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 TELECOMMUNICATIONS SERVICES TO THE PUBLIC AS A FACILITIES BASED, NON-DOMINANT INTERLATA CARRIER	)	

O R D E R

On October 5, 1989, LDD, Inc. ("LDD") and DCI, Inc. ("DCI") filed a motion for reconsideration of the Commission's August 25, 1989 Order in this proceeding. In that Order, the Commission granted DCI the authority to provide interLATA telecommunications services to the public as a facilities-based carrier and granted its affiliate, LDD, the authority to provide statewide long-distance service as a WATS reseller, subject to the conditions contained therein. In its application, LDD had proposed two network configurations in which the primary difference was the location of the switching equipment used to switch Kentucky intrastate traffic. LDD's preferred option was to use its existing switch in Cape Girardeau, Missouri, which would require the use of DCI's transmission facilities to transport the call from LDD's point-of-presence in Paducah, Kentucky, to Cape Girardeau. The second option was to locate the switch in

Paducah. In the August 25, 1989 Order, the Commission found that the network configuration which would have resulted from locating the switch in Paducah was consistent with the Commission's policies concerning the resale of services by WATS resellers. The Commission rejected LDD's preferred option because of concerns related to the type of service provided to LDD by DCI; however, the Commission indicated that it would reconsider its decision provided that LDD could propose a solution that addressed the Commission's concerns. The motion filed on October 5, 1989 requested reconsideration of this decision or, in the alternative, that the Commission allow LDD to delay the installation of the Paducah switch until a decision is reached in Administrative Case No. 323.[1] South Central Bell Telephone Company filed its response to this motion on October 23, 1989.

In its motion, LDD indicated that the location of LDD's switch at Paducah would result in the unnecessary duplication of equipment and would cause the unnecessary expenditure of some $350,000. LDD felt this was in violation of the rules and regulations of the Commission and applicable law incident thereto. LDD felt that the policy enunciated in Administrative Case No. 273[2] protects existing local exchange carriers from having their facilities duplicated by competing carriers and the

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1 Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

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

utilization of a switch at Cape Girardeau would not duplicate any facility of a local exchange carrier but would in fact unnecessarily duplicate its own facilities. LDD felt that allowing it to locate its switch in Cape Girardeau would not be inconsistent with the Commission's policies but would rather preserve the policy of the Commission to avoid duplication of services and unnecessary expenditures as well as protecting the investment already made by local exchange carriers.

DISCUSSION

In an Order dated September 2, 1983 in Administrative Case No. 261,[3] the Commission found that it was in the public interest to allow the resale of intrastate WATS. The Commission based this finding on its expectation that the resale of WATS would result in more efficient utilization of available system capacity, which could in turn lessen the need for further construction by the telephone utilities.[4] A slowdown in construction and expansion could lower revenue requirements in the future, thereby providing benefits to all subscribers.

Later, in an Order dated May 25, 1984 in Administrative Case No. 273, the Commission found that the potential benefits to consumers from interLATA competition outweigh the costs of the duplication of transmission facilities, and therefore, authorized

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3 Administrative Case No. 261, An Inquiry Into the Resale of Intrastate Wide Area Telecommunications Service.

4 Prior to this Order, the only "telephone utilities" were local exchange carriers. At the present time, there are several different types of telephone utilities, for example, local exchange carriers, WATS resellers, interLATA carriers, and cellular telephone carriers.

facilities-based interLATA competition. However, this decision was limited to the interLATA market and did not apply to the intraLATA toll market. WATS resellers were permitted to continue providing statewide long-distance service, as it was expected that WATS resellers would continue to use the transmission facilities of local exchange carriers in providing intraLATA services, which would not cause wasteful duplication of intraLATA transmission facilities.

These decisions created distinctions between the two types of long-distance carriers authorized to compete in Kentucky. WATS resellers were authorized to provide service statewide, whereas facilities-based carriers could only provide interLATA service. These distinctions necessitated the development of criteria for evaluating a utility's application to provide long-distance telecommunications services. The obvious criteria was the ownership of transmission facilities. However, the inadequacy of this criteria became apparent when an affiliate of a facilities-based carrier applied for authority to provide statewide service as a WATS reseller in Case No. 9066.[5] In this proceeding Cincinnati Bell Long Distance Company, Inc. ("Choice"), an affiliate of Cincinnati Bell Telephone Company, applied for authorization to resell WATS within Kentucky. The Commission determined that as Choice did not own transmission

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5 Case No. 9066, The Application of Cincinnati Bell Long Distance, Inc., 125 E. Court Street, 10th Floor, Cincinnati, Ohio 45202, for a Certificate of Public Convenience and Necessity to Provide Intrastate Toll Telephone Service Within the Commonwealth of Kentucky.

facilities and would obtain the use of such facilities only under tariff from certified carriers, it could be authorized to provide intrastate service as a WATS reseller. However, Choice was put on notice that if it should construct transmission facilities in the future, its authorization to resell WATS would be revoked and it should then seek authorization to provide service as a facilities-based carrier.

The Commission reached a similar conclusion in Case No. 9830[6] in which Long Distance Telephone Savers, Inc. was a wholly-owned subsidiary of SouthernNet Services, Inc., a common carrier which owned and operated transmission facilities in several southeastern states.

The Commission's decisions in these cases reflected its recognition of the potential unfairness in classifing a carrier as facilities-based solely because an affiliate owned transmission facilities. However, it would have been naive to ignore the possibility that a reseller might use an affiliate's transmission facilities just as if the reseller itself owned these facilities. If such use were to occur, it raises two major

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6 Case No. 9830, The Application of Long Distance Telephone Savers, Inc., for a Certificate of Public Convenience and Necessity to Provide Resale of Telecommunications Services and Operation of Facilities Within Kentucky.

concerns. The first concern is the opportunity and incentive for cross-subsidies and discriminatory treatment of competitors. The second concern is the possibility of the reseller using its affiliate's transmission facilities in providing intraLATA services. If this were to occur, it would clearly invalidate the rationale that the resale of WATS would result in more efficient utilization of available system capacity, which was the primary support for the Commission's finding that the resale of intrastate WATS was in the public interest. This would also, in effect, be allowing intraLATA facilities-based competition in violation of current policies. These considerations led to the requirement that WATS resellers obtain the use of transmission facilities solely from certified carriers under tariff, and that WATS resellers provide intraLATA services using only the transmission facilities authorized for intraLATA resale. The tariffing requirement is primarily useful to prevent cross-subsidies or discriminatory treatment of competitors by a dominant carrier; however, this requirement also helps to prevent a facilities-based, nondominant carrier from competing in the intraLATA market under the aegis of a WATS reseller affiliate. The requirement that WATS resellers provide intraLATA services using only the transmission facilities authorized for intraLATA resale is to further the goal of more efficient utilization of available system capacity, since it is technically and economically feasible to provide intraLATA services by assembling interstate or interLATA services. Although it is assumed that resellers use these services because it is the most cost effective means of providing service,[7] to allow them to do so would again invalidate the finding that the resale of WATS was in the public interest. That is, WATS resellers have intraLATA operating authority only because of the Commission's determination that the resale of intraLATA WATS would result in more efficient utilization of existing intraLATA facilities, and was therefore in the public interest. If a reseller was not using existing intraLATA facilities in providing intraLATA services, then it would not be in the public interest to allow the reseller to operate.

As previously noted, in LDD's situation, it has an existing switch in Cape Girardeau, Missouri, and from LDD's perspective, the most cost effective means to provide service would be to use this switch rather than install a switch in Kentucky. As it is not possible to use local exchange carrier services to transport calls to Missouri, it must use the services of a carrier that has interstate transmission capabilities, which in this case, is its affiliate, DCI. It should be noted that if a switch were located in Kentucky, it would not be necessary to use DCI's transmission services, since the local exchange carriers would be able to provide all necessary services.

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7 Rates for interstate services have been steadily declining relative to comparable intrastate services primarily as a result of the Federal Communications Commission's ("FCC") subscriber line charges. These charges reflect the FCC's decision to assign costs to local services that were previously assigned to long-distance services. The Commission has opposed this practice primarily because of the effect on local service rates.

In the August 25, 1989 Order, this proposal was rejected primarily because of concerns relating to the type of services provided to LDD by DCI. The Commission also noted its objection of the intended resale of interstate services to provide intrastate services. The Commission's concern with respect to the type of services provided to LDD by DCI was because the service was little more than a private leasing agreement between DCI and LDD. In the October 5, 1989 motion, the proposed solution to this problem was to tariff the use of LDD's switch in Cape Girardeau. With respect to the Commission's concern over the use of interstate services, it was suggested that this would have no effect on local exchange carriers, as it would not unnecessarily duplicate any local exchange carrier facilities. It was further noted that all intraLATA calls would originate on local exchange carrier Feature Groups A, B, and D switched access services and terminate via local exchange carrier WATS.

Upon reconsideration, the Commission finds it reasonable to grant LDD's request to delay the installation of the Paducah switch until a decision is reached in Administrative Case No. 323. In that proceeding, the Commission is investigating the issue of whether or not it is in the public interest to allow some degree of facilities-based intraLATA competition. If the Commission determines that such competition is in the public interest, then it is possible that there would be little distinction between resellers and facilities-based carriers. In this event, LDD would have spent $350,000 in unnecessary switching equipment. Furthermore, the Commission concurs with

LDD's contention that granting its request would have little or no effect on any Kentucky local exchange carrier. This concurrence is entirely dependent upon DCI's agreement to dedicate a portion of its channels to LDD's use. The Commission is concerned over the enforceability of this arrangement, and therefore will require LDD to keep records reflecting that its intraLATA traffic volumes reasonably correspond to its purchase of local exchange carrier services. Due to billing differences between local exchange carrier services and the services that LDD will be providing to its customers, an exact one-to-one correspondence is not expected. The Commission will not require that usage reports be filed at this time; however, records should be maintained for possible Commission review.

IT IS THEREFORE ORDERED that:

1. LDD's request to delay the installation of the Paducah switch until a decision is reached in Administrative Case No. 323 shall be granted. Upon a decision in Administrative Case No. 323 with respect to whether or not intraLATA facilities-based competition is in the public interest, LDD shall have 60 days to install a switch in Paducah or 30 days to file evidence demonstrating that its service configuration is consistent with the Commission's policies.

2. LDD shall keep records reflecting that its intraLATA traffic volumes reasonably correspond to its purchase of local exchange carrier services.

Done at Frankfort, Kentucky, this 27th day of October, 1989.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Acting Executive Director