

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On December 29, 1994, the Commission entered an Order affirming its intent to implement intraLATA equal access and addressing several issues necessary to implementation. The Commission noted that various objections to implementing intraLATA equal access had been made in comments on the November 1992 Task Force report, prefiled testimony, and testimony at the June 1993 public hearing but noted that these objections had been addressed in its May 6, 1991 Order or other previous Orders in this proceeding.

On January 20, 1995, GTE South Incorporated ("GTE South") filed a petition for rehearing on four specific issues. On January 25, 1995, South Central Bell Telephone Company ("South Central Bell") moved to participate fully on rehearing. On February 1, 1995, AT&T Communications of the South Central States, Inc. ("AT&T") and Sprint Communications Company, LP ("Sprint") filed responses to GTE South's petition for rehearing.

The Commission holds that the petition for rehearing should be denied.

GTE South seeks rehearing on the decision to implement intraLATA equal access. It argues that the Commission did not, in its December 29, 1994 Order, explain in detail the record evidence which formed the basis for its decision to implement intraLATA equal access and largely ignored GTE South's testimony on this issue. The Commission allowed GTE South to present evidence on the issue of implementing 1+ intraLATA competition at the hearing, but indicated that the evidence would be "afforded such weight as the Commission feels is proper in light of and in spirit of the Commission's prior policy decisions."¹ The Commission's previous Orders, specifically the May 6, 1991 Order, fully detailed the rationale for approving 1+ intraLATA competition and found it in the public interest. GTE South's evidence raised no new issues.

GTE South next requests rehearing on the Commission's decision to require local exchange carriers to incur 35 percent of the cost of implementing intraLATA equal access. South Central Bell also questions the assumption that underlies the cost of sharing formula. GTE South and South Central Bell, as the predominant local exchange carriers in Kentucky, seek to avoid paying any of the cost of implementing intraLATA equal access. The interexchange carriers, on the other hand, claimed that all carriers providing intraLATA toll service should participate in the cost recovery mechanism. The Commission simply fashioned a reasonable balance of the competing interests. The December 29, 1994 Order reflects

¹ Transcript of Evidence at 26 and 27.

factors used by the Commission in reaching its decision:² local exchange carriers provide toll services like the interexchange carriers; participation and cost recovery will encourage local exchange carriers to minimize their costs and to scrutinize costs of the other local exchange carriers; current market restrictions apply to South Central Bell and GTE South; customers may prefer a single toll carrier; and allocation of a portion of the costs to the local exchange carriers minimizes the impact on local exchange carrier rates while recognizing basic fairness to all toll market participants.

The Commission's consideration of these factors as addressed in its Orders represents a sufficient description of the evidentiary basis for its 35 percent-65 percent cost recovery mechanism.

GTE South next seeks rehearing on the Commission's statements regarding the carrier of last resort obligations of the local exchange carriers. The Order states that local exchange carriers cannot abandon service, including toll service, without first seeking Commission approval and cites as authority KRS 278.020.³ The Commission also noted that implementing intraLATA equal access imposes obligations on interexchange carriers. Specifically, interexchange carriers providing interLATA service were ordered to

² December 29, 1994 Order at 18 and 19.

³ December 29, 1994 Order at 27.

provide intraLATA toll service as end offices convert to intraLATA equal access.⁴

The Commission was merely acknowledging the legal duty that the local exchange carriers bore prior to the initiation of this proceeding. If any local exchange carrier believes that competition in a specific area has increased to the point that it should no longer provide toll service to that specific locale, it may petition the Commission pursuant to KRS 278.020, KRS 278.512, and KRS 278.514. The December 29, 1994 Order created no new duty for the local exchange carriers.

However, the Commission's Order is clarified to note that interexchange carriers which serve end offices on an interLATA equal access basis must serve the same end offices on an intraLATA equal access basis as soon as those end offices convert to intraLATA equal access.

Finally, GTE South seeks rehearing on the constitutionality of the Commission's Order, citing equal protection principles of fair and level treatment. GTE South argues that the Commission's decision to implement intraLATA equal access will allow competitors who can provide end to end toll services to compete with GTE South. Further, it contends that this competition will cause it to suffer a significant loss of revenue and market share. The Commission's May 6, 1991 Order discussed the benefits of competition, the viability and sustainability of competition, and the projected impact on local rates and universal service. The Commission has

⁴ Id.

espoused a policy in favor of intraLATA equal access after an extensive evidentiary proceeding. The alleged harm noted by GTE South has been argued by the local exchange carriers from the inception of this proceeding. The Commission has found that such harm will not likely occur. Of course, if such harm should occur, GTE South, or any other market participant, may avail itself of any and all of the provisions of KRS Chapter 278 to redress such grievances the market participant claims it is experiencing due to intraLATA equal access.

Inasmuch as the Commission has not ordered the transfer of any GTE South plant nor has it declared that GTE South will not be awarded rates to cover its revenue requirement, no confiscation of property has occurred.

Having considered the petition for rehearing and all of the responses thereto and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. The petition for rehearing is denied.
2. The December 29, 1994 Order is clarified as to the service requirements of interexchange carriers.

Done at Frankfort, Kentucky, this 8th day of February, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner