

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE BILLING) ADMINISTRATIVE
PRACTICES FOR FOREIGN EXCHANGE SERVICE) CASE NO. 335

O R D E R

On May 21, 1990, the Commission issued an Order establishing this investigation to determine if alleged changes in the billing practices for interLATA foreign exchange service¹ may have resulted in unauthorized rate increases to customers of these services and, if so, to consider requiring the responsible carriers to show cause why they should not be fined pursuant to KRS 278.990 and to provide refunds. All local exchange carriers and AT&T Communications of the South Central States, Inc. ("AT&T") were required to file information and comments describing their billing practices.

AT&T's response, filed June 20, 1990, contained a detailed explanation of the recent change in billing procedures. AT&T noted that prior to divestiture, AT&T provided the long-distance portion of the service while the local exchange companies provided

¹ Foreign exchange service is a type of telecommunications service which allows customers located in one exchange to receive dial tone and a telephone number from a different exchange. For example, foreign exchange service allows a customer in Georgetown to have a Lexington telephone number. The service requires the cooperation of the local telephone companies in both exchanges, as well as a long distance carrier to transport calls between the two exchanges.

the local service connections.² In the intrastate jurisdiction, the local exchange carriers provided both segments of the service. At divestiture, AT&T filed tariffs in Kentucky for intrastate foreign exchange service. AT&T contends that the tariffs required the customer to obtain facilities from the local exchange carriers, but despite this tariff provision, AT&T was billed and paid for switched access services associated with the open end. These bills were usually in the form of usage based Feature Group A charges, but in some cases the local exchange carriers charged the customer a flat-rated business line charge which was credited to AT&T in the billing and collection process.

AT&T indicated that in 1985, new tariffs were filed in all South Central Bell Telephone Company ("South Central Bell") states except Kentucky to flow-through Feature Group A charges to the customer, by creating a procedure to link AT&T's access bills to the customers' bills. The process was not totally successful and was not implemented in Kentucky. Between 1987 and 1989, AT&T filed tariffs in all South Central Bell states, including Kentucky, explicitly requiring direct customer billing. AT&T felt this did not constitute a tariff change in Kentucky, but that this presented a tariff change as well as a billing change for customers in states where the "flow-through" tariff was in effect.

² These local service connections are also referred to in the telephone industry as local access services. With foreign exchange service, the facility serving the customer's end is often referred to as the "closed end," whereas the other end, where calls can be switched to the customer's line, is often referred to as the "open end."

AT&T contends that the Kentucky tariff filing³ did not change the substance of the customer's responsibility to obtain services directly from the local exchange carriers, but rather clarified that the local exchange carriers would bill the customer for such charges rather than AT&T. AT&T notified all the local exchange carriers that beginning in January 1990, AT&T would no longer accept these bills, but that the letters sent in Kentucky unfortunately mirrored the verbiage which had been used in other states where tariff changes had occurred. AT&T felt it had acted in good faith throughout this process and requested the Commission to set an informal conference at which the local exchange carriers, Commission Staff, and any intervenors could discuss an equitable disposition of this case.

The Commission deferred AT&T's request for an informal conference to obtain more information from the local exchange carriers on their billing procedures. The responses revealed serious inconsistencies in the way in which local access services associated with interLATA foreign exchange service have been billed. For example, even prior to the January billing conversion, some carriers were already billing customers Feature Group A usage charges and had been since divestiture. Other carriers were billing customers a business line rate which was used as a credit toward bills to AT&T for Feature Group A usage.

³ Case No. 89-168, Proposed Restructure and Repricing of AT&T's Channel Services Tariff, and approved effective June 1, 1990 by Order dated March 19, 1990.

And finally, some carriers have not billed customers any charges at all for local access, but have instead billed AT&T.

The informal conference was held on November 5, 1990, at which AT&T proposed a resolution. AT&T subsequently filed a formal settlement proposal, which provides for customer refunds as follows:⁴

A. The three LECs affected by the billing conversion (Duo County, South Central Rural and GTE South) shall refund all FGA FX charges paid by AT&T FX customers that experienced a FGA billing conversion between January 1, 1990 and June 1, 1990.

B. The refund to the end-user customers shall be net of the applicable business line charges for the period from January 1, 1990 to June 1, 1990.

C. The affected LECs will debit AT&T through the Carrier Access Billing System an amount equal to the refunds paid to the end-user customers.

D. The refund process will be completed within sixty (60) days of the Commission's Order approving this settlement.

The Commission is very concerned over the differences in billing procedures for foreign exchange service and by the unauthorized billing change which occurred in January 1990. The diverse billing procedures resulted in AT&T's customers paying substantially different rates for essentially the same service, depending upon which local exchange carrier was participating in the provision of the service. Minor rate differences are to be expected as a result of the different costs involved in each territory; however, local access charges associated with foreign exchange service ranged from no charge at all to usage-based

⁴ Motion for Commission Approval of Proposed Settlement, filed November 16, 1990.

