

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO INTRALATA TOLL)
COMPETITION, AN APPROPRIATE) ADMINISTRATIVE
COMPENSATION SCHEME FOR COMPLETION) CASE NO. 323
OF INTRALATA CALLS BY INTEREXCHANGE) PHASE I
CARRIERS, AND WATS JURISDICTIONALITY)

O R D E R

On March 29, 1990, the Commission issued an Interim Order concerning intraLATA toll competition which comprises Phase I of this three-phase proceeding.¹ Therein, the Commission determined that a prima facie case exists that intraLATA toll competition is in the public interest; that such competition should extend to equal access on a presubscribed basis, intraLATA interexchange private-line service, intraLATA interexchange message-toll services, and intraLATA interexchange operator services; and that the next portion of Phase I (implementation) should proceed "apace".

GTE South Incorporated ("GTE"); Leslie County Telephone Company, Salem Telephone Company, and Lewisport Telephone Company ("Leslie County"); and South Central Bell Telephone Company

¹ Phase II concerns an appropriate compensation scheme for completion of intraLATA calls by interexchange carriers, and Phase III concerns WATS jurisdictionality. See Order dated December 12, 1988.

("South Central Bell") filed motions for rehearing. Cincinnati Bell Telephone Company ("Cincinnati Bell") filed a memorandum in support of GTE's motion. MCI Telecommunications Corporation ("MCI") and AT&T Communications of the South Central States ("AT&T") each filed a response to the motions for rehearing.

Rehearing is sought on the following matters:

1. The provision in the March 29, 1990 Order which states, "[T]his is an interim Order, not final and appealable."

2. Whether the Order contained sufficient probative evidence to support its findings.

3. The provision which ordered that the implementation phase of the case "shall proceed apace."

4. Whether the finding that facilities-based intraLATA competition will be in the public interest comports with Kentucky law.

The Commission, having reviewed the motions for rehearing and the responses thereto and having been otherwise sufficiently advised, hereby finds that the motions should be denied.

The first issue for which parties have sought rehearing concerns the provision that the Order was an Interim Order and was not final and appealable. South Central Bell requests that the Commission clarify that the hearings in Phase I of this proceeding are not complete at this time. Such clarification would solidify the interim nature of the March 29, 1990 Order. GTE, Leslie County, and MCI also request that the Commission address this

issue. The parties cite Mayfield Gas Co., Inc. vs. Public Service Commission, Ky., 259 S.W.2d 8, 11, 12 (1953), for the proposition that the Commission has the authority to determine whether a hearing is completed and that any order which reduces rates of public utilities must be proceeded by completed public hearings.

The Commission has not concluded hearings on Phase I of the proceeding (intraLATA toll competition). The Commission did not intend that any action, such as "reducing rates of public utilities" as in the Mayfield Gas case, would occur as a result of the March 29, 1990 Order. The Commission will issue an Order detailing its findings in the March 29, 1990 Order as well as its findings from the remaining hearings in Phase I of this proceeding at the conclusion of the implementation hearings in Phase I. The purpose of holding a hearing concerning public interest of intraLATA toll competition, and upon any determination that a prima facie case exists that such competition is in the public interest, then a subsequent hearing concerning the implementation of the Commission's finding was to focus attention on all issues involved in intraLATA toll competition. At the conclusion of the implementation portion of Phase I, parties may seek rehearing and judicial review of the Commission's decisions concerning intraLATA toll competition including those determinations contained in the March 29, 1990 Order.

The second issue for which rehearing is sought concerns whether sufficient evidence exists to support the findings contained in the March 29, 1990 Order. The argument is made that

the record to date contains insufficient probative evidence for the Commission to have made its determination. However, the Commission is not so persuaded.

The third issue on which rehearing is sought concerns the March 29, 1990 Order "that the implementation phase of this case shall proceed apace." GTE asserts that the implementation of intraLATA toll competition will involve numerous issues and that at this time there is insufficient evidence in the record to permit resolution of these issues without further hearings. That is all well and true. Ergo, the planned hearings concerning implementation will proceed as quickly as possible.

The fourth issue for which rehearing is sought is whether the Commission's finding that a prima facie case exists that facilities-based intraLATA competition is in the public interest comports with Kentucky law. South Central Bell asserts that the Commission's reliance on Kentucky Utilities vs. Public Service Commission, 390 S.W.2d 168 (Ky. 1965) is misplaced, but addresses only those cases and issues which it has previously addressed through briefs in Phase I and raises no new issues.

IT IS THEREFORE ORDERED THAT ALL MOTIONS FOR REHEARING ARE DENIED.

1. The March 29, 1990 Order is an Interim Order and not final and appealable.

2. There is sufficient evidence to support the findings contained in the March 29, 1990 Order.


3. The implementation phase of this case shall proceed "apace" or as soon as possible.

4. The Commission's finding that facilities-based intraLATA competition will be in the public interest comports with Kentucky law.

5. The Commission will, in the near future, issue an Order containing a procedural schedule, data requests, and an opportunity for oral comments on various scenarios concerning the implementation phase.

Done at Frankfort, Kentucky, this 4th day of May, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:



Executive Director

Executive Director_