

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF ALLNET COMMUNICATION)
SERVICES, INC., FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO)
OPERATE AS AN INTEREXCHANGE CARRIER OF) CASE NO. 9031
TELECOMMUNICATIONS SERVICES AND FOR THE)
ESTABLISHMENT OF INITIAL RATES WITHIN)
KENTUCKY)

O R D E R

On April 6, 1984, Allnet Communications Services, Inc., ("Allnet") filed an application for a certificate of public convenience and necessity to operate as an interexchange carrier of telecommunications services within Kentucky. AT&T of the South Central States, Inc., ("ATTCOM") was permitted to intervene.

On October 30, 1984, the Commission held a hearing in this matter. Briefs were filed with the Commission on November 12 and 16, 1984.

Allnet was incorporated in Illinois in 1980 as Combined Network Inc. and commenced interstate operations in 1981. In November, 1983, it changed its name to Allnet, and it maintains its principal offices at 100 South Wacker Drive, Seventh Floor, Chicago, Illinois.

Allnet is a licensed resale carrier authorized by the Federal Communications Commission ("FCC") to provide interstate long distance telephone service to all points in the United States.

Allnet presently uses three basic types of transmission circuits to complete a call: fixed rate private circuits; circuits leased from other common carriers; and Wide Area Telecommunications Services ("WATS") which permits nationwide calling.

Initially, Allnet plans to offer its services to residents of Louisville, Kentucky, and now has a sales office located in Louisville. However, Allnet owns no telecommunications equipment located in Kentucky. Louisville customers complete calls over Allnet's network through leased facilities to its switch located in Cincinnati, Ohio. This switch is a Northern Telecom CTSS type.

Allnet's expected call blocking rate is less than 1 percent. In order to provide high quality services, Allnet designed its systems for a 0 db loss between Allnet originating and terminating telephone company end offices and for an overall loss of 13.4 db. Allnet also designed noise, frequency, distortion and echo controls into its system.

The brief filed by ATTCOM raised an issue regarding whether Allnet should be required to pay intrastate access charges prospectively and retroactively to January 1, 1984. It is implicit in the concept of the Commission granting Allnet authority to offer intrastate interLATA services, that Allnet will pay all relevant intrastate access charges once certificated. However, ATTCOM has raised a new issue (i.e. payment of access charges retroactive to January 1, 1984, as a condition to granting certification) by its brief to which no party had prior

notice. Allnet challenged ATTCOM's raising the issue of retroactive payment of access charges.

The Commission is of the opinion and finds that ATTCOM has improperly raised the issue of retroactive payment of access charges. ATTCOM chose not to raise the issue at or before the October 30, 1984, hearing. ATTCOM did not offer any testimony at the hearing.¹ Therefore, no party had notice of that issue and to consider it now may result in a denial of due process. However, even if the Commission considered this issue on the merits, there is insufficient evidence to indicate that Allnet was willfully providing intrastate communications services within Kentucky without a certificate or that Allnet was holding itself out to the public as such a carrier. As recognized in The October 26, 1984, Order in Administrative Case No. 273, there is currently no evidence to indicate that Allnet has carried significant amounts of intrastate traffic.

During rehearing in Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky, it came to the Commission's attention that Sprint, which had an intrastate certificate request pending, might seek total intrastate authority as a WATS reseller rather than attempt to obtain an intrastate, interLATA-only certificate. The Commission's Order on Rehearing advised Sprint that this issue and whether partially facilities-based

¹ Transcript of Evidence ("T.E.") at page 168.

carriers should be treated as "pure" resellers were proper concerns for Sprint's certificate case.²

At the beginning of the October 30, 1984, hearing in this case all the applicants were asked whether they were seeking certification as a non-dominant facilities-based carrier providing interLATA communication only or as a reseller.³ Sprint, MCI and Allnet all replied that they sought an intrastate interLATA certificate, not status as a reseller.⁴ Thus, even though the Commission had expressly stated that its certificate case was the proper forum to raise the issue of whether facilities-based or reseller treatment should be accorded Sprint, and logically any other applicant seeking the same authority and treatment, Sprint as well as MCI and Allnet, chose not to pursue the matter at the hearing in its certificate case.

