

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On May 27, 1986, the Public Service Commission granted rehearing to South Central Bell Telephone Company ("SCB"), Cincinnati Bell Telephone Company ("Cincinnati Bell") and General Telephone Company of the South ("General") on the issue of permitting measured service rate structure for Shared Tenant Service ("STS") and Customer-Owned Coin Operated Telephone ("COCOT") providers. In addition to granting rehearing on measured service the Commission permitted oral arguments on whether STS and COCOT providers are utilities, on "grandfathering" joint use tariffs and on the definition of STS providers.

Public hearings were conducted at the Commission's offices in Frankfort, Kentucky, on July 24, 1986, for the purpose of cross-examining and hearing oral arguments on the issues described above.

Witnesses appearing for the Local Exchange Companies ("LECs") were as follows:

Cincinnati Bell: R. William Stropes, District Manager of Tariffs

General: Robert L. Mitchell, Usage Sensitive Service Program Manager

SCB: Joan D. Mezzell, Operations Manager, Rates and Economics Department

John F. Dorsch, Manager, Rates and Economics Department

All briefs and information requested during the hearing have been filed.

Public Utility Status

In its April 16, 1986, Order, the Commission initially determined that STS providers would be treated as public utilities. The Commission also determined that COCOT providers would continue to be treated as tariffed customers of the LECs, since the record was inadequate to support a change in the existing regulatory treatment. South Central Bell and Treyton Oak Towers' ("Treyton Oak") petitions for rehearing of these decisions were granted by the Commission's Order dated May 27, 1986. The Commission specified that the following four issues would be the subject of oral argument at the rehearing:

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.

Treyton Oak argued that if STS providers were defined as public utilities, then COCOTs and other utilities would need to be

treated consistently. The Commission agrees that it should treat STS and COCOT providers on a consistent basis. Consequently, the Commission's determination herein that STS providers are not public utilities obviates the need to address COCOT providers separately. Given this result, it is unnecessary for the Commission to consider issues three and four listed above.

The issue of whether STS and COCOT providers are public utilities is a difficult one. As the Commission acknowledged in its original Order, "There is no Kentucky case law directly on point, given the circumstances confronting the Commission in this case."¹ The Commission's experience with the regulation of COCOT providers indirectly, i.e. as tariffed customers of the LECs, has proven successful thus far, and that treatment should be applied to STS providers as well. The Commission intends to monitor the development of STS within Kentucky. Should its relative size or a change in circumstances indicate a different regulatory posture is desirable, the Commission may revisit this question.

As originally determined, the Commission is still convinced STS and COCOT providers offer their services "for compensation." The only issue then remaining is whether their services are offered "to the public" within the meaning of KRS 278.010(3)(e). There are no STS providers currently operating or planned in Kentucky, of which the Commission is aware. Given the anticipated limited scope of STS and COCOT providers' operations, the Commission finds that the "for the public" test is not met.

¹ April 16, 1986, Order, page 7.

Local Measured Service

The Commission in its Order on rehearing required Cincinnati Bell, SCB and General to address whether measured rate service unreasonably discriminates against COCOT and STS providers when compared to other PBX users and business customers. In addition they were required to provide cost, demand and technological bases for distinguishing COCOT and STS providers from other PBX and business phone users. Finally, they were required to address whether measured rates resulted in anti-competitive barriers to STS and COCOT service providers.

In both prefiled testimony and cross-examination Cincinnati Bell, SCB and General contended that STS and COCOT service providers could be distinguished from other PBX and business users based on their usage, the cost of providing service to them, and their position as a competitive telephone reseller. Cincinnati Bell provided data which indicated that its single STS provider's usage was higher than the average PBX customer's usage. Thus, Cincinnati Bell contended that the STS providers will impose higher costs on the network because portions of the costs of LEC's plant is traffic sensitive.

Cincinnati Bell and General contended that without measured rates the general ratepayers would be subsidizing STS providers. Cincinnati Bell, SCB and General argued that the adoption of measured rates recognizes the changing competitive environment faced by local telephone companies and that its adoption is not discriminatory but instead represents a normal competitive response to an evolving competitive threat.

