

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTHERNNET, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE LONG DISTANCE) CASE NO. 89-134
TELECOMMUNICATIONS SERVICES, INCLUDING)
OPERATOR-ASSISTED SERVICES, STATEWIDE)
AS A WATS RESELLER WITHIN THE COMMON-)
WEALTH OF KENTUCKY)

O R D E R

On March 26, 1990, the Commission issued an Order certifying SouthernNet, Inc. ("SouthernNet") as a WATS¹ reseller, not a facilities-based carrier, on an interim basis, pending the outcome of Administrative Case No. 323,² and contingent upon SouthernNet's compliance with originating and terminating traffic on local exchange companies' access services and WATS, respectively. SouthernNet was also certificated to provide interLATA³ intrastate operator-assisted telecommunications services as long as it complies with all the provisions,

¹ Wide Area Telecommunications Service.

² Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

³ Local Access and Transport Area.

restrictions, and conditions of service outlined in the Administrative Case No. 330⁴ Orders.

On March 30, 1990 and April 16, 1990, SouthernNet filed motions for reconsideration of certain aspects of the March 26, 1990 Order. On April 19, 1990, the Commission granted SouthernNet's motions for reconsideration. On May 14, 1990, the Commission ordered SouthernNet to file additional information. SouthernNet filed its response on June 15, 1990.

In its March 30, 1990 petition, SouthernNet requested that it be allowed to identify itself as "Telecom*USA," its parent company, in its operator-assisted services. In support of its request, SouthernNet contended that in order to avoid customer confusion, it had registered to do business as "Telcom*USA" in each of Kentucky's 120 counties as well as with the Secretary of State. Furthermore, SouthernNet requested that its certificate be issued in the name of "SouthernNet, Inc. d/b/a Telecom*USA."

In its April 16, 1990 petition, SouthernNet requested flexibility to be allowed originating intraLATA calls on local exchange companies' special access services, in addition to switched access services. SouthernNet also requested flexibility to be allowed to terminate intraLATA calls over other local exchange companies' services as alternate routing, in addition to WATS. In support of its request, SouthernNet claimed that the

⁴ Administrative Case No. 330, Policy and Procedures in the Provision of Operator-Assisted Telecommunications Services.

Commission had imposed more restrictive conditions on SouthernNet than the ones imposed on Cincinnati Bell Long Distance, Inc. ("CBLD") in Case No. 89-363.⁵

March 30, 1990 Petition

The Commission has certificated SouthernNet, not Telecom*USA, as a WATS reseller, based on the determination that SouthernNet did not own any transmission facilities. Therefore, using the name of "Telecom*USA" when the parent company owns nine affiliates that are facilities-based carriers does not comply with the Commission's policies concerning resellers and facilities-based carriers.

SouthernNet's June 15, 1990 response contends that "SouthernNet's reseller status is based upon its network; not its name." Furthermore, SouthernNet says that "Telecom*USA, Inc. does not provide any telecommunications services. Although Telecom*USA, Inc. does own other subsidiaries which in turn own transmission facilities, the Commission's Order of March 26, 1990 . . . found this fact not to impact SouthernNet's reseller status in the Commonwealth." SouthernNet also contends that "Cincinnati Bell Long Distance, Inc. ("CBLD"), a Kentucky reseller, has as part of its name "Cincinnati Bell" which is a common way of referring to Cincinnati Bell Telephone Company, a facilities-based carrier."

⁵ Case No. 89-363, Cincinnati Bell Long Distance, Inc., for Authority to Expand Their Market Area.

It should be noticed that CBLD's name is "Cincinnati Bell Long Distance, Inc." not "Cincinnati Bell Telephone Company." CBLD is not operating as and labeling itself with the name of a parent company which owns facilities-based entities. Furthermore, CBLD is not an operator-assisted service provider. Therefore, the concerns about consumer confusion between "Cincinnati Bell" and "CBLD" do not exist.

SouthernNet argues that just as the affiliation with facilities-based carriers did not preclude SouthernNet from reseller classification, the reseller classification should not preclude SouthernNet from branding its calls with "Telecom*USA."

The Commission's finding that SouthernNet should be classified as a reseller was based upon SouthernNet's network configuration and its operation consistent with being a reseller. For SouthernNet to label calls with the name of its parent company, an entity owning nine facilities-based carriers, obliterates the distinction between SouthernNet and its facilities-based affiliates. If the Commission were to approve SouthernNet's request to brand calls "Telecom*USA," SouthernNet would be operating in Kentucky under the name of an entity that owns facilities-based carriers, yet it has the authority to provide resold intraLATA services. Such a situation would create confusion in all aspects of its operations and the Commission finds this unreasonable.