In its brief ATTCOM requests that the Commission recognize Sprint, MCI and Allnet as facilities-based carriers. Since Allnet is not seeking operating authority as a WATS reseller and is seeking only intrastate, interLATA authority, the issue raised by ATTCOM does not require the Commission take action at this time.

ATTCOM alleges in its post hearing brief that Allnet has not met the requirements concerning jurisdictional traffic

² October 26, 1984, Order in Administrative Case No. 273 at pages 19 and 25-26.

³ T.E. at page 7.

⁴ T.E. at page 8.

studies imposed by the October 26, 1984, Order in Case No. 273.⁵

This Order required 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.⁶

This Order further required that,

. . .OCCs seeking intrastate interLATA certification shall . . .agree to supply the information discussed in the prior ordering paragraph [reproduced above] as a precondition to obtaining a certificate and as a condition to retaining it.⁷

In a reply brief filed November 16, 1984, Allnet states that it will comply with any applicable requirements promulgated by this Commission.⁸ Allnet is of the opinion that it has thus far conformed with the Commission's requirements concerning jurisdictional traffic studies.

The Commission is of the opinion and finds that Allnet has, thus far, met the requirements contained in the October 26, 1984, Order concerning jurisdictional traffic studies. Allnet has agreed to supply the required information. A conference is being scheduled to determine precisely how Allnet will furnish this information. The Commission fully expects that Allnet will provide the agreed-upon information within the specified time

⁵ Brief of ATTCOM at pages 9-10.

⁶ Order on Rehearing, Administrative Case No. 273, p. 25.

⁷ Ibid.

⁸ Reply brief of Allnet at page 5-6.

period. Should Allnet fail, at a future juncture, to comply with the traffic reporting provisions contained in the October 26, 1984, Order, the Commission will, at that time, take appropriate action.

In Administrative Case No. 273, the Commission required companies filing for a certificate of public convenience and necessity to make a showing of financial viability. This could take the form of pro forma financial statements or, as an alternative subject to waiver by the Commission, sufficient cash reserves to sustain the applicant through its initial operating period. The Commission also required that Kentucky-specific records, including a balance sheet, income statement, a statement of changes in financial position, and other information, be submitted annually. Allnet in this proceeding submitted evidence of sufficient financial backing to indicate that it possesses the financial viability to provide service in Kentucky. Allnet also indicated at the hearing that it currently does not maintain Kentucky-specific records, but that it would be willing to work with the Commission's staff to meet the intrastate reporting requirements.⁹ The Commission expects Allnet to notify the Commission should any problems arise in the fulfillment of the reporting requirements of Administrative Case No. 273.

FINDINGS AND ORDER

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

⁹ T.E. at pages 148-149.

(1) Allnet is technically capable of providing the service.

(2) Allnet has shown that it is financially able to provide telecommunications services within Kentucky.

(3) Allnet is ready, willing and able to provide service and should be granted a certificate of public convenience and necessity to provide intrastate interLATA telecommunications services to the public.

(4) Allnet should not be allowed to provide intrastate intraLATA services to the public.

(5) Allnet should conform its intrastate offering of service to the provisions of the May 25, 1984, and October 26, 1984, Orders in Administrative Case No. 273.

(6) Allnet's rates as filed should be approved.

(7) Allnet should file its tariffs containing its rates, rules, and regulations in the manner prescribed by the Commission.

IT IS THEREFORE ORDERED that Allnet is granted a certificate of public convenience and necessity to provide intrastate interLATA telecommunications services to the residents of Kentucky. This grant is expressly conditioned upon Allnet's compliance with the May 25, 1984, and October 26, 1984, Orders in Administrative Case No. 273 and the November 19, 1984, Order in Case No. 8838, including, but not limited to, the following: provision of jurisdictional reports to local exchange carriers consistent with the Commission-approved methodology; complete,


detailed and accurate records, workpapers and supporting documentation for those jurisdictional reports for 1 year; provision of a traffic study as contemplated in the October 26, 1984, Order in Administrative Case No. 273; and compliance with advertising requirements and restrictions regarding intraLATA service.


IT IS FURTHER ORDERED that Allnet shall not provide intrastate intraLATA services to residents of Kentucky.

IT IS FURTHER ORDERED that Allnet's rates as filed are approved and Allnet shall file its tariffs setting forth its rates, rules and regulations in the manner prescribed by the Commission within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 21st day of November, 1984.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary