

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LDD, INC. FOR THE)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO OPERATE)
AS A RESELLER OF TELECOMMUNICATIONS)
SERVICES WITHIN THE COMMONWEALTH OF)
KENTUCKY)

CASE NO. 89-017

THE APPLICATION OF DCI, INC. FOR THE)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE)
INTRASTATE, INTERLATA TELCOMMUNICA-)
TIONS SERVICES TO THE PUBLIC AS A)
FACILITIES BASED, NON-DOMINANT)
INTERLATA CARRIER)

O R D E R

On July 28, 1989, the Commission issued an Order granting LDD, Inc. ("LDD") a Certificate of Public Convenience and Necessity to provide intrastate, interLATA telecommunications services to the public as a facilities-based, non-dominant interLATA carrier. The Commission denied LDD's request to operate as a reseller of telecommunications services on the basis of LDD's ownership of microwave facilities. The Commission indicated that if LDD were to form a subsidiary that did not own any transmission facilities, LDD's subsidiary could seek authority to be certified as a WATS¹ reseller. LDD's subsidiary could use the transmission facilities of LDD at LDD's tariffed price which would be made

¹ Wide Area Telecommunications Service.

available to other resellers, as well.

On August 9, 1989, LDD filed a motion to rescind portions of the Commission's July 28, 1989 Order. LDD also filed a motion to amend its application and add DCI, Inc. ("DCI") as applicant. In this motion, LDD requested the Commission to rescind that portion of its Order that granted LDD a Certificate of Public Convenience and Necessity to provide intrastate, interLATA telecommunications services as a facilities-based, non-dominant interLATA carrier, in that LDD's application is to be further amended to include DCI as an applicant of such certificate rather than LDD.

DCI is a privately held corporation incorporated under the laws of the state of Missouri, and has obtained from the Commonwealth of Kentucky, Secretary of State, a Certificate of Authority to do business in Kentucky. The microwave transmission facilities owned by LDD have been conveyed to DCI by a bill of sale dated August 1, 1989, which was authorized by action of the Board of Directors of DCI.

DCI seeks authority to provide intrastate, interLATA telecommunications services to the public as a facilities-based non-dominant interLATA carrier. In support of its application, DCI contends that it has the necessary experience in the telecommunications industry, and technical and financial resources necessary to ensure its ability and success in providing services within the Commonwealth of Kentucky. The management of LDD will be responsible by contractual arrangement for the management of DCI.

LDD seeks authority to provide resold intraLATA and interstate telecommunications services by originating all calls on South Central Bell Telephone Company's ("SCB's") Feature Groups A, B, and D switched access services. Under this amendment, LDD does not have any facilities of its own. Therefore, LDD can be classified as a WATS reseller.

LDD has proposed two network configurations. Under Option A, LDD proposes to install a switch in Paducah, Kentucky, whereas under Option B, LDD proposes to use its existing switch in Cape Girardeau, Missouri. Under Option B, LDD proposes to use DCI's microwave facilities to transport LDD's traffic to Missouri and back to Kentucky. DCI proposes to provide this service to LDD through a flat-rated DS1 private line service between Paducah, Kentucky and Cape Girardeau, Missouri. Under both proposals, LDD plans to originate calls on Feature Groups A, B, and D switched access services provided by SCB, and plans to terminate intraLATA calls using SCB's WATS, and interLATA calls via services provided by approved certified carriers.

The Commission is of the opinion that the network configuration proposed in Option A is consistent with the Commission's policies concerning the resale of services by WATS resellers. This determination is based on the presumption that if LDD has

a switch in Paducah, it is unnecessary for LDD to use DCI's microwave facilities for providing Kentucky intrastate services.² However, the Commission has some concerns with the network configuration proposed in Option B. These concerns are more related to the type of services provided to LDD by DCI and not with the actual switching location. On page 4 of the July 28, 1989 Order in this proceeding, the Commission stated that "LDD's subsidiary could use the transmission facilities of LDD at LDD's tariffed price which could be made available to other resellers." However, the manner in which DCI proposes to provide transmission facilities to LDD, a non-switched private line service between Paducah and Cape Girardeau, would be of little use to other WATS resellers. Although DCI is providing a tariffed service to LDD, this service offering appears to be little more than a private leasing agreement between DCI and LDD, which is an arrangement that is inappropriate for a WATS reseller. The Commission also finds it objectionable for a WATS reseller to use interstate services to provide what is clearly jurisdictionally intrastate services.³ Therefore, the Commission rejects the network configuration as proposed under Option B; however, the Commission will reconsider this decision if LDD can propose a solution that addresses the concerns contained herein.

² LDD might require the use of DCI's microwave facilities for providing interstate services, but these services are not within the Commission's jurisdiction.

³ The determination of jurisdiction is based on points of call origination and termination, regardless of how the call is transported.

IT IS THEREFORE ORDERED that:

1. DCI be and it hereby is granted a Certificate of Public Convenience and Necessity to provide intrastate, interLATA telecommunications services to the public as a facilities-based, non-dominant interLATA carrier. DCI shall comply with the November 19, 1984 Order in Case No. 8838.⁴

2. The portion of the Commission's July 28, 1989 Order that granted LDD a Certificate of Public Convenience and Necessity to provide intrastate, interLATA telecommunications services to the public as a facilities-based, non-dominant interLATA carrier is hereby vacated.

3. LDD be and it hereby is granted a Certificate of Public Convenience and Necessity to resell WATS within Kentucky, subject to the conditions described herein. This authority is strictly limited to those services described in this Order and contained in LDD's application.

4. The network configuration as proposed under Option B is rejected, however, the Commission will reconsider its decision if LDD can propose a solution that addresses the concerns contained in this Order.

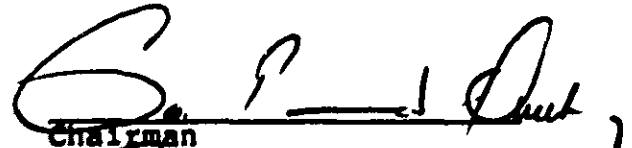
⁴ Case No. 8838, An Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements for Telephone Utilities Pursuant to Changes to be Effective January 1, 1984, as they apply to InterLATA Carriers.

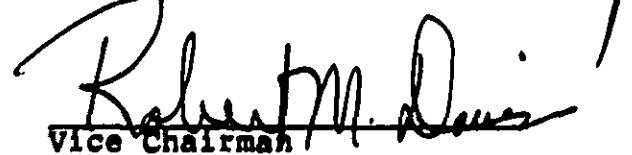
5. DCI, and LDD shall expressly comply with, but not limited to the provisions of the May 25, 1984 and October 26, 1984 Orders in Administrative Case No. 273.⁵

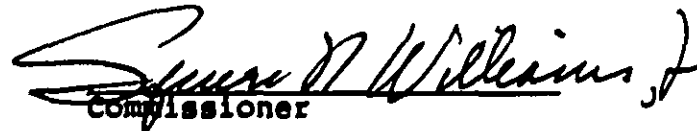
6. Within 30 days of the date of this Order, DCI and LDD shall file their tariff sheets in accordance with 807 KAR 5:001.

Done at Frankfort, Kentucky, this 25th day of August, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director

⁵ Administrative Case No. 273, An Inquiry Into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.