

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO LOCAL RESALE)	
OF EXCHANGE SERVICES BY STS)	ADMINISTRATIVE CASE
PROVIDERS AND COCOT PROVIDERS)	NO. 293

O R D E R

On May 5, 1986, Cincinnati Bell Telephone Company and the Independent Telephone Group ("ITG") filed petitions requesting rehearing or reconsideration of various designated issues. On May 6, 1986, South Central Bell Telephone Company ("SCB"), General Telephone Company of the South ("General"), and Third and Oak Corporation, d/b/a Treyton Oak Towers ("Treyton Oak") filed petitions also seeking reconsideration or rehearing of various designated issues. AT&T Information Systems ("AT&T") and Interconnect Telecommunications Systems, Inc., ("ITS") filed responses to the rehearing requests May 20, 1986, and May 23, 1986, respectively.

Measured Service

Cincinnati Bell, SCB and General have petitioned the Commission to reconsider the prohibition of measured service rate structure for COCOT and STS services. Cincinnati Bell and General contend that the Commission failed to provide notice that measured service was an issue in the proceeding and thus they were deprived of due process. In addition, Cincinnati Bell has indicated that additional usage information has been developed since the hearing and that this information is relevant in determining the proper

rate structure. In response, AT&T stated, ". . .the Commission's decision not to impose discriminatory rates and charges on STS providers is clearly supported by the record in this proceeding and correctly interprets Kentucky law (KRS 278.170(11)) prohibiting rate discrimination by public utilities."¹

The Commission will grant rehearing on measured rate services for STS and COCOT services. Cincinnati Bell, SCB, General and all other interested parties will be required to address the following issues in prefiled testimony:

1. Does measured rate service unreasonably discriminate against STS when compared to other PBX users? Provide cost, demand and technological bases for distinguishing STS providers from other PBX users.
2. Provide cost, demand and technological bases for distinguishing COCOT providers from other business or semi-public phone providers. Does measured rate service unreasonably discriminate against COCOT providers?
3. Does measured rate result in an anti-competitive barrier to STS and COCOT providers?

Message Rate Service

In addition to rehearing the matter of measured rate service, the Commission will also grant rehearing on Cincinnati Bell's recommendation that, in the absence of measured rate service, message rate rather than non-optional flat rate service apply in the case of STS and that message rate rather than optional flat rate service apply in the case of COCOT. However, the Commission

¹ Response of AT&T Information Systems to Applications for Rehearing or Reconsideration, page 10.

advises all parties that its interest in consideration of this option will turn on the following points:

1. In the case of STS, whether or not a message rate service requirement would result in unreasonable discrimination vis-a-vis other PBX users. For example, Cincinnati Bell's Kentucky Metropolitan PBX trunk line rate is \$55.97 per month. Based on usage data for Cincinnati Bell's only STS provider, under message rate service a bill of \$83.72 per month would result on average. The Commission is concerned that the \$27.75 per month difference may constitute unreasonable discrimination.

2. Whether or not a message rate service requirement would result in an anti-competitive barrier to STS and COCOT market entry. For example, Cincinnati Bell's Kentucky Metropolitan business individual line rate is \$44.77 per month. Based on usage data for COCOT providers in Cincinnati Bell's service area, under message rate service a bill of \$87.57 per month would result on average. The Commission is concerned that the \$42.80 per month difference could pose a barrier to market entry.

3. Whether or not a message rate service requirement is justifiable relative to the demonstrable incremental traffic sensitive and non-traffic plant investments imposed on the telephone network by STS and COCOT providers.

The Commission anticipates that the parties will provide testimony and available supporting information on these points.

Joint User Service

In the April 16, 1986, Order the Commission ordered that joint user service tariffs be "grandfathered" upon implementation

of STS tariffs.² In its petition for rehearing, Treyton Oak seeks clarification on the grandfathering conditions.³

The Commission will grant oral argument on grandfathering joint user service tariffs on the following points:

1. The Commission is of the preliminary opinion that joint user service tariffs should be grandfathered upon implementation of STS tariffs, such that no further access line connections would be permitted under joint user service tariffs. CPE additions, changes or rearrangement behind the network interface would be permitted. Central office controlled feature additions would not be permitted--for example, custom calling features. Also, in the preliminary opinion of the Commission, joint user service should be eliminated after a reasonable transition period--for example, 5 years.

2. As an alternative to grandfathering joint user service tariffs, the Commission is of the preliminary opinion that joint user service and STS tariffs could coexist, provided that the number of user/tenant thresholds are applied to each tariff, in order to provide a reasonable basis for service classification.

