

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 September 28, 1990, LDDS of Kentucky, Inc. and LDDS of Indiana, Inc. ("LDDS") filed a motion to compel South Central Bell Telephone Company ("South Central Bell") to respond to certain of its data request items filed August 10, 1990. On October 10, 1990, South Central Bell filed its response to LDDS's motion to compel. On October 11, 1990, MCI Telecommunications Corporation ("MCI") filed a motion to compel South Central Bell to respond to certain of its data request items. On October 16, 1990, South Central Bell filed a response to MCI's motion to compel.

LDDS's motion seeks to compel South Central Bell to respond to its data request Items 2 and 3 concerning intraLATA facilities, capacity, and traffic. South Central Bell objected to the request stating that the material was not readily accessible and that it was extremely burdensome to compile. Further, South Central Bell objected that the requests were an attempt to coerce it into providing data necessary to advance theories of LDDS and that the information was highly proprietary and would allow competitors to

"cream skim" customers from South Central Bell's most lucrative routes.

LDDS's motion contains its response to South Central Bell's objections. LDDS asserts that South Central Bell may not object to discovery on the basis of relevancy because the information requested relates to the claim or defense of the party seeking discovery pursuant to Kentucky Rule of Civil Procedure 26.02(1). LDDS asserts that Bell's objection is an attempt to withhold information which could (emphasis added) support LDDS's theory. LDDS also contends that the potentially burdensome nature of discovery is not an adequate objection to the production of relevant information and that the production of responses to these data requests are not oppressive, in bad faith, or motivated by harassment. Finally, LDDS contends that it will maintain confidentiality of the information in accordance with a nondisclosure agreement.

South Central Bell asserts that the information LDDS seeks is not compiled in the ordinary course of business and South Central Bell would be required to load and process 800 to 1000 tapes to summarize the information LDDS has requested for a total processing cost of \$1,200,000. Also, the data processing department of South Central Bell has estimated that the compilation of this material would take four to six months. South Central Bell further asserts that because the information is so highly proprietary, it should not be required to produce the material even under protective agreement. Finally, South Central

Bell contends that the Commission is not governed by the Rules of Civil Procedure in the same manner as civil courts.

The Commission, having been otherwise sufficiently advised, **HEREBY ORDERS** that LDDS's motion to compel South Central Bell to furnish responses to certain data requests is denied. The Commission currently has before it all information necessary to adequately judge LDDS's theories.

On October 23, 1990, LDDS filed a motion to continue the hearing scheduled to begin October 29, 1990 on the grounds that there are outstanding data requests which LDDS has sought from South Central Bell and AT&T Communications of the South Central States, Inc. ("AT&T"). The Commission's decision moots LDDS's motion concerning the requests to South Central Bell. The information contained in LDDS's motion about AT&T's failure to execute a protective agreement and provide certain responses to LDDS constitutes an insufficient basis to delay the October 29, 1990 hearing. The motion for continuance is **HEREBY DENIED**.

MCI's October 11, 1990 motion seeks to compel South Central Bell to respond to its data request Items 3 and 11 or, in the alternative, to provide MCI with an opportunity to review the files of South Central Bell and BellSouth Services which contain the requested information. In support of its motion, MCI contends that the information it seeks is relevant to the technical feasibility of implementing intraLATA competition on a presubscribed basis. The items in dispute ask that South Central Bell provide copies of documents delivered to it from any switch vendor which discuss the technical feasibility of offering 1+

intraLATA presubscription on existing electronic switches and a statement concerning communications which have occurred between BellSouth Services or South Central Bell and representatives of any switch vendors including the topics discussed, agreements reached, or plans for further study and further communications.

MCI asserts that South Central Bell's unwillingness to enter into a stipulation that "it is technically feasible to implement 1+ intraLATA competition on a presubscribed basis at some point in the future" makes the information sought in Items 3 and 11 necessary. MCI further contends that the Commission should compel South Central Bell to respond to the data requests so that the Commission will have all relevant information in the record for its consideration and determination of the issue of implementing intraLATA competition.

South Central Bell's response opposes MCI's motion on several grounds. First, South Central Bell states that data requests in this investigation do not have to be treated as discovery under Kentucky Rule of Civil Procedure 26 and that MCI may obtain the information from the switch vendors rather than from South Central Bell. Second, South Central Bell states that while it cannot agree to stipulate that it is technically feasible to accomplish intraLATA competition on a presubscribed basis, it has not taken the position that 1+ competition on a presubscribed basis is not technically feasible. Finally, South Central Bell asserts that KRS 278.310 provides that the Commission is not bound by the technical rules of evidence and gives the Commission latitude to gather information. Thus, South Central Bell proposes that

evidence which would technically constitute hearsay instead be afforded appropriate weight as is customary in Commission proceedings.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that MCI's motion to compel South Central Bell to produce further information concerning the technical feasibility of intraLATA presubscription is denied. The record currently contains sufficient information for it to weigh the technical feasibility of intraLATA presubscription and that any additional information which may be necessary will become apparent at the hearing and may be requested at that time.

Done at Frankfort, Kentucky this 24th day of October, 1990.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director