Finally, the September 8, 1989 and January 15, 1990 Orders in Administrative Case No. 330 expressly require that operators shall identify the carrier. Therefore, if SouthernNet introduces itself as "Telecom*USA" to consumers, it is contrary to the Administrative Case No. 330 Orders in addition to creating consumer confusion and frustration. Therefore, SouthernNet's request is denied.

April 16, 1990 Petition

In its April 16, 1990 petition, SouthernNet requested flexibility to be allowed originating and terminating intraLATA calls on special access services and other local exchange companies' services, in addition to switched access services and WATS, respectively. SouthernNet claimed that the Commission had imposed more restrictive conditions on SouthernNet than the ones imposed on CBLD in Case No. 89-363.

The Commission, in fact, treated SouthernNet's application the same as LDD, Inc. ("LDD") in Case No. 89-017⁶ and CBLD in Case No. 89-363. Ordering paragraph 1 of page 5 of CBLD's March 8, 1990 Order is quite similar to Ordering paragraph 2 of SouthernNet's March 26, 1990 Order. The Commission did not provide CBLD more network flexibility than SouthernNet. CBLD, in

⁶ Case No. 89-017, The Application of LDD, 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; The Application of DCI, Inc. for the Issuance of A Certificate of Public Convenience and Necessity to Provide Intrastate, InterLATA Telecommunications Services to the Public As A Facilities-Based, Non-Dominant InterLATA Carrier.

its application, verified that it would originate traffic using only local exchange companies' Feature Groups B and D Switched access services.⁷ CBLD, just like LDD and SouthernNet, should and will originate the calls only over local exchange companies' switched access services and terminate such calls only on local exchange companies' WATS. The CBLD's agreement to such is in the record in Case No. 89-363. Therefore, there are no inconsistencies in the Commission's treatment of these similar carriers.

However, since local exchange companies' special access services are available through access tariffs to interLATA carriers, the Commission believes that allowing SouthernNet to originate the calls on local exchange companies' special access services, in addition to switched access services, is consistent with Commission policies, as long as SouthernNet terminates such calls over local exchange companies' WATS. It is the Commission's policy that WATS resellers should resell only local exchange companies' WATS. Terminating the calls by any route other than local exchange companies' WATS would not comply with Commission decisions and policies regarding intraLATA competition.

IT IS THEREFORE ORDERED that:

1. SouthernNet's request to identify itself as "Telecom*-USA" in its operator-assisted services be and it hereby is denied.

⁷ Refer to paragraph 3 in page 2 of CBLD's December 27, 1989 Response.

2. SouthernNet shall identify itself as "SouthernNet" to end-users of its operator-assisted services.

3. SouthernNet's petition to originate the calls on local exchange companies' special access services, in addition to switched access services, be and it hereby is granted.

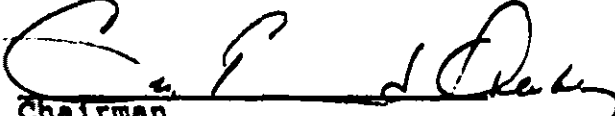
4. SouthernNet's petition to terminate the calls over other local exchange companies' services as alternate routing be and it hereby is denied. All calls shall be terminated on local exchange companies' WATS.

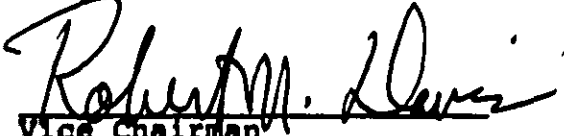
5. The Commission's March 26, 1990 Order shall remain in full force and effect, except as specifically modified herein.

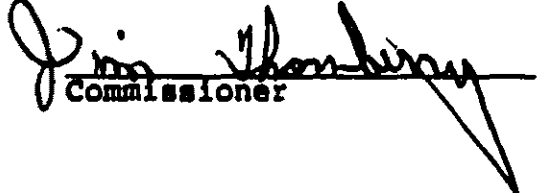
6. Within 30 days from the date of this Order, SouthernNet shall provide the statements required by the March 26, 1990 Order and express full compliance with the March 26, 1990 Order as modified in this Order.

Done at Frankfort, Kentucky, this 20th day of September, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director