COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

BACKGROUND

On June 11, 1990, the Commission issued an Order in this proceeding requiring local exchange carriers ("LECs") to tariff billing and collection charges only for intrastate tariffed services and interstate services that absent the interstate nature would be a state tariffed service. The Commission later clarified its June 11, 1990 Order in an Order entered July 19, 1990 and required the LECs to file revised tariffs reflecting this change in billing and collection or to file a request for a hearing for the purpose of showing why they should not have to comply with the requirement. The July 19, 1990 Order also granted South Central Bell Telephone Company's ("SCB") request for a stay of the decision with respect to 976 vendor services.

SCB, GTE South Incorporated ("GTE"), Contel of Kentucky ("Contel"), and the Independent Telephone Group[1] requested a hearing. AT&T Communications of the South Central States ("AT&T"), MCI Telecommunications ("MCI"), and US Sprint Limited Partnership ("Sprint") also requested the Commission hold a hearing on the requirement with respect to interexchange and interstate 900 vendor services. Sprint also requested the Commission stay its decision with respect to 900 vendor services until the outcome of the proceeding. The Commission granted the requests for hearing and stayed its decision on 900 vendor services.

A hearing was held on December 11, 1990. Cincinnati Bell Telephone Company ("Cincinnati Bell"), Intellicall, Inc. ("Intellicall"), Coin Phone Management Company ("Coin Phone Management"), Integretal, Inc. ("Integretal"), Telesphere Network, Inc. ("Telesphere"), and Operator Assistance Network ("ONA") were present and participated in the proceeding. Briefs and responses to the information requests have been filed.

DISCUSSION

All LECs participating in this proceeding opposed the Commission's exclusion of nonregulated services from billing and

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1 Ballard Rural Telephone Coop.; Brandenburg Telephone Company; Duo County Telephone Coop., Inc.; Foothills Rural Telephone Coop.; Harold Telephone Company; Highland Telephone Coop.; Logan Telephone Coop.; Mt. Rural Telephone Coop.; North Central Telephone Coop.; Peoples Rural Telephone Coop.; South Central Rural Telephone Coop.; Thacker-Grigsby Telephone Company; West Ky. Rural Telephone Coop.

collection primarily because they derive revenue from the interexchange carriers for billing and collection service.

Moreover, at least some LECs stated they anticipated that a limitation on their ability to bill and collect for nonregulated services will hasten the interexchange carriers' decision to perform their own billing and collection for regulated as well as nonregulated services, further eroding their revenue.[2] GTE suggested the Commission adopt other policies that would protect the end-users from potential company abuse such as requiring free blocking on the first complaint, but still permit the LECs to bill and collect for the nonregulated services.[3] SCB noted for the record that its current internal policy does not require disconnection for failure to pay disputed or excessive charges for nonregulated services.[4] Cincinnati Bell also suggested that the Commission develop further customer safeguards with respect to nonregulated service charges rather than affirming its decision.[5]

The interexchange carriers - AT&T, MCI, and Sprint - opposed any decision that would restrict LECs from billing and collecting for nonregulated services, especially 900 vendor charges, on the regulated telephone bill. AT&T stated that it is already its

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2 Transcript of Evidence ("T.E."), December 11, 1990, page 64.

3 Id., pages 64-65.

4 Id., page 21.

5 Id., page 90.

policy to not require the LECs to disconnect for nonpayment of 900 vendor charges. Additionally, AT&T states that LECs are aware of AT&T's policy and of the Federal Communications Commission ("FCC") orders which do not permit disconnection for failure to pay interstate 900 vendor services.[6] AT&T further contended that separation of the vendor charges from the regulated transmission charge was unwarranted because customers are paying for the service in its entirety and the service would be too costly and cumbersome to economically provide with separated charges.[7] AT&T believes that a decision to require separate billing and collection for nonregulated 900 vendor services will result in a loss of many of these services for Kentucky residents since the vendors, both inter- and intrastate, will be economically prohibited from offering the service.[8] AT&T further believes that many of the 900 vendor services are valuable to Kentuckians, such as state government agency information and braille services for sight impaired persons. AT&T also stressed that 900 vendor services are the only sources of current information for those interested in certain infrequently or not widely published information.[9] AT&T did not say that it would stop using the LECs'

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6 Id., page 159.

7 Id., pages 155-159.

8 Id., pages 155-157.

9 Id., page 140.

billing and collection services if the Commission upheld its original decision but said it would need to reevaluate its costs and changes in uncollectibles.[10]

Sprint stated that it believed a docket to prevent 900 vendor customer abuse was more appropriate than denying LECs from offering tariffed billing and collection for these services.[11] Sprint also commented that no other state, to its knowledge, had required that nonregulated services not appear on the jurisdictional telephone bill.[12]

MCI, Intellicall, Coin Phone Management, and ONA argued that the Commission should grant tariffed billing and collection for pay phones not presently considered jurisdictional in Kentucky. Moreover, Intellicall pointed out that permitting the LECs to bill and collect for their own nonregulated services, such as customer premises equipment and directory publishing charges, was discriminatory if the Commission was not going to permit tariffed billing and collection services for other nonregulated services.[13] Telesphere advocated that the Commission permit billing and collection for 900 services and described how its own internal

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10 Id., page 140.

