

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of:

AN INQUIRY INTO INTER- AND)
INTRALATA INTRASTATE COMPE-) ADMINISTRATIVE
TITION IN TOLL AND RELATED) CASE NO. 273
SERVICES MARKETS IN KENTUCKY)

ORDER ON REHEARING

	<u>Page</u>
INTRODUCTION.	1
UNAUTHORIZED INTRALATA CALLING.	5
Summary of Parties' Major Positions	5
Discussion.	7
ADVERTISING AND CONSUMER EDUCATION.	19
OCCs.	19
ATTCOM.	20
FINDINGS AND ORDERS	22

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

★ ★ ★ ★ ★

In the Matter of:

AN INQUIRY INTO INTER- AND)	
INTRALATA INTRASTATE COMPE-)	ADMINISTRATIVE
TITION IN TOLL AND RELATED)	CASE NO. 273
SERVICES MARKETS IN KENTUCKY)	

ORDER ON REHEARING

INTRODUCTION

On May 25, 1984, the Public Service Commission issued its Order authorizing competition in the Kentucky interLATA telecommunications market while restricting competition in the intraLATA market. In that Order the Commission recognized the technical problems associated with implementing an effective blocking scheme to prevent unauthorized intraLATA traffic carried by Other Common Carriers ("OCCs") with Feature Group A access connections. The Commission stated at that time a more efficient method of effectively enforcing its prohibition of intraLATA competition was to remove incentive for consumers to use OCCs' services for this traffic. The Commission required each OCC to bill its consumers the intrastate Messenger Toll Service ("MTS") rate for an equivalent call.

GTE Sprint Communications Corporation ("Sprint"), AT&T Communications of the South Central States, Inc. ("ATTCOM"), MCI Telecommunications Corporation ("MCI") and the Western Union Telegraph Company ("Western Union") sought rehearing on this

issue and other issues. On July 5, 1984, the Commission granted rehearing on the issue of restriction of unauthorized intraLATA calling. Furthermore the Commission determined that ATTCOM's petition for rehearing on its requirement to advertise its lack of authority to carry intraLATA calls was closely interwoven with the unauthorized intraLATA calling issue and thus granted rehearing on that issue. A formal conference was held on July 20, 1984, at which oral and written responses to the Commission's Order of July 11, 1984, were taken. Specific factual issues concerning technical aspects of each OCC's transmission system and its billing system were explored. Cross-examination was reserved for the rehearing but clarifying questions were permissible.

Public hearings were conducted at the Commission's offices in Frankfort, Kentucky, on August 30 and 31, 1984, for the purpose of cross-examining witnesses.

Witnesses appearing for the various parties were as follows:

Sprint - Mr. Ronald D. Havens, Director of Regulatory Affairs

MCI - Mr. Richard W. Brown, Director, Consumer Information and Revenue Systems

Multi-Com Systems, Inc. ("Multi-Com") - Mr. Jeffrey Michael Zahner, Executive Vice President

ATTCOM - Mr. D. M. Ballard, Vice President-Regulatory Relations; Mr. James Tamplin, Staff Manager, Engineering Planning Division

Western Union - Mr. Joseph A. Sinnaeve, Director of Switched Analog Systems Engineering

All outstanding information requests have been answered.

At the close of the hearing, South Central Bell Telephone Company ("Bell") entered an oral motion "to delay an issuing of any interLATA certificates until such time as the Commission can make an appropriate determination as to how unauthorized intra-LATA calling would be policed and controlled."¹ On September 6, 1984, Bell confirmed its oral motion with a written motion stating same. By Order of October 8, 1984, the Commission granted all parties an opportunity to file a response to the Bell motion. Multi-Com joined Bell's motion to delay issuance of certificates until the Commission could develop a method to enforce its Order of May 25, 1984. That Order deferred intraLATA toll competition, with the exception of Wide Area Telephone Service ("WATS") resellers and LECs, which were already authorized to provide that service. The AG concurred with Bell's motion. Allnet Communication Services, Inc. ("Allnet"), MCI, Western Union and Sprint filed comments opposing the motion, arguing it would unfairly delay the entry of competitive inter-exchange carriers into the intrastate interLATA market and would adversely impact the presubscription process as equal access occurs. The argument was also advanced that the merits of placing constraints upon separate certificate cases should not properly be considered in this generic case.

