

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE TARIFF FILING OF SOUTH CENTRAL )  
BELL TELEPHONE COMPANY TO ESTABLISH )  
PULSELINK PUBLIC PACKET SWITCHING ) CASE NO. 10321  
NETWORK SERVICE AND DATA TRANSPORT )  
ACCESS CHANNEL SERVICE )

O R D E R

Background

On August 26, 1988, MCI Telecommunications Corporation ("MCI") propounded a request for information to South Central Bell Telephone Company ("South Central Bell").<sup>1</sup> On September 23, 1988, South Central Bell responded to MCI's request for information. On October 31, 1988, MCI filed a motion to compel South Central Bell to provide certain information and to cause depositions to be taken. On November 15, 1988, South Central Bell filed a response to MCI's motion.

Discussion

Among MCI's requests for information was item no. 21, which stated: "Please provide copies of the work papers used in establishing the rates for PulseLink service in Kentucky."<sup>2</sup> South Central Bell's response was that it considered "the market

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<sup>1</sup> The information request was filed with the Commission on August 29, 1988.

<sup>2</sup> Motion of MCI, Exhibit A.

research, forecasting and resultant competitive analysis used in establishing PulseLink rates to be proprietary."<sup>3</sup>

In its motion, MCI moves the Commission to compel South Central Bell to provide the information requested in item no. 21, "including the computer runs and printouts used to develop the cost support and pricing of the PulseLink filing."<sup>4</sup> Furthermore, MCI contends that deposing a person familiar with the PulseLink filing might avoid a protracted public hearing and "would enable MCI and the Commission to better understand both the cost information filed with this Commission and the workpapers currently being withheld by South Central Bell."<sup>5</sup> Finally, MCI indicates its willingness "to conduct the deposition under such reasonable conditions or requirements which will protect South Central Bell's reasonable proprietary information and interests."<sup>6</sup>

South Central Bell's response is that "PulseLink is a competitive service; a service that is or could be provided by an interexchange carrier such as MCI."<sup>7</sup> Accordingly, South Central Bell summarizes its objections as follows:

1. PulseLink's cost structure depends on usage characteristics and the information MCI seeks show how cost varies

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<sup>3</sup> Response of South Central Bell to MCI's First Set of Data Requests, Item No. 21.

<sup>4</sup> Motion of MCI, page 2.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid., page 3.

<sup>7</sup> Response of South Central Bell, page 3. In fact, South Central Bell observes that MCI once provided a packet switching service known as Datatransport.

with usage. South Central Bell contends that such information is valuable to a competitor and "would allow a competitor to select the best in-road to the market."<sup>8</sup>

2. The information MCI seeks "would indicate to a competitor which markets within South Central Bell's territory are the most lucrative and which are not profitable."<sup>9</sup> South Central Bell contends that such information would result in a competitive advantage.

3. The information MCI seeks show materials cost and vendor installation charges that South Central Bell negotiated for its exclusive use. South Central Bell contends that such information is an important component of PulseLink's cost structure. Furthermore, "disclosure of such information would adversely impact the relationship between South Central Bell and its vendor."<sup>10</sup>

4. The information MCI seeks "can be extrapolated from the data South Central Bell has offered to produce."<sup>11</sup> Furthermore, production of computer analyses would reveal to MCI methods that "South Central Bell has internally devised for making cost/pricing studies for service offerings including, but not limited to PulseLink."<sup>12</sup>

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8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid., emphasis in original.

South Central Bell also represents that it has offered to provide MCI with all information that has been filed with the Commission, including certain proprietary information, but excluding customer specific information.<sup>13</sup>

The Commission will not address South Central Bell's claim that PulseLink is a competitive service offering, as it is beyond the scope of MCI's motion to compel and involves regulatory issues that have not been addressed in the record of this case.

In information filed in the record of this case, South Central Bell indicates that PulseLink rates "are market based, not cost based."<sup>14</sup> The distinction is important to resolving the dispute between MCI and South Central Bell. South Central Bell developed cost information to satisfy Commission filing requirements. However, South Central Bell did not use the cost information to set PulseLink rates. Instead, South Central Bell set PulseLink rates based on its analysis of market demand and the price levels that the market could sustain.

In the opinion of the Commission, MCI's motion to compel should be denied, as it seeks information of a commercially sensitive nature in the form of market studies. However, the Commission will require South Central Bell to provide MCI with cost information and all other information contained in responses

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<sup>13</sup> Ibid., page 4.

<sup>14</sup> South Central Bell's Response to the Commission's First Request for Information, Item 14.

to information requests, subject to the terms of any protective agreements that the parties may execute regarding proprietary information and with the exception of customer specific information. In particular, allowing MCI access to the cost information filed in conjunction with the PulseLink tariff will afford MCI the opportunity to compare costs and rates, and form an opinion on issues such as contribution and cross-subsidization. This is sufficient to safeguard MCI's interests.

The taking of depositions is permitted under KRS 278.340. MCI has informed the Commission that it is willing to conduct any proposed deposition under requirements which will protect South Central Bell's reasonable proprietary information and interests. Accordingly, MCI should limit the scope of any deposition to the cost information filed in conjunction with the PulseLink tariff and other information of record, as outlined in this Order.

#### Findings and Orders

The Commission, having considered MCI's motion and South Central Bell's response, and being sufficiently advised, is of the opinion and finds that:

1. MCI's motion should be denied to the extent that it seeks information of a commercially sensitive nature in the form of market studies and granted to the extent that South Central Bell should provide MCI with the opportunity to take depositions related to the cost information filed in conjunction with the PulseLink tariff and other information of record, as outlined in this Order.

2. South Central Bell should provide MCI with cost information and all other information contained in responses to information requests, subject to the terms of appropriate protection agreements and with the exception of customer specific information. Furthermore, South Central Bell should provide MCI with this information within 10 days from the date of this Order.

3. In order to conclude this investigation, the following further schedule of procedure should be adopted:

(a) Further requests for information will be due no later than February 10, 1989.

(b) Responses to further requests for information will be due no later than February 24, 1989.


(c) Further prefiled testimony will be due no later than March 6, 1989.

(d) A public hearing will be scheduled on March 22, 1989, at 9:00 a.m., EST, in the Commission's offices at Frankfort, Kentucky.

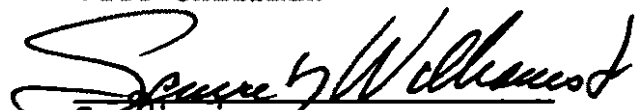
Accordingly, the above findings are HEREBY ORDERED.

Done at Frankfort, Kentucky, this 26th day of January, 1989.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

Attest:

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Executive Director