11 Id., page 165.

12 Id., page 169.

13 Id., page 164.

policies are designed to protect the customer from abuse.[14] Telesphere also stated that it had attempted direct billing and found it to be uneconomical.[15]

Two parties, Integretel and Telesphere, addressed the issue of the Kentucky Commission's alleged regulation of interstate billing and collection. Integretel notes that the Commission's June 11, 1990 Order is an attempt to regulate interstate billing and collection in contravention of the FCC's exclusive jurisdiction over such matter and in violation of the FCC's Detariffing of Billing and Collection Order, 102 F.C.C.2d 1150, recon, 1 FCC Rcd 445 (1986).[16] In support of its contention, Integretel cites numerous FCC and court actions for the general proposition that the FCC has exclusive jurisdiction over interstate service. Integretel cites AT&T Communications v. Public Service Commission, D. Wyoming, 625 F.Supp. 1204, 1208, (1985) that it is beyond dispute that interstate telecommunications service is normally outside the reach of state commissions and within the exclusive jurisdiction of the FCC. The court found invalid a state-imposed tariff requiring AT&T to pay LECs for both interstate and intrastate calls to cover costs of local disconnection service. The court held that such tariffs

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14 Id., pages 206 and 207.

15 Id., page 208.

16 Integretel's Brief, pages 6-12, filed January 28, 1991.

infringed on the exclusive jurisdiction of the FCC and violated the Supremacy Clause. This case is not applicable since this Commission has instituted no such tariff, but merely determined the appropriate range of services for which jurisdictional LECs shall provide tariffed billing and collection services. No IXC is required to pay any rate associated with the provision of interstate service.

Integretel contends that state regulation of billing and collection practices used in connection with interstate communications is, except for the disconnection of local services, prohibited by the FCC Detariffing Order supra. Integretel argues that the FCC intended to preempt all state regulation of LEC billing and collection services except disconnection for nonpayment and quotes the FCC order to state that "state regulation of local exchange carrier billing and collection for interstate services of the interexchange carriers is preempted." (1 FCC Rcd at 446).

Integretel cites the FCC order in Public Service Commission of Maryland, 2 FCC Rcd 1998, 2002 (1987), holding that its Detariffing Order "clearly preempts all state regulation of charges for billing and collection for interstate telecommunications, including state regulation of charges for a disconnection service that is incidental to billing and collection for interstate telecommunications services."

Telesphere[17] argues that the Commission's restrictions are

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17 Telesphere's Brief, pages 17-24, filed January 28, 1991.

invalid because they purport to regulate the provision of interstate billing and collection services. Telesphere also cites the Maryland Commission petition where the FCC clarified that LEC billing and collection services for interstate carriers "are themselves interstate communications for purposes of the FCC jurisdiction under Section 2(a) of the Act." 4 FCC Rcd 4000, 4005 (1989). The FCC stated that "when billing and collection service is used to bill interstate ratepayers, the service is interstate in nature not intrastate." Id. at 4006. And that, "federal jurisdiction is determined by the nature of the communications that pass through the facilities, not by the facility's location or the affiliation of the service provider." Id. Telesphere states that the FCC's decision was affirmed by the D.C. Court of Appeals stating that "a direct effort by a state to impose costs on interstate service that the FCC believes are unwarranted seems rather clearly within the FCC's authority to prevent." Public Service Commission of Maryland v. FCC, 909 F2d 1510, 1516 (D.C. Cir. 1990).

The Commission disagrees with the analysis of Telesphere and Integretel concerning the application of FCC orders and federal court decisions. The authority cited relates to a prohibition of states directly attempting to impose cost on interstate services. The Commission's requirement that LECs tariff billing and collection services only for those interstate services which, but for their interstate nature, would be allowed to be tariffed on an intrastate basis does not interfere with FCC jurisdiction over the

provision of interstate services. The Kentucky Commission's requirement in no way prohibits LECs from billing and collecting for interstate services. However, the billing and collection by LECs of interstate services which are nonutility in nature will be at rates which are not tariffed and the LEC revenues and expenses associated with this billing and collection will be below the line.