Feature Group A charges, which could be substantial depending upon the customer's usage. The Commission recognizes that the billing change which occurred in January 1990 was an attempt to gain some consistency and to enforce what AT&T contends was its interpretation of its previous tariff. However, this tariff was extremely ambiguous, as evidenced by AT&T's testimony in Case No. 9703⁵ which differs from its current interpretation and as evidenced by the variety of the interpretations of the local exchange carriers. AT&T's new channel services tariff effective June 1, 1990 has been clarified in this regard, in that it now more clearly defines the customer's responsibility to pay for local access charges. However, changes in billing procedures should not have occurred prior to the effective date of this tariff particularly as this tariff was implemented simultaneously with rate reductions in switched services to offset the rate increases in channel services. Therefore, the Commission will approve AT&T's proposal to provide refunds to customers whose billing was changed prior to June 1, 1990. The Commission finds that penalties are unwarranted in this case considering the difficulties in interpreting AT&T's previous tariff, which was so ambiguous that it cannot be said with certainty that any of the carriers were billing inconsistently with the terms of the tariff. However, the Commission will require that future tariff filings be

⁵ Case No. 9703, AT&T Communications of the South Central States, Inc. vs. Independent Telephone Company, Inc., Transcript of Evidence, Volume I, page 71.

more explicit in defining precisely what services are included in any tariffed rate, and that any uncertainty in this regard will be sufficient cause for rejection of a tariff filing. This is becoming of more importance considering the growing numbers of telecommunications carriers and the variety of their service offerings. For example, the channel services portion of interLATA foreign exchange service could have been provided by any of AT&T's competitors. The potential number of carriers involved requires more than a tacit understanding of who is responsible for the payment of local access services. Customer options for selecting carriers and services have increased dramatically; however, complexities that confuse even telecommunications experts such as the carriers themselves are completely unnecessary and should be eliminated.

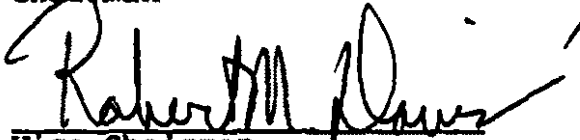
Having been otherwise sufficiently advised, the Commission
HEREBY ORDERS that:


1. AT&T's settlement proposal, attached hereto as Appendix A and incorporated herein, is approved.
2. Customer refunds shall be implemented as described herein.

Done at Frankfort, Kentucky, this 3rd day of January, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A
APPENDIX TO AN ORDER OF
THE KENTUCKY PUBLIC SERVICE COMMISSION
IN ADMINISTRATIVE CASE NO. 335 DATED 1/03/91

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

NOV 16 1990

In the Matter of:

PUBLIC SERVICE
COMMISSION

AN INVESTIGATION INTO THE BILLING)
PRACTICES FOR FOREIGN EXCHANGE) ADMINISTRATIVE
SERVICE) CASE NO. 335

* * *

MOTION FOR COMMISSION APPROVAL
OF PROPOSED SETTLEMENT

AT&T Communications of the South Central States, Inc. ("AT&T"), through counsel, hereby Moves the Commission for an order approving the refund proposal set out herein and closing this case. In support of this Motion, AT&T states as follows:

1. On November 5, 1990, an informal conference was held to discuss possible solutions to this proceeding. The conference was attended by representatives of GTE South, Duo County Telephone Cooperative, South Central Rural Telephone Cooperative, South Central Bell, Cincinnati Bell, AT&T and Commission Staff.

2. At that conference AT&T stated that in order to address the concerns raised by the Commission and correct any customer confusion that may have resulted from the billing conversion of Feature Group A ("FGA") FX charges, AT&T proposed that end users and the affected LECs be reimbursed. The proposed refund and settlement for which AT&T is seeking Commission approval is as follows:

- A. The three LECs affected by the billing conversion (Duo County, South Central Rural and GTE South) shall refund all FGA FX charges paid by AT&T FX customers that experienced a FGA billing

conversion between January 1, 1990 and June 1, 1990.

- B. The refund to the end user customers shall be net of the applicable business line charges for the period from January 1, 1990 to June 1, 1990.
- C. The affected LECs will debit AT&T through the Carrier Access Billing System an amount equal to the refunds paid to the end user customers.
- D. The refund process will be completed within sixty (60) days of the Commission's Order approving this settlement.

3. This proposal will affect between 148 and 160 FX customers and will result in refunds of approximately \$107,000.

4. None of the parties attending the informal conference expressed objections to the settlement of this case under the terms and conditions set forth above.

WHEREFORE, based on the foregoing, AT&T requests the Commission to issue an Order approving the proposed settlement and closing this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion
For Commission Approval Of Proposed Settlement was mailed,
sufficient postage prepaid, to all parties of record this 16th
day of November, 1990.

H.N. McNeal
COUNSEL TO AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC.