

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRANDENBURG TELECOM LLC)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2002-00383
)	
AT&T COMMUNICATIONS OF THE)	
SOUTH CENTRAL STATES, INC.)	
)	
DEFENDANT)	

ORDER

On October 15, 2002, Brandenburg Telecom LLC (Brandenburg) notified the Commission by letter that it has provided AT&T Communications of the South Central States, Inc. (AT&T) switched access service pursuant to its tariff since February 2002, but since that time AT&T has not paid any bill rendered to it by Brandenburg. Brandenburg asked the Commission to consider the matter. On October 18, 2002, Brandenburg moved for an informal conference with the Commission Staff.

Brandenburg also filed a formal complaint against AT&T, asking that the Commission order AT&T to pay all outstanding tariffed intrastate switched access charges due and owing to Brandenburg for services since February 2002. Brandenburg also asked that AT&T continue paying its tariffed charges as they become due, unless and until the parties enter into a contract service arrangement (CSA).

On November 8, 2002, AT&T filed its response to the complaint. AT&T claims that it never ordered switched access services from Brandenburg. AT&T admits that it

provides long-distance service to customers in Kentucky, including some end-user customers who receive local exchange telephone service from Brandenburg. AT&T admits that it has not paid Brandenburg for intrastate switched access services. AT&T has informed Brandenburg that it will pay only for access services that it orders through a CSA for access service. AT&T claims that this document will contain additional terms and conditions not found in Brandenburg's tariff.

AT&T presents a counterclaim against Brandenburg in its response as well. AT&T states that it has received service from Brandenburg since February 2002 and that it has paid interstate access charges to Brandenburg. AT&T also states that, pursuant to 47 C.F.R 61.26(d), Brandenburg cannot charge more for interstate switched access services than the rates charged by the incumbent local exchange carrier serving in that area, which is currently Kentucky ALLTEL, Inc. (ALLTEL). AT&T asks the Commission to offset the amount paid to Brandenburg for interstate access against whatever the Commission determines is the proper amount of intrastate access charges it owes to Brandenburg.

On December 17, 2002, the Commission Staff held an informal conference with the parties to discuss the issues of the case. Parties reiterated their positions. The Commission Staff requested that AT&T file copies of the actual bills rendered to AT&T from Brandenburg and that Brandenburg submit a narrative history of its tariff to explain the development of the rates in relation to ALLTEL's rates.

Brandenburg filed its information on March 24, 2003, and AT&T filed its information on March 24 and 25, 2003. Brandenburg also filed a motion for summary judgement. Upon review of the information submitted the Commission finds that a

hearing has not been requested by the parties and is not necessary. Therefore, the Commission will render its decision herein.

Brandenburg filed a tariff for intrastate access services in Kentucky. The tariff was accepted on April 29, 2002. The Commission finds that the rates included in the tariff are legally filed with this Commission and have been properly applied to its bills to AT&T with two exceptions.

First, the tariff of Brandenburg was effective on April 29, 2002, but Brandenburg charged AT&T for service for a period beginning on February 16, 2002.¹ KRS 278.160(2) states:

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.

Accordingly, Brandenburg is not entitled to collect for service rendered for the time period before April 29, 2002.

Second, Brandenburg has misapplied the rate for directory assistance/information (DA / info) surcharge located in Section 2.2.2 End Office. The

¹ Brandenburg began billing AT&T for access service on February 16, 2002. The amount of Intrastate services billed on the February 16, 2002 through March 15, 2002 bill was \$26.90. The amount of Intrastate services billed on the March 16, 2002 through April 15, 2002 bill was \$110.67. The amount of Intrastate services billed on the April 16, 2002 through May 15, 2002 bill was \$1598.21. By pro-rating the April 16, 2002 through May 15, 2002 billing and adding the previous two months billings, the amount of service billed prior to April 29, 2002 would be a de minimus \$ 830.13. (Calculation: $1598.21 / 30 \text{ days} = 53.27 \text{ per day}$; $13 \text{ days} \times 53.27 \text{ per day} = \692.56 ; $\$692.56 + 26.90 + 110.67 = 830.13$.)

tariffed rate is \$0.0000895 per minute. However, Brandenburg billed AT&T \$0.00895 per minute.

The Commission finds that Brandenburg should re-rate the DA / info surcharge on its bills to AT&T for service rendered after April 29, 2002. Also, AT&T should pay all appropriate amounts for intrastate service to Brandenburg.

AT&T has counterclaimed that Brandenburg's rates for interstate access service are not in compliance with the FCC's rules and orders. However, AT&T has paid Brandenburg these amounts for services rendered. The Commission does not have jurisdiction over interstate rates billed by carriers for interstate services. AT&T should address this complaint to the FCC.

AT&T has also sought a CSA with Brandenburg to govern its relationship for intrastate access charges. Brandenburg refuses to enter into a CSA, asserting that its tariff is adequate. The Commission declines to order Brandenburg to enter into a CSA with AT&T. Brandenburg may voluntarily enter into a CSA with AT&T if it wishes. If it does so, this agreement must be filed with the Commission for approval.

IT IS THEREFORE ORDERED that:

1. Brandenburg shall re-rate its bills to AT&T for intrastate access service as directed herein for service rendered after April 29, 2002. Brandenburg shall simultaneously serve copies of those bills upon the Commission and AT&T.

2. AT&T shall render payment to Brandenburg for those bills within 20 days of receipt, and AT&T shall also provide proof of payment to the Commission at that time.

Done at Frankfort, Kentucky, this 1st day of May, 2003.

By the Commission

ATTEST:


Executive Director