Client Charges

In the April 16, 1986, Order the Commission denied SCB's proposal to apply client charges to STS tenants. In its petition

² Order, April 16, 1986, pages 41-42.

³ Treyton Oak, Petition for Reconsideration or Rehearing and for Clarification, pages 10-11.

for rehearing, SCB seeks reconsideration of client charges.⁴

The Commission will not grant rehearing on client charges. As observed in the Order, client charges are not cost-based and are, in effect, a surcharge imposed on STS tenants.⁵ For these reasons the Commission considers client charges to be unreasonable.

Tariff Filing Requirements

In its April 16, 1986, Order the Commission required all LECs to file STS and COCOT tariffs.⁶ In its petition for rehearing, the ITG requested reconsideration of this requirement.⁷ The Commission will not grant rehearing or oral argument on this issue, as it remains of the opinion that STS and COCOT tariffs should be filed by all LECs in order that STS and COCOT service be made available throughout the state in as uniform a manner as possible.

STS Premises

The Commission's Order of April 16, 1986, indicated a definition of STS premises intended to impose geographic limitations on the scope of STS operations.⁸ Various parties filing petitions for rehearing seek reconsideration of the STS premises definition. The Commission will grant oral argument on the need to modify the

⁴ SCB, Application for Hearing Pursuant to KRS 278.400, page 6.

⁵ Order, April 16, 1986, page 35.

⁶ Ibid., page 22.

⁷ ITG, Motion for Reconsideration, page 2.

⁸ Order, April 16, 1986, page 30.

STS premises definition in its Order, with a view toward the merits of specific alternatives.

Directory Listings

The Commission's Order of April 16, 1986, allowed "each STS client an alphabetical or white pages directory listing at no charge."⁹ Various parties filing petitions for rehearing seek reconsideration of this order.

The Commission will modify its Order with respect to directory listings consistent with the views expressed by the parties seeking rehearing. That is, an alphabetical or white pages directory listing should be allowed in the case of STS providers at no charge. And STS providers may obtain additional listings for its tenants, subject to applicable additional listing charges.

Deregulation of Semi-Public Pay Stations

In its request for reconsideration the ITG petitioned the Commission to address its request for deregulation of "new" semi-public pay stations. The ITG contends that a rate subsidy for COCOTs may result from the Commission's Order.

The Commission will not grant rehearing on the deregulation of new semi-public telephones. The Commission will continue to monitor the development of the COCOT industry and may consider deregulation of semi-public telephones in some future proceeding.

Public Utility Status

SCB and Treyton Oak petitioned for rehearing on the Commission's determination that STS providers are public utilities. SCB

⁹ Ibid., page 35.

asserts that if STS providers are public utilities, they may be barred by existing utility franchises from offering their services unless substantially inadequate service is currently being provided. SCB also contends that the Commission's determination may increase the likelihood of federal preemption of state regulation in this area. Treyton Oak's petition again raises the legal argument that STS providers are not offering service "to the public" and that under the Commission's interpretation, various landlords, joint users and COCOT providers would meet the definition of public utilities. The Commission will grant rehearing on the issue of whether STS providers are public utilities. For purposes of this rehearing, the Commission will only consider oral argument by the parties directed to the following points:

1. Whether STS providers are public utilities.
2. Whether COCOT providers are public utilities.
3. Whether defining either STS or COCOT providers as public utilities implies that landlords and joint users are public utilities.
4. Whether the provision of STS service is barred by telephone utility franchises unless a substantial inadequacy of service is demonstrated, and if so, whether a substantial inadequacy can be shown so as to permit entry of STS providers.

Findings and Orders

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

1. For all the reasons previously discussed, SCB's, Cincinnati Bell's, ITG's and General's petitions for rehearing should be granted in part and denied in part as specified in the above sections of this Order.

2. In accordance with the above discussion, Treyton Oak's petition for reconsideration should be granted.

3. All parties should prefile testimony as specified above on or before July 1, 1986.

4. Oral arguments and cross-examination on the prefiled testimony should be held.

IT IS THEREFORE ORDERED that:

1. SCB's, Cincinnati Bell's, ITG's and General's petitions for rehearing are granted in part and denied in part as previously indicated.

2. Treyton Oak's petition for reconsideration is granted.

3. All parties shall file testimony on measured and message rate service on or before July 1, 1986.

4. Oral arguments and cross-examination on the prefiled testimony shall be held on July 24, 1986, at 9:00 a.m., Eastern Daylight Time, in the Commission's offices, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 27th day of May, 1986.

PUBLIC SERVICE COMMISSION

Richard D. Hemery, Jr.
Chairman

Ken [unclear]
Vice Chairman

James H. [unclear]
Commissioner

ATTEST:

Secretary