The Commission has held in abeyance a number of applications for certificates of convenience and necessity pending the outcome of this case. In the May 25 Order in this case, the

¹Transcript of Evidence ("T.E."), Volume II, p. 386.

Commission determined that competition may yield benefits to the consumer and that it was appropriate to proceed with competition in the interLATA market. Given the general intent of the May 25, 1984, Order, there are a number of concerns which the Commission has with Bell's motion. First, if the Commission should delay the process by granting Bell's motion, it would frustrate and counter its own efforts to pursue a pro-competitive policy. Second, it would deny several parties the opportunity to compete with ATTCOM during the most critical period of developing competition--that of presubscription. Third, although the Commission is convinced that unauthorized calling will occur, it is still uncertain as to the magnitude of this traffic.

The Commission concurs with Sprint that the proper forum for Bell's motion is in the certificate cases and not in this forum. However, the Commission has determined to address the Bell motion in this proceeding since the parties to the certificate cases are participants herein and have had an opportunity to comment or respond to the Bell motion.² Thus, a due process issue is not presented by the Commission addressing the motion in this case, and proceeding to the merits will expedite resolution of this issue. In light of all the considerations discussed above, the Commission will deny Bell's motion to delay certification of OCCs.

²While not an intervenor in Administrative Case 273, the Independent Telephone Company, Inc., an intervenor in Sprint's certificate case, has indicated it has no objection to the issue being addressed in this forum.

UNAUTHORIZED INTRALATA CALLING

Summary of Parties' Major Positions

The AG, Bell, Continental, General, Cincinnati Bell Telephone Company ("Cincinnati Bell") and The Independent Group support, to varying degrees, a compensation plan whereby unauthorized intraLATA revenues obtained by OCCs would be transferred to the authorized local exchange carrier ("LEC"). Alltel Kentucky, Inc., ("Alltel") emphasizes such a plan should be considered as a short-term measure only and should terminate "once equal access has been implemented or as soon as the Commission opens the intraLATA market to real competition. [Footnote omitted.]"³ In addition, these parties endorse placing various consumer education and advertising requirements on the OCCs. The AG supports a requirement that the LECs block unauthorized intraLATA calls at end offices that have been converted to equal access. The AG also endorses provisions for termination of service for OCC consumers who persistently utilize OCC networks to place unauthorized intraLATA calls.

ATTCOM advocates the physical blocking of intraLATA calls by the OCCs. If the Commission finds the blocking solution inappropriate, ATTCOM endorses billing of intraLATA calls over OCC networks at the prevailing tariffed rate. These revenues would then be turned over to the authorized intraLATA carrier. ATTCOM also discusses the alternative of auditing OCC billing records

³ Response of Alltel to Item 4 of Staff Information Request dated August 10, 1984.

and disconnecting OCC consumers who persistently place unauthorized intraLATA calls. Further, ATTCOM supports requiring OCCs to provide consumer education and advertising of their lack of intraLATA certification.

Allnet, MCI, Western Union, and Sprint oppose any solution involving the physical blocking of calls. It is the opinion of these parties that consumer education and advertising efforts constitute a sufficient solution to the problem. Generally, these parties argue that OCC billing of intraLATA calls at the prevailing rates of the authorized carriers is unworkable and unnecessary. They take the same position with respect to auditing of traffic and the possibility of consumer disconnection.

MCI and Western Union argue it is improper to consider any issues other than retention or deletion of the requirement that OCCs bill intraLATA calls at the prevailing intraLATA tariffed rate, and whether ATTCOM should be required to advertise its lack of intraLATA authority. These carriers contend that these specific issues were the only ones granted for rehearing by the Commission.

In post hearing briefs, several OCCs argue that the compensation proposals are, in effect, penalties. Sprint goes on to argue such penalties are illegal, unworkable, confiscatory and that the Commission lacks authority to impose such a penalty on the OCCs. Sprint contends any compensation requirement should be extended to ATTCOM. Sprint also contends that, as it currently has no facilities in Kentucky, it should be treated as a reseller until it does operate on a facilities basis in the state.