It is the opinion of the Commission that the record on rehearing does not support modifying its original Order. The Commission fully realizes that the development of STS services may result in higher average usage of the trunks used by STS providers. However, the information provided by Cincinnati Bell, SCB and General does not convince the Commission that higher usage or a limited number of PBX trunks would result in higher costs to the LEC. The limited number of PBX trunks may constrain the usage during busy hours, thus resulting in a lower long-run cost to the LEC. Furthermore, SCB, Cincinnati Bell and General were unable to provide an adequate accounting of other costs and savings associated with the development of STS service. The Commission remains convinced that the appropriate forum for determining whether measured rates will lower the costs of providing telephone service is in Administrative Case No. 285. Thus the Commission reaffirms its original Order on measured service for STS providers. All LECs will be required to file STS tariffs within 30 days of the date of this Order.

Similarly, the Commission is not convinced that it should modify its original Order on measured service for COCOTS. SCB, Cincinnati Bell and General have failed to provide evidence which demonstrates that measured rates track costs. In addition the Commission is not convinced it is appropriate to single out COCOT providers for measured service without appropriate cost data because it poses a barrier to COCOT market entry. The Commission remains convinced that the appropriate forum for determining the feasibility of measured service is Administrative Case No. 285.

Thus the Commission reaffirms its original Order on measured service for COCOT providers. All LECs will be required to file COCOT tariffs within 30 days of the date of this Order.

Message Rate Service

The Commission, in its Order granting rehearing, agreed to consider Cincinnati Bell's recommendation that, in the absence of measured rate service, (1) message rate rather than flat rate service apply in the case of STS and (2) message rate rather than the COCOT's option of choosing message rate or flat rate service apply in the case of COCOTs.

Both in prefiled testimony and under cross-examination, Cincinnati Bell and SCB contended that message rate service is preferable to flat rate service and should be required in the cases of STS and COCOTs, in the event that the Commission rejected measured rate service on rehearing. Furthermore, Cincinnati Bell and SCB contended that adopting message rate service would not result in unreasonable discrimination against STS providers vis-a-vis other PBX users, would not pose an anti-competitive barrier to STS and COCOT market entry, and would be justifiable on the basis of additional network costs caused by STS and COCOTs.

In the opinion of the Commission, the record on rehearing is not persuasive. Therefore, the Commission will not modify its Order of April 16, 1986, to require message rate service in the case of STS and COCOTs except to eliminate the option of message rate service in the case of COCOTs.

In the case of STS, the record on rehearing indicates that, on average, message rate service would result in bill

differentials between STS providers and other PBX users. Such bill differentials are not supported by any definitive cost of service data and, therefore, would constitute unreasonable discrimination and could pose an undesirable barrier to STS market entry.

Similarly, in the case of COCOTs, the record on rehearing indicates that, on average, message rate service would result in bill differentials vis-a-vis flat rate service that are not supported by any definitive cost of service data and which could pose an undesirable barrier to COCOT market entry. On the other hand, the record on rehearing suggests that allowing COCOT vendors the option of either message rate service or flat rate service could result in an unfair competitive advantage to COCOT vendors vis-a-vis local exchange carriers who also provide coin telephone service. Therefore, the Commission will modify its Order of April 16, 1986, to eliminate the message rate option and require that COCOTs be connected to the exchange network under applicable business individual line rates.

Joint User Service

The Commission, in its Order granting rehearing, invited oral argument on the "grandfathering" of joint user service tariffs. No party to this case objected to grandfathering joint user service tariffs, as ordered in the Commission's Order of April 16, 1986. Instead, rehearing concerned the terms and conditions of grandfathering and focused on two proposals made by the Commission in its Order of May 27, 1986.

Based on the record of oral argument and the cross-examination of witnesses at rehearing, the Commission is of the opinion that joint user service tariffs should be grandfathered upon the implementation of STS tariffs, such that no further access line connections will be permitted under joint user service tariffs -- i.e., no new customers will be connected to the exchange network under joint user service tariffs and no existing customers will be allowed to connect additional access lines under joint user service tariffs. Furthermore, in the case of existing customers, the connection of additional access lines of any type will require reclassification from joint user service to some other appropriate classification of service. Also, existing customers served under joint user service tariffs will not be permitted to add central office controlled features such as touch tone or custom calling services. CPE additions, changes, and rearrangements on the customer's side of the network interface will be permitted, as neither the Commission nor local exchange carriers can be expected to police events occurring on the customer's premises. Finally, joint user service tariffs will be terminated after a transition period of 5 years.

STS Premises

The Commission, in its Order granting rehearing, invited oral argument on the definition of an STS premises.

In its Order of April 16, 1986, the Commission defined an STS premises in terms of continuous property "under common ownership or management that is not separated by property owned or managed

by others".² In its petition for rehearing, SCB proposed to define an STS premises in the following terms:

Resale is permitted where facilities permit and within the confines of specifically identified contiguous property areas under the control of a single owner or within a common development with a single name identity, i.e., office parks, shopping centers, apartment complexes, condominiums.³

The key difference between the Commission's definition and SCB's recommended definition is the concept of "common management," which SCB and other local exchange carriers believe should be deleted from the definition of an STS premises. In general, the local exchange carriers contend that the "common management" clause is too comprehensive and would result in the unrestricted development of STS. Similarly, Cincinnati Bell further contends that the concept of "continuous property" in the Commission's definition of an STS premises and the concept of "contiguous property" in SCB's definition of an STS premises are both too comprehensive and would also result in the unrestricted development of STS.

AT&T Information Systems ("ATTIS") stated in oral argument that "we are very satisfied with the description that the Commission set forth in its Order limiting shared tenant service

² April 16, 1986, Order, page 30.

³ Application for Hearing Pursuant to KRS 278.400, pages 7-8, emphasis deleted.

providers to contiguous property with common ownership or management".⁴ ATTIS also stated that it was "amenable" to SCB's proposed definition of an STS premises, but objected to "Cincinnati Bell's proposal to limit shared tenant services to common ownership."⁵

In the opinion of the Commission, SCB's recommended definition of an STS premises is acceptable with some clarification. STS should be permitted where facilities are available within continuous property areas under single ownership or within common developments with a single name identity, such as multi-tenant office buildings, apartment and condominium complexes, commercial malls, campus complexes, and office and industrial parks. "Single ownership" should be interpreted so as to mean not only an individual owner, but also ownership in the form of a corporation, joint venture, or partnership with a single name identity. "Continuous property" should be construed to mean property that is not intersected by property owned by other entities. Furthermore, continuous property can be intersected by public thoroughfares, railroads, and other public and private rights of way, provided that the property would be continuous in the absence of such intersections.

⁴ Transcript of Evidence, July 24, 1986, page 280.

⁵ Ibid., page 280.

ORDERS

Having considered the evidence of record, and in accordance with the above-stated FINDINGS,

IT IS THEREFORE ORDERED that:

1. The Commission's April 16, 1986, Order is modified to reflect the decision herein not to treat STS and COCOT providers as public utilities.

2. The Commission's April 16, 1986, Order is reaffirmed as to the decision that local measured service rates would not apply to STS and COCOT providers.

3. All LECs shall file conforming STS and COCOT tariffs within 30 days of the date of this Order.

4. The Commission's April 16, 1986, Order allowing COCOTs the option of message rate service is hereby modified to remove that option and the April 16, 1986, Order is affirmed in rejecting mandatory message rate service for STS or COCOT providers.

5. Joint user service tariffs shall be grandfathered upon the implementation of STS tariffs according to the terms discussed previously in this Order, and the joint user service tariffs shall be terminated at the end of a 5-year transition period.

6. The definition of STS premises contained in the April 16, 1986, Order shall be modified to reflect the adoption of the SCB proposed definition, as further explained in the text of this Order.

7. In all other respects, the Commission's April 16, 1986, Order in this proceeding is hereby affirmed.

Done at Frankfort, Kentucky, this 11th day of November, 1986.

PUBLIC SERVICE COMMISSION

Richard D. Hennessy
Chairman

[Signature]
Vice Chairman

[Signature]
Commissioner

ATTEST:

Executive Director