FINDINGS

The Commission finds that its June 11, 1990 Order regarding this issue and its July 19, 1990 Order clarifying the June 11, 1990 Order should be affirmed. LECs should include on their utility bills only charges for the intrastate messages for utilities having tariffs on file with the Kentucky Public Service Commission and only for intrastate tariffed services. The LEC's tariff relating to intrastate billing and collection should reflect this requirement. The Commission affirms its previous reasoning stated in the June 11, 1990 Order on page 4:

> The Commission believes that it is reasonable to allow the billing and collections for intrastate messages that are tariffed services and fall into the state law definition of the utility services regulated by the Public Service Commission. It is not reasonable to allow the state regulated utility to place any and all charges whether utility related or not on telephone bills for collection. The most reasonable distinction as to what a utility may or may not include on its bill to its customer is the one made by the Commission's Order in this matter. The Commission has a duty to determine the range of the billing and collection services performed by utilities under its jurisdiction and to protect utilities' customers from both excessive billing and collections and from unreasonable billing and collection.

The Commission is persuaded that in affirming this decision, it must be consistent to avoid allegations of discrimination and arbitrariness. LECs should not be allowed to include in their utility bill any nontariffed intrastate service irrespective of whether it is provided as a nonregulated service by the LEC itself. Examples include, but are not limited to, inside wiring, special CPE, and directory publishing fees. The Commission's decision dated April 30, 1990 which recognized that the Commission had permitted LECs to bill and collect but not disconnect for inside wire and certain CPE and acknowledged that it may consider additional exceptions by application in special cases, is subject to being classified as discriminatory and/or arbitrary. Therefore, it should, as to this issue, be reversed. Since this decision is in conflict with currently filed tariffs, the Commission will allow any LEC to request a hearing on this matter prior to implementation of this portion of the Order.

LECs should include charges on their utility bills and rates in their tariff for billing and collection for interstate telecommunications services for IXCs only when a service, absent its interstate nature, would be allowed by Kentucky state law to be a tariffed utility service. The Commission reiterates from its past Orders in this matter that it is reasonable to allow the LECs to bill and collect only for interstate IXC telecommunications services that the state law defines as regulated services. This has previously been clarified by the Commission to prohibit LECs to bill and collect for 900 vendor services or any other

nontariffed service of jurisdictional IXCs. In the area of 900 type services, the charges associated with the transmission of 900 service are considered utility services and may, therefore, appear on the LECs' utility bills. However, the 900 vendor charges will not be permitted to appear on the LECs' utility bills.

Nothing herein shall prohibit the LECs from including within the same envelope of the LECs' utility bill a separate billing sheet for services not to be included in the utility bill itself, (whether intrastate or interstate). Any LEC choosing to bill and collect for services not to be included in the utility bill shall be required to disclose at the uppermost position of any billing sheet containing charges for these other services, in no lesser than 14 point bold type, the following statement: "NONPAYMENT OF ITEMS ON THIS SHEET WILL NOT RESULT IN DISCONNECTION OF YOUR LOCAL TELEPHONE SERVICE."

In summary, the billing and collection tariffs for LECs shall contain rates for intrastate tariffed services and for interstate services which, but for their interstate nature, would be tariffed services under Kentucky state law. For any other billing and collection service provided by LECs the associated revenues and expenses must be accounted for below the line. The Commission has correctly asserted its jurisdiction in this matter and has not violated any FCC or federal court mandate. The Commission has the authority and duty to regulate tariffed intrastate utility services. This Order will protect Kentucky end-users from disconnection of local service for nonpayment of nonutility services.

There was evidence regarding the Commission's previous decision which requires the LECs to reflect the name of the underlying carrier for all charges appearing on customer bills. The Commission's June 11, 1990 Order denied rehearing on this issue. Thus, the previous Order of the Commission stands unaltered. The Commission remains of the opinion that subcarrier identification is necessary for customers to be adequately informed. LECs shall not bill for an underlying telecommunication carrier without disclosing on the bill the identity of that carrier.

IT IS THEREFORE ORDERED that:

1. LECs shall include on their utility bills and in their billing and collection tariff only charges for intrastate services tariffed and on file with the Kentucky Public Service Commission or contained in special contracts on file with the Public Service Commission.

2. LECs shall include on their utility bills and in their billing and collection tariff charges for interstate telecommunications services only when that service, absent its interstate nature, would be allowed by Kentucky state law to be a tariffed utility service.

3. Any LEC billing for services not allowed to be included on the utility bill shall be required to use separate billing sheets and include the following statement at the uppermost position of each sheet in no lesser than 14 point bold type: "NONPAYMENT OF ITEMS ON THIS SHEET WILL <u>NOT</u> RESULT IN DISCONNECTION OF YOUR LOCAL TELEPHONE SERVICE."

4. All LECs shall file billing and collection tariffs complying with the decision herein within 20 days of the date of this Order.

5. Any LEC whose billing and collection tariff requires modification to comply with the Commission's decision regarding detariffed or nonregulated services provided by the LEC shall request a hearing within 20 days of the date of this Order solely for this issue if it does not file a conforming tariff.

Done at Frankfort, Kentucky, this 5th day of September, 1991.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director