

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF CINCINNATI BELL LONG)
DISTANCE, INC., 125 E. COURT STREET,)
10TH FLOOR, CINCINNATI, OHIO 45202, FOR)
A CERTIFICATE OF PUBLIC CONVENIENCE AND) CASE NO. 9066
NECESSITY TO PROVIDE INTRASTATE TOLL)
TELEPHONE SERVICE WITHIN THE COMMONWEALTH)
OF KENTUCKY)

O R D E R

INTRODUCTION

On May 22, 1984, Cincinnati Bell Long Distance, Inc., ("Choice") filed its application for a certificate of public convenience and necessity to provide resale of wide area telecommunications service ("WATS") within the state of Kentucky. Choice is a wholly-owned subsidiary of Cincinnati Bell Enterprises, Inc., ("CBE") which in turn is a wholly-owned subsidiary of Cincinnati Bell, Inc. ("CBI"). In addition CBI owns Cincinnati Bell Telephone Company ("CBT"), which operates as a local exchange carrier in Northern Kentucky.

On July 17, 1984, the Commission staff met with representatives from CBE, Choice, and the Attorney General's office ("AG") to gather information on the various aspects of Choice's plans to operate in Kentucky. On August 27, 1984, public hearings were conducted at the Commission's offices in Frankfort, Kentucky, for purposes of cross-examining witnesses. All information requested during the hearing was provided.

Motions to intervene were filed by American Telephone and Telegraph Communications, Inc., and the AG. These motions were granted.

Competitive Concerns

In Administrative Case No. 261, An Inquiry into the Resale of Intrastate Wide Area Telecommunications Service, the Commission found that the resale of WATS was in the public interest and therefore lifted its prohibition on the service within Kentucky. As a result of Adm. Case No. 261, a number of WATS resellers have been certificated in Kentucky with minimal regulatory review. However, the application of Choice presents concerns to the Commission which were not addressed in either Adm. Case No. 261 or in previous WATS resale certification proceedings. Since Choice and CBT are owned by CBI, the Commission is concerned that the common ownership provides both the opportunity and incentive for cross-subsidies and discriminatory treatment of competitors, each possibly working to the detriment of ratepayers. The Commission therefore considers it necessary to scrutinize Choice's application for the purpose of both protecting local exchange ratepayers and insuring fair competition for Choice's interexchange competitors. Much of the hearing was devoted to these concerns.

In response to the Commission's concern with its ability to discriminate against both potential and current competitors, CBT filed a document entitled, "Anti-Discriminatory Policy of Cincinnati Bell Telephone Company." In the document, CBT states: "Tariffed service and equipment is furnished to customers on a

first-come, first-served basis and this has been the practice followed in dealing with CBLD."¹ Though the Commission fully realizes that CBT is not subject to the legal restrictions of the Modified Final Judgment or similar court restrictions, the Commission reluctantly agrees that a "first-come first-served policy" will in most circumstances insure equal treatment of Choice's competitors. However, in those circumstances where the policy does not lead to equal treatment, competitors will continue to have recourse to this Commission and the courts. The Commission does reserve the authority to investigate and ultimately withdraw Choice's certificate if anticompetitive practices should occur.

A second concern of the Commission in this regard is the potential for cross subsidization between competitive subsidiaries and the regulated monopoly. Choice currently employs a limited number of people (approximately 13) on a full-time basis; however, for special needs (i.e. accounting), it utilizes services provided by other entities within CBI, including CBT. CBT has provided detailed records in this proceeding to demonstrate that Choice, when utilizing services from CBT, has paid the employee's fully loaded hourly rate. Though the opportunity remains, the Commission's concerns regarding the potential for cross subsidy are lessened by the provision of this information

¹Hearing Request, CBT Appendix C.

and by the apparent agreement² of CBE and Choice to provide access to all books of account and records of both parties. The Commission will have full opportunity to evaluate billings for services and to determine if allocations of cost are equitable to CBT and Choice.

The Commission is concerned that the information provided to the public is not sufficient to permit differentiation between WATS resellers and CBT, thus resulting in a competitive advantage for Choice. However Choice does not agree. Choice's witness Mr. Steve Robertson contends ". . .it [Choice] has established. . .a stronger image than Cincinnati Bell Long Distance."³ Although neither the Commission nor Choice has the scientific evidence to substantiate or determine the public's perception of Choice and its relationship to CBT, the Commission is of the opinion that passages from Choice's advertising such as "With Choice, you get professional Cincinnati Bell Service"⁴ are inappropriate and could result in a competitive advantage for Choice. Thus the Commission will require Choice to delete references to Cincinnati Bell Telephone in both its printed and electronic advertising

²Mr. Clark, Vice President of CBE, agreed to make the books and accounts of both CBE and Choice available to the Commission during the hearing. However, the attorney for Choice, Mr. Dale, indicated a reluctance to make any similar assurances with respect to CBI's books and records. Since the hearing, the Commission has not received any information retracting Mr. Clark's agreement, so it is assuming that the books and records of both CBE and Choice are available for inspection.

³Transcript of Evidence, August 27, 1984, p. 34.

⁴Choice advertising pamphlet provided during informal conference on July 17, 1984.

materials. However, the Commission does not feel that the advantages are of such magnitude that a certificate should be withheld strictly on that basis. The Commission will continue to monitor the public statements and advertising of Choice and will take action in the future if abuse should occur.

The Commission realizes that this application from CBT is probably the first of a number of applications for certificates to provide competitive services from regulated telephone companies. The Commission does intend to apply the same standards and secure the same type of information and assurances from these companies as it has required from CBT.

Facilities

Choice plans to switch all long distance traffic over facilities leased from AT&T Communications ("ATTCOM"), which will include Band 1-6 ATTCOM WATS lines, Intrastate Ohio WATS lines, Network Access, and Message Sensitive Outgoing-Only trunks. Choice's switch will be ESSX service leased from CBT in Cincinnati, Ohio, under tariff. This service will be equipped with Electronic Tandem Network feature.

Access to the switch will be provided in the following ways: (1) Customers can dial a local telephone number within the Cincinnati exchange area; (2) Customers can have a leased direct line to the ESSX, eliminating the need to dial a local telephone number and 5-digit authorization code; or (3) customers can dial expanded 800 INWATS number from outside of the Cincinnati exchange area. Using the automatic route selection feature, the ESSX will route a customer call to the appropriate WATS band for

completion. If all facilities within a band are busy, the call will be routed to the next higher band. If all bands are busy the call will be completed over the AT&T Public Switched Network. Choice plans to include Foreign Exchange lines leased from ATTCOM to expand the serving area and to expand the network by leasing additional OUTWATS lines. Choice has no plans to construct any of its own facilities at this time.

The Commission does put Choice on notice that if Choice should choose to construct transmission facilities in the future, this certificate to resell WATS statewide will be revoked. In addition, at that time Choice will be required to seek a new certificate of convenience and necessity from this Commission with the restrictions then currently placed on facilities-based carriers.

FINDINGS AND ORDERS

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

(1) Choice will be leasing facilities from certified carriers, both local and long distance, under tariff, and these parties will maintain their respective equipment. Therefore Choice has available to it the technical capability to maintain its system.

(2) Choice does not own or lease, except under tariff, any transmission facilities either within Kentucky or the United States.

(3) Showing of public need is not necessary due to Adm. Cases Nos. 261 and 273, An Inquiry into Inter- and Intra-LATA

Intrastate Competition in Toll and Related Services Markets in Kentucky.

(4) Choice is financially viable.

(5) Choice should be granted a certificate of public convenience and necessity to resell WATS within the Commonwealth of Kentucky, subject to the conditions described above (e.g., avoiding anti-competitive behavior and not adding transmission facilities).

(6) The rates filed in this case should be approved.

(7) Choice should file its tariffs containing its rates, rules and regulations in accordance with the Commission's regulations within 30 days from the date of this Order.

(8) The Commission will have access to the books and records of CBE and Choice.

(9) CBT's first-come first-serve policy in providing facilities will not discriminate against Choice's competitors.

(10) Pursuant to its Order entered May 25, 1984, in Administrative Case No. 273, the Commission finds that Choice should amend its operations and thus its rules and regulations to place in escrow all customer deposits received for service.

IT IS THEREFORE ORDERED that Choice be and it hereby is granted a certificate of public convenience and necessity to resell WATS service within Kentucky, subject to the conditions described above.

IT IS FURTHER ORDERED that Choice's rates as filed be approved and that it file tariffs containing its rates, rules and regulations within 30 days from the date of this Order.

IT IS FURTHER ORDERED that Choice shall place in escrow all customer deposits received for service and shall amend its rules and regulations to state this policy.

Done at Frankfort, Kentucky, this 1st day of November, 1984.

PUBLIC SERVICE COMMISSION

Richard D. Hemmings
Chairman

Richard D. Hemmings
Vice Chairman

Lu Shull
Commissioner

ATTEST:

Secretary