Multi-Com supports limited and specific intraLATA call-blocking requirements on the OCCs, coupled with other measures. It is Multi-Com's view that blocking should be required in the cases of banded WATS, Direct Access Lines, and OCC-provided automatic dialing devices ("autodialers"). Multi-Com supports a compensation solution for remaining traffic and holds the position that WATS resellers should receive such funds, as well as the local exchange carriers. Multi-Com also supports a requirement that OCCs disconnect consumers who persist in placing unauthorized intraLATA calls. In addition, Multi-Com proposes that extensive notification, advertising and consumer education requirements be placed on the OCCs.

Discussion

Before proceeding to the particular issues raised on rehearing, the Commission emphasizes that it will not allow any carrier to operate indefinitely without proper authorization. Based upon the evidence of record, there is no question that some OCCs are carrying Kentucky intrastate toll traffic--both interLATA and intraLATA--without authority to do so. Several OCCs have certificate requests pending before the Commission. The determination has been made in this case that any grant of operating authority to facilities-based OCCs will currently be for interLATA operations only. The Commission holds the expectation that the OCCs will take steps to abide by the current ban on intraLATA competition. If the Commission's expectations in this regard are not met, it will take appropriate action.

The major issue confronting the Commission on rehearing is how to enforce the current ban on intraLATA competition at the same time that interLATA competition is allowed. The primary impediment to achieving this objective arises from the technical nature of the OCC's interconnections to the LECs. The lack of automatic number identification on the line side interconnections utilized by the OCCs necessitates a pragmatic approach to this problem. As aptly pointed out by Multi-Com in its post hearing brief, the solutions before this Commission are all flawed to varying degrees.

The Commission has fully considered on rehearing all the alternatives before it. In a post hearing brief, MCI and Western Union maintain that rehearing was granted on the restricted issue of whether the intraLATA billing requirement contained in the May 25, 1984, Order should be retained or deleted (in addition to the grant of rehearing to ATTCOM on the advertising issue). On this basis, they argue that no other proposals can properly be considered upon rehearing. However, MCI and Western Union are in error in this interpretation; the Commission specifically granted rehearing on grounds considerably broader than this. The May 25 Order granted to all parties "opportunity to evaluate and present views on alternative solutions to this problem. [Emphasis added.]"⁴ Not only did the Commission not restrict rehearing in the manner suggested by MCI and Western Union, it combined the requests granted for rehearing and found that together these

⁴Order, May 25, 1984, p. 11.

constitute "a single general issue upon which rehearing will be granted. [Emphasis added.]"⁵ If MCI and Western Union objected to this treatment, these objections properly should have been voiced during the proceedings rather than raised in post hearing briefs.

The proposed solutions can usefully be viewed as lying on a continuum, from the most effective and costly solutions at one end to the least effective and costly solutions at the other end. The solution at one extreme of this continuum is to require the physical blocking of intraLATA calls by the OCCs. This solution was rejected in the Commission's Order of May 25, 1984, as being undesirable due to its high cost. No new evidence has been presented on rehearing to indicate this finding was in error. To the contrary, reconsideration has reinforced the Commission's opinion that requiring blocking of unauthorized calls over OCC networks would impose inordinate costs upon the OCCs.⁶ These costs are unjustified in light of the impending phase-in of equal access, the nature of the Commission's ban on intraLATA competition, and the impediment such costs would present to the development of the OCCs as viable long-term competitors to ATTCOM.

The Commission has been urged to require that the LECs block unauthorized intraLATA traffic at end offices that are

⁵Ibid.

⁶Sprint's Response to Commission Order, dated July 11, 1984, p. 3.

converted to equal access.⁷ It is the Commission's opinion that Feature Group D blocking of unauthorized traffic at equal access offices by the LECs is appropriate until such time as intraLATA competition is allowed. The Commission has rejected the requirement of physical blocking by the OCCs utilizing line side connections due to prohibitive costs. Prohibitive costs are not present in the case of blocking by an LEC at equal access end offices.

At the other extreme is a solution relying solely upon advertising and consumer education by the OCCs. The May 25, 1984, Order rejected reliance upon this approach alone, stating:

The Commission questions whether a program relying solely upon promotional and billing activities to inform and educate consumers would be a sufficient deterrent to the completion of intraLATA calls over interLATA carrier networks.⁸

As a result of the Commission's skepticism, it was found that advertising and consumer education should be augmented with the provision that the OCCs bill intraLATA calls at the prevailing tariffed rates. On rehearing, no persuasive substantive evidence was presented to demonstrate the efficacy of advertising and consumer education efforts as the sole solution.

Evidence was presented on rehearing which demonstrated that substantial costs to the OCCs would result from augmenting the consumer education approach in the manner discussed in the May 25, 1984, Order. The evidence also indicates that other

⁷AG Brief, p. 5.

⁸Order, May 25, 1984, p. 19.

measures designed to supplement consumer education efforts entail considerable costs. For the Commission to determine whether the imposition of any such measures is warranted, the magnitude of the problem of unauthorized intraLATA calling must be known. If the traffic is de minimis--as contended by the OCCs--then the costs associated with additional measures render them unjustified. If significant volumes of unauthorized intraLATA traffic are being carried over OCC networks, then additional steps should be taken. The Commission finds that reliable, current information on the volume of intraLATA traffic carried over OCC networks in Kentucky does not exist. The Commission further finds that this information is needed to make an informed judgment on whether requirements beyond those of advertising and consumer education are warranted. Accordingly, any OCC seeking intrastate interLATA authority in Kentucky shall provide to the Commission, 3 months from the date of any certificate granted or 3 months from the date of this Order, whichever occurs first, valid estimates of the volume of Kentucky intraLATA traffic carried over its network.⁹ The estimation methodology and the required data will be determined by the carriers in conjunction with the Commission staff, and will be subject to Commission approval. A conference for this purpose will be scheduled shortly. Agreement to supply this information will be a precondition for interLATA certification for any OCC. Continuance of such certification

⁹Sprint has indicated willingness to conduct such studies. See Sprint brief, p. 46.

shall be subject to the requirement that these data be furnished periodically until such time as the Commission finds they are no longer needed.

Should, in the Commission's judgment, these data indicate that advertising and consumer education are not sufficiently effective in deterring unauthorized calling, the Commission has determined that compensation by the OCCs to the authorized intra-LATA carrier would be appropriate.

Several considerations have entered into this determination. First, a significant diversion of intraLATA traffic and associated revenue from the LECs would adversely impact local exchange rates, at a time when these rates are already under upward pressure for a variety of reasons. The Commission remains committed to its regulatory goal of universal service. If the revenue impact from diverted traffic is of sufficient magnitude to adversely affect universal service, then the Commission would be compelled to pursue the compensation plan.

The Commission has also carefully considered the impact of unauthorized intraLATA calling and the various proposed solutions on the competitive positions of ATTCOM and the OCCs. The Commission has clearly established that a fundamental goal of this proceeding is development of effective interLATA toll competition. Due to their costs, imposition of measures more stringent than advertising will not advance this objective and therefore should be done only if the benefits achieved outweigh costs incurred. As to the arguments advanced by ATTCOM that it is put at a significant competitive disadvantage by the OCC's

ability to carry unauthorized intraLATA traffic, the Commission finds them unpersuasive. This is because, among other things, ATTCOM retains its advantages of an "in place" customer base, high quality of trunk side interconnections, and status as the "default" carrier. In any event, the Commission will consider the overall competitive positions of the OCCs and ATTCOM in determining any discount in access charges paid by OCCs in Case No. 8838, An Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements for Telephone Utilities Pursuant to Changes to be Effective January 1, 1984.

The Commission is fully aware of the shortcomings of a compensation plan. Such a plan necessarily involves compromises and approximations, and considerable effort would be required to implement it. However, as previously noted, all options before the Commission on this issue contain flaws. It is the Commission's opinion that this option, if needed, would accomplish the objectives in the most economical manner available. Taken as a whole, the evidence adduced at the formal conference and through data requests and testimony demonstrates compensation is the most direct and economical alternative presented with which to supplement the required advertising provision, if needed. This plan appears workable and, if properly constructed, could be administered in an equitable manner. Specific problems with such a plan were raised by the OCCs during these proceedings. Some of these points have merit, but would need to be considered in implementing a compensation program rather than accepting the concept.

The Commission will not address the specific details of an appropriate compensation plan at this juncture. To do so would be premature since, as previously discussed, the data needed to make a determination concerning the need for this program are not yet available. If, in the Commission's judgment, the data do indicate a compensation program is needed, it will schedule conferences with the parties involved to resolve the issues necessary to implement it.

Multi-Com has proposed several measures which would reduce the volume of unauthorized intraLATA traffic, and thus the likelihood that a compensation program will be necessary. This proposal involves the limited imposition of blocking requirements, restricted to the cases of direct access lines, OCC provided autodialers, and banded WATS service. It is the Commission's opinion that these proposed measures have considerable merit. However, sufficient questions exist concerning their implementation that the Commission will not impose limited blocking requirements upon the OCCs at this time.

The Commission agrees with Multi-Com's assessment that the possibility of jurisdictional misclassification of toll traffic over direct access lines is sufficiently slight that it does not pose a problem. However, Multi-Com was unable to demonstrate that the cost of blocking intraLATA calls over direct access lines is materially less than in the case of switched access lines.

There also exist several difficulties with Multi-Com's proposal to require blocking on OCC provided autodialers. As

these devices are deregulated customer premises equipment, several legal issues would arise upon imposition of a Commission requirement that they be programmed to block intraLATA calls. There is also evidence that only certain types of autodialers would be programmable in the required fashion, and that their use may not be widespread since the advent of universal call termination by the OCCs.¹⁰

With respect to a blocking requirement on banded WATS utilized by the OCCs, there is insufficient evidence to determine whether such a requirement could be practically implemented. In particular, it was not established that the blocking type function occurring in banded WATS could be expanded and transferred to provide blocking capability at the intraLATA level.

The Commission is of the opinion that the piecemeal nature and complexity of selective blocking requirements renders this solution less desirable than the transfer of unauthorized revenues discussed herein. However, it would be appropriate that the OCCs institute wherever possible, and on a voluntary basis, certain of these steps. The OCCs are currently more familiar than the other parties with the technical aspects of their systems, implementation costs, and the amounts of unauthorized traffic that might be eliminated by selective blocking. Therefore, they are currently in the best position to judge which situations could lend themselves to the proposed types of blocking. Specific and limited blocking, if it can be accomplished at a

¹⁰T.E., Volume I, pp. 189-190 and T.E., Volume II, pp. 193-194.

reasonable cost, should be perceived by the OCCs to be in their own interest, since this would reduce the likelihood of imposition of a compensation plan. The OCCs have clearly indicated that they do not feel that a compensation program is desirable. The OCCs should also recognize that future events could result in the Commission imposing some or all of Multi-Com's proposal.

Multi-Com also proposed that resellers be included in any compensation program, arguing there is no basis on which to distinguish between LECs and WATS resellers for the purpose of determining which carriers should appropriately be compensated.¹¹ However, cross examination of Multi-Com's witness, Jeffrey Zahner, established that WATS resellers differ from LECs in several respects material to this issue.¹² In particular, WATS resellers obviously do not provide local exchange service, and the diversion of toll traffic from WATS resellers does not hold the same potential for adverse consequences on local monopoly ratepayers as does diversion of traffic from LECs. Accordingly, the Commission finds that any compensation program implemented should include only LECs as recipients of revenue.

In post hearing briefs, MCI, Western Union, and Sprint take the position that the compensation proposals before the Commission are equivalent to penalties levied upon the OCCs. This characterization of the compensation method as a penalty is

¹¹Supplemental Testimony of Jeffrey M. Zahner filed August 27, 1984.

¹²T.E., Volume II, pp. 177-188.

in error. On its face, it is clear that a properly constructed compensation program is merely a removal and transfer of revenues the OCCs have not been authorized to obtain. Such a program would place the OCCs in a revenue position comparable to that which would exist if they had trunk side connections and thus were unable to complete unauthorized intraLATA calls. This does not constitute a penalty, but instead a partial remedy for the inability of companies utilizing line side connections to properly comply with the Commission's temporary ban on intraLATA toll competition. Compensation would prevent a windfall to the OCCs at the expense of the LECs that are authorized to carry this traffic and obligated to provide service to all customers within their certificated territory.

It has also been suggested that any compensation requirement should include ATTCOM.¹³ In support of this, Sprint cites an example where intraLATA calls can be completed by ATTCOM consumers. The Commission finds Sprint's example to be a highly unusual one which will not occur under most circumstances. It is often possible to cite extreme cases which are not relevant. Sprint also fails to provide evidence that this type of calling will be anything other than truly de minimis.

Sprint points out that ATTCOM's affiliate, AT&T Information Services, Inc., ("ATTIS") is a WATS reseller which can complete intraLATA calls. Sprint argues that this fact requires ATTCOM be made a party to any compensation plan instituted.

¹³Ibid., pp. 38-39.

Since ATTIS is not currently engaged in WATS resale in Kentucky, this argument is premature. It is not necessary to the Commission to judge the merits of this argument at this time. Accordingly, the Commission currently excludes ATTCOM from participation in any compensation program.

Several parties argue that, in addition to a transfer of unauthorized revenues to authorized carriers, the OCCs should be required to terminate service to consumers who persistently place intraLATA calls over their networks. While such a provision has some appeal as a method to enforce the current ban on intraLATA competition, the Commission finds this option to be undesirable for several reasons. First, the evidence indicates that a compensation program, if needed, constitutes a more cost-effective manner of accomplishing the Commission's goals.¹⁴ Additionally, as pointed out by Sprint, termination of a consumer's intrastate toll service would necessarily result in termination of interstate service.¹⁵ In this instance, the Commission agrees that jurisdictional considerations may circumscribe the Commission's authority to take such a course of action. However, the Commission does not foreclose the possibility of imposing this requirement at a later date if, for whatever reason, the measures adopted in this Order are unsuccessful in dealing with the problem of unauthorized intraLATA calling.

¹⁴ See, for example, Pre-filed Testimony of MCI witness, Richard W. Braun, pp. 16-17.

¹⁵ Sprint Brief, p. 43.

Sprint has stated the opinion in this case that it should be classified as a reseller and that "the resale activities of OCCs which are partially facilities based should be treated on the same basis as those of 'pure' resellers."¹⁶ The Commission advises Sprint that such issues are proper concerns in the certificate case it currently has pending before the Commission and can be dealt with in that proceeding if Sprint so desires.

ADVERTISING AND CONSUMER EDUCATION

OCCs

All parties to the proceeding agreed that consumer education should be an integral part of the Commission's strategy in the transition to competition in the interexchange market. There was disagreement over the specific method which the Commission could and should employ in designing a consumer education program.

The Commission is of the opinion that an OCC consumer education and advertising program is appropriate in implementing a competitive interexchange market in Kentucky. The Commission does not intend to become a censoring agency but it is the Commission's responsibility to insure that consumers are not misled in this critical period of introducing competition in Kentucky. Therefore, it will require each OCC to notify its current and potential consumers of the Commission's intraLATA policy. All advertising designed for Kentucky-specific consumers shall

¹⁶Ibid., p. 40.

contain notice of the Commission's intraLATA policy. Specific details on the wording and other aspects of this program will be determined through staff conferences with each of the OCCs. The Commission will require that OCC customer relations and sales personnel be instructed to provide similar information in any Kentucky-specific marketing programs and consumer contacts. Failure to meet these Commission advertising requirements could result in decertification of the offending OCC.

ATTCOM

ATTCOM petitioned the Commission to reconsider the requirement that ATTCOM advertise it is not certified to carry intraLATA traffic. In the rehearing, ATTCOM reiterated its position that it is unable to carry intraLATA toll traffic and therefore should be exempted from the advertising requirements placed on OCCs. In support of this position ATTCOM states, "In logic and fairness, therefore, neither AT&T Communications nor its Kentucky ratepayers should be burdened with the obligations and cost of advertising the intraLATA prohibition."¹⁷ However, ATTCOM contends that the advertising requirement should remain on the OCCs because "equal access will not occur at the identical times for all citizens of Kentucky."¹⁸

The AG and Sprint are opposed to lifting the advertising requirements on ATTCOM. Both the AG and Sprint took similar

¹⁷ATTCOM Brief, p. 11.

¹⁸Ibid., p. 12.

positions that lifting the ban would result in "an unjustifiable competitive handicap in an equal access environment."¹⁹ "That advantage would be particularly unfair for presubscriptions."²⁰ In their opinion, the Commission's effort to encourage competition would be better served by imposing Kentucky-specific advertising requirements on ATTCOM.

The Commission is once again attempting to balance numerous factors in coming to an appropriate decision on ATTCOM's advertising requirement. If equal access were universally available or were scheduled to be universally available on a specific date in the future, the Commission would agree with ATTCOM's position. However, the problem is that a phasing in of equal access will occur while the Commission maintains a consumer education and advertising requirement on the OCCs. If the Commission totally eliminates the requirement that ATTCOM inform the public of its limited authorization, it may appear to the public that ATTCOM is exempt from the intraLATA prohibition, irrespective of the fact that it is technically impossible for ATTCOM to complete such calls. The Commission is of the opinion that any resulting misconception and confusion would be unacceptable with regard to consumers who are served by offices being converted to equal access. The intense nature of competition for these customers, and the importance of the presubscription process dictate that accurate information on the capabilities of each interLATA

¹⁹AG Brief, p. 6.

²⁰GTE Sprint Brief, p. 49.

carrier be made available. Accordingly, ATTCOM shall be required to notify these consumers that it is authorized to carry only interLATA toll traffic. This requirement shall be restricted to mailings and other material specifically directed to consumers served by offices undergoing the equal access conversion, and who are being presented with the choice of presubscribing to an interLATA carrier. As with the OCCs, the specific form this notification shall take will be determined through conferences with the Commission staff. The Commission will also require that ATTCOM customer relations and sales personnel be instructed to provide similar information in any equal access marketing programs and consumer contacts.

FINDINGS AND ORDERS

The Commission, after consideration of the evidence of record and being advised, is of the opinion and finds that:

1. SCB's motion to hold various requests for certification in abeyance should be denied for the reasons set forth above.

2. A requirement that the OCCs physically block intra-LATA calls should be rejected on rehearing since no new evidence has been presented to indicate that the rejection of this solution in the May 25, 1984, Order was in error.

3. The costs imposed by a comprehensive blocking solution are unjustified in light of the impending phase-in of equal access, the temporary nature of the Commission's ban on intraLATA competition, and the impediment such costs would present to the

development of the OCCs as viable long-term competitors to ATTCOM.

4. Physical blocking of unauthorized intraLATA traffic at equal access Feature Group D connections by the LECs is appropriate unless and until intraLATA competition is introduced.

5. Any OCC seeking intrastate interLATA authority in Kentucky should provide valid estimates of the volume of Kentucky intraLATA traffic carried over its network.

6. OCCs seeking intrastate interLATA certification should be required to agree to supply the information discussed in the prior finding as a precondition to obtaining a certificate and as a condition for retaining it.

7. WATS resellers should not be included as recipients of revenue in any compensation program that may be implemented.

8. The issues raised by Sprint as to 1) whether it will be treated as a reseller until such time as it begins facilities-based activities in Kentucky and 2) whether resale activity by an OCC which is partially facilities-based should be treated on the same basis as those of "pure" resellers, are proper concerns to be raised in Sprint's certificate case and should be raised therein.

9. An OCC consumer education and advertising program is appropriate in implementing a competitive interexchange market in Kentucky.

10. Each OCC should notify its current and potential customers of the Commission's intraLATA policy.

11. All advertising designed for Kentucky-specific consumers should contain notice of the Commission's intraLATA policy.

12. Specific details on the wording and other aspects of the consumer education program should be determined through conferences with Commission staff.

13. OCC customer relations and sales personnel should provide information regarding the Commission's intraLATA policy in any Kentucky-specific marketing program and consumer contacts.

14. ATTCOM should notify its current and potential consumers, in areas served by an office undergoing equal access conversion, that it is authorized to carry only interLATA toll traffic.

15. ATTCOM's notification should be restricted to material directed to consumers served by offices undergoing equal access conversion and who are being presented with the choice of presubscribing to an interLATA carrier.

16. Specific details on the form of this notification should be determined through conferences with Commission staff.

17. ATTCOM customer relations and sales personnel should be instructed to provide similar information in any equal access presubscription marketing programs and consumer contacts.

18. Multi-Com's proposals involving limited imposition of blocking requirements restricted to the cases of direct access lines, OCC-provided autodialers, and banded WATS service have considerable merit, but should not be imposed at this time.

19. It is appropriate for OCCs to institute, wherever possible and on a voluntary basis, the measures discussed by Multi-Com.

IT IS THEREFORE ORDERED that SCB's motion to hold various requests for certification in abeyance be and it hereby is denied.

IT IS FURTHER ORDERED that a requirement that OCCs physically block intraLATA calls be and it hereby is rejected on re-hearing.

IT IS FURTHER ORDERED that the LECs shall physically block intraLATA calls at equal access offices unless and until intraLATA competition is introduced.

IT IS FURTHER ORDERED that any OCC seeking intrastate interLATA authority in Kentucky shall provide valid estimates of the volume of Kentucky intraLATA traffic carried over its network within 3 months from the date of any certificate granted or 3 months from the date of this Order, whichever occurs first.

IT IS FURTHER ORDERED that OCCs seeking intrastate interLATA certification shall be required to agree to supply the information discussed in the prior ordering paragraph as a pre-condition to obtaining a certificate and as a condition to retaining it.

IT IS FURTHER ORDERED that WATS resellers shall not be included as recipients of revenue in any compensation program that may be implemented.

IT IS FURTHER ORDERED that the issues raised by Sprint as to 1) whether it will be treated as a reseller until such time as

it begins facilities-based activities in Kentucky and 2) whether resale activity by an OCC which is partially facilities-based should be treated on the same basis as those of "pure" resellers, are proper concerns to be raised in Sprint's certificate case and shall be addressed therein.

IT IS FURTHER ORDERED that an OCC consumer education and advertising program shall be implemented in a competitive inter-exchange market in Kentucky.

IT IS FURTHER ORDERED that each OCC shall notify its current and potential customers of the Commission's intraLATA policy.

IT IS FURTHER ORDERED that all advertising designed for Kentucky-specific consumers shall contain notice of the Commission's intraLATA policy.

IT IS FURTHER ORDERED that specific details on the wording and other aspects of the consumer education program shall be determined through conferences with Commission staff.

IT IS FURTHER ORDERED that OCC customer relations and sales personnel shall be instructed to provide information regarding the Commission's intraLATA policy in any Kentucky-specific marketing program and consumer contacts.

IT IS FURTHER ORDERED that ATTCOM shall notify its current and potential consumers, in areas served by offices undergoing equal access conversion, that it is authorized to carry only interLATA toll traffic.

IT IS FURTHER ORDERED that ATTCOM's notification shall be restricted to material directed to consumers served by offices

undergoing equal access conversion and who are therefore being presented with the choice of presubscribing to an interLATA carrier.

IT IS FURTHER ORDERED that specific details on the form of this notification shall be determined through conferences with Commission staff.

IT IS FURTHER ORDERED that ATTCOM customer relations and sales personnel shall be instructed to provide similar information in any equal access presubscription marketing programs and consumer contacts.

IT IS FURTHER ORDERED that in light of the other measures being required herein to enforce the prohibition on intraLATA competition, the Commission's Order of May 25, 1984, insofar as that Order required each OCC to bill its consumers the intrastate MTS rate for unauthorized intraLATA traffic, be and it hereby is rescinded.

Done at Frankfort, Kentucky, this 26th day of October, 1984.

By the Commission

ATTEST:

Forest M. Skays
Secretary