

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LONG DISTANCE MANAGEMENT (A DIVISION)	
OF WRIGHT BUSINESSES, INC.) AND TMC)	
OF SOUTHERN KENTUCKY (A GENERAL)	
PARTNERSHIP))	
)	
PETITIONERS)	
)	
VS.)	CASE NO. 91-315
)	
SOUTH CENTRAL BELL TELEPHONE COMPANY)	
)	
DEFENDANT)	

O R D E R

BACKGROUND

On September 3, 1991, Long Distance Management ("LDM") and TMC of Southern Kentucky ("TMC") filed a complaint against South Central Bell Telephone Company ("South Central Bell") concerning the formula used in calculating access rates charged by South Central Bell to carriers such as LDM and TMC. The rates are calculated as follows. The companies' total access minutes are multiplied by the percentage of interstate usage ("PIU") of access. South Central Bell's interstate access rate is applied to the interstate access minutes. South Central Bell's intrastate access rate is applied to the remaining access minutes. Currently, the intrastate rate for access is higher than the interstate rate. South Central Bell conducted an audit of LDM's and TMC's reported PIU and billed them an amount in excess of

\$151,283.59 for intrastate access minutes which had been priced as interstate access minutes.

On September 18, 1991, the Commission ordered South Central Bell to satisfy or answer the complaint. South Central Bell filed its answer September 30, 1991. On November 15, 1991, the Commission ordered South Central Bell to file a memorandum and ordered LDM and TMC to respond. South Central Bell's memorandum was filed December 5, 1991. On December 23, 1991, LDM and TMC filed a memorandum in response to South Central Bell. On July 6, 1992, LDM and TMC and South Central Bell filed prehearing memorandum. The hearing was held July 14, 1992.

LDM and TMC allege that when they began service from South Central Bell they did not have the ability to calculate their PIU on an individual basis and therefore agreed with South Central Bell they would use the industry average of 85 percent for the PIU.

In 1990, South Central Bell employed an accounting firm to determine the actual usage of LDM and TMC and establish their PIU. Because LDM and TMC have common ownership, they were audited together. The test period for the audit was the month of August 1990. LDM and TMC, as required by South Central Bell's tariff, supplied call detail records to the accounting firm. The accounting firm then examined the call detail records and the information about LDM and TMC's facilities to calculate the actual PIU for the month of August 1990. The actual PIU was approximately 35 percent. This PIU was then applied on a going-forward basis to produce the amount owed by LDM and TMC.

By letter dated June 18, 1991, South Central Bell advised LDM and TMC of the audit results and stated its intent to bill the companies for a combined total of \$151,283.59 for the period October 1990 through April 1991. South Central Bell also recalculated the PIU for August and September 1990 and billed LDM and TMC for those months. South Central Bell backbilled only to August 1990 based on its audit procedures to backbill only to the period beginning with the audit initiation. Beginning May 1991, South Central Bell billed LDM and TMC based on the audited PIU, until LDM and TMC reported a different PIU.

LDM and TMC further allege they are the only resellers located in Kentucky that have been audited and whose rates are based on actual PIUs. LDM and TMC contend that South Central Bell has advised them of its intent to audit competitors but that process will take two or more years. They also allege that this change in their rates puts them at a severe competitive disadvantage. In their memorandum, LDM and TMC contend that South Central Bell had no authority to backbill them and cited South Central Bell's tariff.

South Central Bell argues that whether other carriers are misreporting their PIUs is not at issue, complainants should neither be entitled to misreport nor be excused from past misreporting, and that the proper solution is for all carriers to accurately report PIU. South Central Bell further argues that, by tariff, it is the customer's responsibility to accurately report the PIU of each feature group A and B facility. South Central

Bell cannot record interexchange carriers' ("IXCs'") use of feature group A and B facilities. Only the IXCs can measure their own use of these facilities.

In its answer to the complaint, South Central Bell asserts that the rates assessed against the Complainants were the tariffed rates and denies any discrimination in its practices regarding PIU determination and auditing. South Central Bell contends that it has complied with its tariff as it is obligated to do.

In response to LDM and TMC's allegation that they are the only resellers located in Kentucky that have been audited, South Central Bell filed an affidavit of one of its employees that there were 15 interexchange carriers with feature group A and B facilities that have both originating and terminating traffic and that 4 have previously been audited and 5 are currently being audited.

At the hearing, LDM and TMC stated that after the audit they began supplying the quarterly jurisdictional reports which provide South Central Bell with the actual PIU for a three-month period of time as required by the tariff. TMC and LDM also stated that they have begun terminating interstate traffic for other carriers in order to elevate the interstate usage and that currently they are reporting interstate usage of 75 percent.¹

¹ Transcript of Evidence ("T.E.") at 21.

