its Motion to Dismiss. Furthermore, the evidence establishes that AmeriCall's relationship with Dial-O is very different from AmeriCall's response to the Commission's May 25, 1989 Order, which states that Dial-O provides operator services to AmeriCall's customers. Dial-O's role is much more than that. There is no written contract between AmeriCall and Dial-O. (See Response to Commission's June 16, 1989 Order, Item 3.) AmeriCall filed contracts that AmeriCall and Dial-O had entered into for the provision of operator services. (See AmeriCall's response HR 11.) AmeriCall has contracted with only one customer to provide operator services and that is with the University of Kentucky. All other contracts for the provision of operator services are made by and entered into by Dial-O with the exception of a few earlier dated contracts entered into by VeriCall. All of the Dial-O contracts specifically provide that Dial-O will provide telecommunications services including operator services. None of the contracts indicate that AmeriCall has any role in the telecommunications agreements.

Pursuant to the contract terms, Dial-O receives all revenues for the provision of telecommunications services. In turn,

AmeriCall receives approximately 20 percent of all of Dial-O's gross revenues for providing the underlying transmission services to Dial-O's customers. (See AmeriCall's Response HR 14.) Dial-O retains approximately 80 percent of its gross revenues. In addition to the contracts, it appears that all other revenues go to Dial-O.

Dial-O, not AmeriCall, contracts with the unaffiliated entity that actually provides operator services. Additionally, Dial-O contracts for the billing and collection services necessary for the provision of operator services. (See AmeriCall's Response HR 9.) The billing service agreement describes Dial-O as the customer "engaged in business of providing telecommunications services including operator services."

Therefore, the Commission finds that Dial-O is a utility within the meaning of KRS 278.010 (3)(e), because it contracts with the public to provide telecommunications services and receives compensation from the public for the provision of the same. By separate Order in Case No. 90-001,⁶ the Commission has required Dial-O to show cause why it should not cease operations and be subject to penalty and refund requirements. AmeriCall's only role with relationship to Dial-O's contracts and customers is providing the underlying transmission facilities to Dial-O's customers. The Commission finds that AmeriCall should cease

⁶ Case No. 90-001, The Provision of Telecommunications Services by AmeriCall Dial-O Services, Inc.

providing transmission services for carriers that do not have authorized tariffs on file with the Commission.

AmeriCall's Investment

AmeriCall claims in its confidential response to the request at the hearing that it has a substantial investment in providing operator services which it would not have made had it not received authority from the Commission to provide operator services on an intraLATA basis. It claims that it is critical for it to retain the ability to provide intrastate operator services to protect this investment. AmeriCall states that it and Dial-O would not have made any of the investment had it only received authority to provide operator services on an interLATA basis. (See AmeriCall's response to HR 15.) As evidence of this investment, AmeriCall provided several exhibits, which have been accorded confidential treatment, in response to the Commission's questions propounded in its Order dated December 8, 1989.

In its response to Item 1 of the Order, AmeriCall provided a copy of VeriCall's income statement for the five months ended May 31, 1988. This exhibit, according to AmeriCall, reflects "start-up" expenses associated with the provision of operator services. After reviewing the exhibit, the Commission finds that the exhibit reflects operating expenses, not investment as requested in the Order. As AmeriCall has been providing operator services, it has likely recouped these expenses through operating revenues already received. Additionally, there will not be any stranded investment resulting from this expenditure, as no investment in telephone plant appears to have been made.

Exhibit B, which was supplied in response to Item 2 of the Order, reflects investment in switching equipment, which according to AmeriCall, was required solely to provide operator services. AmeriCall further states that this equipment can be used to provide message telecommunications service. As this equipment can be used in the provision of interstate and interLATA operator services, in addition to interstate and interLATA message telecommunications services, the Commission finds that requiring AmeriCall to cease the provision intraLATA operator services will not cause significant stranded investment.

Also submitted in response to question Item 2 of the Order was Exhibit C, which is a breakdown of the facilities AmeriCall has leased in order to provide operator services and the cost of installation of these facilities. From this evidence, it is doubtful that AmeriCall would be exposed to risk should the Commission require AmeriCall to cease the provision of intraLATA operator services. First of all, the Commission notes that Kentucky-specific leases account for roughly 22 percent, in terms of dollars, of the total remaining commitment. Secondly, it is doubtful if any of these circuits are dedicated solely to the transport of Kentucky intraLATA operator-assisted traffic. It would appear that these circuits could be used in the provision of interstate and interLATA operator-assisted services, in addition to interstate and interLATA message telecommunications services. Thirdly, of the Kentucky leases, over half were entered into subsequent to the initiation of this investigation on May 22, 1989. Also, there is no evidence that AmeriCall would suffer any

financial harm should it have to cancel any or all of the leasing arrangements. However, it is doubtful if lease cancellations would be necessary as a result of the Commission's decision in this case. AmeriCall would still need a significant portion of these circuits to continue its operations.

Finally, in response to Item 3 of the Order, AmeriCall was asked to identify investment made by Dial-O to provide operator services. In response, AmeriCall stated that the capital investment of Dial-O consisted of investment of former VeriCall shareholders in shares of VeriCall stock prior to the merger with Dial-O and the investment of the shareholders of Dial-O in shares of Dial-O stock. Also included was a loan to Dial-O from its shareholders to provide working capital and a bank note payable used to finance Dial-O receivables generated from its provision of operator services. It appears to the Commission that from the evidence provided by AmeriCall that Dial-O has not invested in plant, property or equipment to provide operator services. Also, AmeriCall has not segregated items dedicated solely to intraLATA operator-assisted services. Therefore, it is impossible to determine the financial impact, if any, on Dial-O of an unfavorable decision in this case. Nonetheless, Dial-O is operating as a utility completely without Commission authority. Dial-O cannot claim any reliance on past Commission approval. Since most of the revenue is retained by Dial-O, the argument of investment is not persuasive. Investment resulting from misinterpretation or broadening a Commission Order in order to competitively disadvantage other telecommunications providers is a

step taken at the risk of management and the stockholders and should not impact the Commission determination of what is in the public interest and the provision of reasonable service.

Facilities Owned by AmeriCall

In response to questions at the hearing (HR 12, HR 27), AmeriCall states that it owns a 300 pair copper cable connecting its switch located in Citizens Plaza through the Liberty Bank Building and the Meidinger Tower to the Heyburn. The 300 pair copper cable is located underground and is comprised of 200 digital pairs and 100 analog pairs. The interbuilding cable is used by AmeriCall as a connection between AmeriCall's telemarketing center located in the Heyburn Building and the switch in Citizens Plaza. AmeriCall also uses the cable for access to MCI Telecommunications Corporation ("MCI") located in the Meidinger Tower and for access to Quest located in the Heyburn Building. Liberty Bank uses this cable for access to the AmeriCall switch in the Citizens Plaza.

The type of facility owned by AmeriCall in the arrangement described above is similar to services provided end-users by local exchange carriers. The Commission was not previously aware that AmeriCall was providing these types of services. AmeriCall's tariff does not specify the provision of these services. This is an intraLATA facility, which even facilities-based carriers are not authorized to use, because intraLATA facilities-based competition has not been authorized.

The Commission has authorized WATS resellers to provide intraLATA services through the resale of facilities leased from

LECs. WATS resellers are not authorized to provide service using their own facilities. Carriers that own transmission facilities are restricted to provide interLATA services and cannot provide services statewide (i.e. intraLATA). WATS resellers are allowed to provide intraLATA services because of the determination in Administrative Case No. 261 that the resale of WATS should result in more efficient utilization of existing system capacity. Therefore, WATS reseller applications are reviewed to ensure that the manner in which they are reselling services is consistent with this goal. If a WATS reseller were to use services other than those offered by the local exchange carrier to provide intraLATA services, it would not be "efficiently utilizing existing system capacity." The above described facilities that AmeriCall owns are in contradiction with its certificate authorizing the provision of intraLATA telecommunications services through the resale of WATS. Furthermore, AmeriCall is reminded that the provision of intraLATA services through reselling MCI's or Quest's services is also not permitted.

Therefore, since AmeriCall owns facilities, the Commission finds for the reasons stated above that it should be prohibited from providing intraLATA telecommunications services including intraLATA operator services. AmeriCall could continue to provide interLATA telecommunications services as a facilities-based carrier and modify its tariff accordingly.

Unauthorized Rates

AmeriCall filed in response to the Commission's Order the contract it has entered into with the University of Kentucky for

the provision of telecommunications services. (See AmeriCall's response dated June 15, 1989, Exhibit C). This contract charges the University of Kentucky for telecommunications services and operator-assisted calling card services at rates different from its tariff rates. Any utility that enters into a contract to provide services for rates that have not been authorized in its tariff must file that contract for the Commission's review as a special contract. 807 KAR 5:011, Section 13. While AmeriCall has filed the University of Kentucky contract in this case, it has never made a filing with the Commission for review as a special contract. During the pendency of this case, AmeriCall filed a proposed tariff which the Commission suspended the effective date (Case No. 89-236⁷ which is still pending). Therefore, AmeriCall is charging the University of Kentucky unauthorized rates and should file this contract with the Commission for review as a special contract.

After considering all of the evidence of record and being otherwise sufficiently advised, IT IS ORDERED that:

1. Within 30 days of the date of this Order, AmeriCall shall cease providing all intraLATA telecommunications services, including, but not limited to operator services. AmeriCall shall notify all customers affected by this Order within 10 days of the date of this Order, advising that this service will cease within

⁷ Case No. 89-236, Tariff Filing of AmeriCall Systems of Louisville.

30 days of the date of this Order. AmeriCall shall file a modified tariff deleting this service within 30 days of the date of this Order.

2. Within 10 days of the date of this Order, AmeriCall shall file with the Commission the University of Kentucky contract and any other special contract for the Commission's review in compliance with 807 KAR 5:011, Section 13.

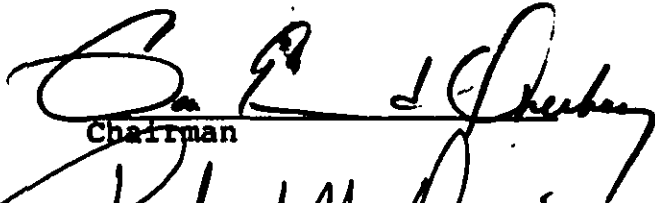
3. AmeriCall shall immediately cease from providing transmission services for any carrier in Kentucky that does not have an effective tariff on file with the Public Service Commission.

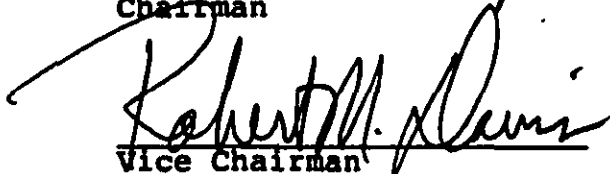
4. AmeriCall may provide interLATA telecommunications services as a facility-based carrier and modify its tariff accordingly.

5. AmeriCall shall file tariff revisions consistent with the findings of this Order within 30 days from the date of this Order.

Done at Frankfort, Kentucky, this 8th day of January, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:

Executive Director