DISCUSSION

Importance of PIU

An accurate determination of the PIU is critical because the rates for interstate access are generally lower than the rates for intrastate access. Therefore, IXCs and resellers have an incentive to report a higher PIU than intrastate usage. There is no way to ensure that the interstate jurisdiction and the intrastate jurisdiction derive the accurate amount of access revenue apart from the IXC accurately reporting the actual PIU.

When IXCs and resellers pay intrastate access rates based on a percentage of intrastate usage that is lower than the actual intrastate usage, it is detrimental to Kentucky. Access services are priced above their actual cost and provide a "contribution" to other ratepayers. To the extent that access revenues are not produced, the Kentucky ratepayers must pay more for other services they purchase. Also, nontraffic sensitive revenue requirement recovery is allocated to IXCs and resellers based on their intrastate usage. Thus, the less one carrier pays based on intrastate usage the more other carriers must pay for their service. Accordingly, it is essential that IXCs and resellers pay access rates based upon their actual percent intrastate usage.² The only mechanism that the local exchange carrier has to

² T.E. at 68 and 69.

determine whether access is being correctly billed is the PIU.³ The information necessary to determine PIU is in the sole possession of the IXC's and resellers. The local exchange carrier does not have sufficient information to determine the PIU for the IXC's and resellers.

South Central Bell's Tariff and Audit Procedures

South Central Bell's tariff for the jurisdictional reports⁴ states at paragraph 1 that:

When a customer [LDM and TMC] orders Feature Group A (FGA) and/or Feature Group B (FGB) Switched Access Service, the customer shall state in its order the projected percentage for interstate usage for each FGA line or FGA multiline hunt group, and for each FGB trunk group on a tandem basis. . . . The projected interstate percentages will be used by the Company [South Central Bell] to apportion the usage between interstate and intrastate until a revised report is received as set forth in [paragraph] 8.

Paragraph 8 requires that:

Effective on the first of January, April, July and October of each year the customer shall update the interstate and intrastate jurisdictional report The customer shall forward to the Company, to be received no later than 30 days after the first of each such month, a revised report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each service arranged for interstate use. The revised report will serve as the basis for the next three months' billing. No prorating or back billing will be done based on the report. If the customer

³ T.E. at 73.

⁴ Access Services Tariff, E2.3.14.A.

does not supply the reports, the Company will assume the percentages to be the same as those provided in the last quarterly report. For those cases in which a quarterly report has never been received from the customer, the Company will assume the percentages to be the same as those provided in the order for services as set forth in [paragraph] 1.

LDM and TMC argue that South Central Bell's tariff prohibits and does not provide for backbilling based on PIU audits.

Paragraph 6 contains the statement that "no prorating or back billing will be done based on the report." Earlier in the proceeding, LDM and TMC had filed a motion for interim relief based on their assertion that South Central Bell had violated this portion of its tariff in backbilling LDM and TMC. The Commission, by Order dated May 8, 1992, denied LDM and TMC's motion for interim relief determining that the phrase applied only to the jurisdictional reports to be furnished by customers when the customer added or subtracted busy hours minutes of capacity, lines or trunks to existing service.

Also, paragraph 8 contains the same sentence, "no prorating or back billing will be done based on the report." This paragraph addresses the customer's obligation to update the interstate and intrastate jurisdictional report each quarter and provides for this revised report to serve as the basis for the next three months billing. The backbilling prohibition language of paragraph 8 relates only to the filing of such quarterly reports, much like paragraph 6.⁵

⁵ T.E. at 55 through 56 and 79 through 80.

The tariff provides for the production by IXCs and resellers of data used to determine the projected interstate percentage and also requires IXCs and resellers to make records available to South Central Bell for inspection as reasonably necessary for purposes of verification of the percentages. The tariff states:

If a billing dispute arises or a regulatory commission questions the projected interstate percentage, the Company will ask the customer to provide the data the customer uses to determine the projected interstate percentage. The customer shall supply the data within 30 days of the Company request. The customer shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained and upon request of the Company make the records available for inspection as reasonably necessary for purposes of verification of the percentages.

As further support⁶ of its authority to backbill, South Central Bell cited another portion of its tariff which provides for the rendering of a bill for any known unbilled non-usage sensitive charges for prior periods and any known unbilled usage charges for prior periods.⁷

In response to a request at the hearing, South Central Bell filed a copy of its audit procedures for three types of audits it conducts on items that are self-reported by IXCs.⁸ One of these items is the PIU. These audit procedures are not contained in South Central Bell's tariff. The tariff clearly states that the

⁶ Access Services Tariff, E2.3.14.B.

⁷ Access Services Tariff, E2.4.1.B.2.

⁸ South Central Bell Audit Procedures, filed July 20, 1992.

customer in this case LDM and TMC has the responsibility for stating its projected PIU and that this projected usage will be used by South Central Bell to apportion the usage between interstate and intrastate until a revised report is received by South Central Bell. The customers are to provide revised reports on a quarterly basis to update the jurisdictional report. The revised report is to be used as the basis for a three-month billing period. The tariff also states that if the customers do not supply the reports, then South Central Bell will assume the percentages are the same as those provided in the last quarterly report or, if no quarterly reports are supplied, then South Central Bell will assume the percentages are the same as those provided when service was initially ordered. The filing of the PIU with South Central Bell is clearly LDM and TMC's responsibility. Furthermore, the tariff provides for the possibility of a billing dispute as has occurred and provides the procedure for South Central Bell to verify the percentages of use by jurisdiction.

South Central Bell's tariff adequately supports South Central Bell's rendering its bill to LDM and TMC for prior usage based on the August audit.

Discrimination in Rates

LDM and TMC allege that South Central Bell has singled them out for the PIU audit and is thus discriminating against them in its provision of access services. However, South Central Bell's

witness discussed at length the other PIU audits it has conducted. Of 17 IXCs operating in Kentucky, 5 have been audited.⁹

TMC and LDM also argued that the correction of all PIUs based on audits should be done at the same time so that no carriers would be corrected before any other carrier. However, this is not practical because the PIUs would be misreported by differing percentages and because the companies' would have differing total access charge bills.

In response to LDM and TMC's contention that South Central Bell has discriminated against them in its conduct of a PIU audit and rendering a bill based on the audit, South Central Bell has asserted that it is merely collecting its lawful filed rates for service rendered to TMC and LDM. The Commission has, on many occasions, addressed the issues of customer billing disputes. The results consistently require that the utility bill a customer for the service rendered to that customer based on its filed rates.

KRS 278.160(2) requires that:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

According to this law, a utility is prohibited from providing service at a rate other than that set forth in its tariffs on file with the Commission.

⁹ T.E. at 57 and following.

A failure to collect the full amount owed based on filed rates also constitutes a violation of KRS 278.170(1). That law provides:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

Any utility that fails to collect from a customer the full amount owed is effectively granting a preference in rates to that customer.

LDM and TMC paid to South Central Bell less compensation than that which was prescribed in South Central Bell's filed schedules based on its corrected PIU. KRS 278.160(2) is based on the policy of ensuring rate uniformity. Neither equitable considerations nor even a utility's own negligence may serve as a basis from departing from the filed rate schedules.¹⁰ Boone County Sand and Gravel Co. v. Owen County RECC, Ky.App., 799 S.W.2d 224 (1989).

The Commission has even required arrearages that extend over a 10 year period to be billed by the utility though the arrearages were caused by the utility's own negligence.¹¹

¹⁰ See application of Nolin Rural Electric Cooperative Corporation seeking approval of an adjustment of billing regarding members John Bland and Donald Farris. Case No. 10373, Order dated September 19, 1989.

¹¹ Case No. 10205, Green River Electric Corporation Application for an Order Approving Proposed Resolution of Underbilling to Town and Country Mobile Home Park, Order dated February 23, 1990.

The applicable rate schedules and the final amount of backbilling are not in dispute. There was no evidence produced that the billed amount, based on the audit, was not reflective of the rate schedules based on a PIU of approximately 35 percent. A preponderance of the evidence does not support the contention that South Central Bell inappropriately singled out LDM and TMC for an audit causing them competitive disadvantage. South Central Bell appropriately billed LDM and TMC for intrastate access resulting from overreporting of PIU. South Central Bell is, however, directed to allow LDM and TMC to pay the amount owed over a 5-year period of time in order to not jeopardize these companies' competitive standing.


The Commission, having considered the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The complaint against South Central Bell is hereby dismissed.

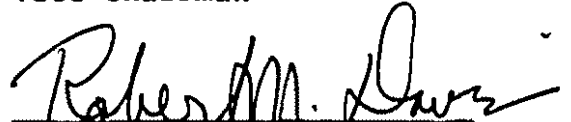
2. LDM and TMC shall have a period of 5 years from the date of this Order in which to make repayments on such amounts they owe South Central Bell resulting from the under-reporting of their PIU provided that minimum quarterly payments are made in an amount no less than 5% of the total amount due.

Done at Frankfort, Kentucky, this 19th day of October, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director