

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE TARIFF OF SOUTH CENTRAL BELL)	
TELEPHONE COMPANY REGARDING)	CASE NO.
IMPLEMENTATION OF INTRALATA 1+)	95-285
AT&T COMMUNICATIONS OF THE SOUTH)	
CENTRAL STATES, INC., MCI TELE-)	
COMMUNICATIONS CORPORATION,)	
SPRINT COMMUNICATIONS COMPANY,)	
AND WORLDCOM, INC. D/B/A LDDS)	
WORLDCOM)	CASE NO.
)	95-396
v.)	
)	
BELLSOUTH TELECOMMUNICATIONS,)	
INC., D/B/A SOUTH CENTRAL BELL)	
TELEPHONE COMPANY)	

ORDER

Payphone presubscription is common to both of these proceedings, thus they were consolidated for hearing and resolution by Commission Order on January 3, 1996.

Case No. 95-285

On June 2, 1995, BellSouth Telecommunications, Inc. ("BellSouth") filed tariff revisions concerning its non-traffic sensitive revenue requirement and intraLATA equal access cost recovery. The purpose of the proposed tariff was to recover the cost of 1+ intraLATA presubscription in compliance with the Commission's December 29, 1994 Order in Administrative Case No. 323.¹ AT&T Communications of the South Central States, Inc.

¹ Administrative Case No. 323, Phase I, An Inquiry Into IntraLATA Toll Competition, An Appropriate Compensation Scheme For Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality. Order Dated December 29, 1994.

("AT&T"), Sprint Communications Company ("Sprint"), MCI Telecommunications Corporation ("MCI"), and GTE South Incorporated ("GTE") intervened in the proceeding. The long-distance carriers objected to BellSouth's tariff, which proposed that intraLATA presubscribed carriers for public and semi-public payphones be determined by the respective owners of the payphones. Currently, the interLATA presubscribed carrier for public and semi-public payphones is selected by the owner of the premises where the payphone is located. By Order dated June 30, 1995, the Commission accepted the proposed tariff, subject to further findings in this proceeding.

Case No. 95-396

On September 6, 1995, AT&T, MCI, Sprint and WorldCom, Inc. d/b/a LDDS WorldCom ("LDDS"), ("Complainants") filed a joint complaint against BellSouth alleging anti-competitive business office methods and procedures adopted by BellSouth regarding the implementation of intraLATA presubscription. The Commission ordered BellSouth to satisfy or answer the complaint. On September 28, 1995, BellSouth denied each allegation of anti-competitive practice.

Complainants assert that BellSouth intends to leverage its monopoly position to discriminate in favor of its own competitive services. The specific alleged anti-competitive practices include: (1) implementing procedures in its "IntraLATA Presubscription-Customer Contract Information"² that will unfairly enable it to market its intraLATA services to customers who call BellSouth for new service or additional service

² Joint Complaint, Exhibit A.

prior to advising the customer that other choices of intraLATA carriers exist; (2) placing on customers' bills and in telephone directories messages that imply BellSouth is the owner of intraLATA toll traffic; (3) charging each existing customer a primary interexchange carrier ("PIC") change fee to select an initial intraLATA carrier other than BellSouth; (4) being the default carrier for those customers who are undecided or who choose no PIC option; and (5) implementing discriminatory operator call completion procedures if the customer wishes to place an intraLATA operator assisted toll call. Complainants allege that these procedures are discriminatory in that BellSouth does not intend to inform the customer that the call is intraLATA or to offer the customer the choice of using the customer's presubscribed intraLATA toll carrier.

At the hearing, which was held on February 15, 1996, AT&T, MCI, Sprint, and BellSouth presented witnesses. Briefs were filed on March 22, 1996.

DISCUSSION

There are three issues to be resolved: (1) whether BellSouth should be allowed to presubscribe its payphones to itself; (2) whether BellSouth is improperly charging customers for PIC changes; and (3) whether BellSouth's business office practices regarding the choice of intraLATA toll carrier are appropriate.

BellSouth Payphone Presubscription

The Telecommunications Act of 1996 at §276 codified at 47 United States Code §151 et seq., provides for regulations to promote competition among payphone providers. Included in these regulations are rules that provide that all payphone service providers have the right to negotiate with the location provider to select and contract with

the carriers that will carry intraLATA calls from their payphones. Id. at §276(b)(1)(E). The regulations would also allow Bell operating company payphone service providers the same right as independent payphone providers to negotiate with the location provider on the selection of carriers for interLATA calls from their payphones unless the Federal Communications Commission ("FCC") determines in its rulemaking that this is not in the public interest. Id. at §276(b)(1)(D). The FCC must promulgate regulations by November 1996.

Complainants argue that BellSouth's tariff runs counter to the intent of Congress and this Commission to open the intraLATA toll market to competition.³ They allege that intraLATA toll competition is hindered because BellSouth will not allow a premises owner to presubscribe a BellSouth payphone to an intraLATA toll carrier other than itself. Complainants acknowledge that premises owners have the power to choose the presubscribed toll carrier through the negotiation process with a payphone provider. AT&T acknowledged that it does not allow a different interLATA toll carrier to be presubscribed to its payphones.⁴

Complainants contend that placement of payphones by a local exchange carrier ("LEC") differs from those employed by an interexchange carrier ("IXC") because of the IXC's primary emphasis on the toll market, rather than the local exchange market. They argue that because BellSouth has so many payphones throughout its territory, its refusal

³ See Order in Administrative Case No. 323, dated December 29, 1994 and the Telecommunications Act of 1996, § 276, respectively.

⁴ Transcript of Evidence ("T.E.") at 13-14.

to allow premises owners to presubscribe its payphones to a different intraLATA toll carrier obstructs competition.

BellSouth maintains that the presubscription practices in its proposed tariff are the same as those employed by Complainants and are consistent with the Telecommunications Act of 1996, which allows for equal treatment between Bell operating companies and independent payphone providers regarding payphone presubscription.⁵

The Telecommunications Act of 1996 clearly preserves the right of premises owners to determine the intraLATA carrier and interLATA carrier presubscribed to payphones located on their property. The payphone installation is a negotiated transaction between the payphone provider and the premises owner. The law does not require BellSouth to presubscribe its payphones to other intraLATA toll carriers. Property owners are free to negotiate with any other payphone provider. Consequently, the Commission finds that BellSouth's payphone presubscription practices are consistent with its past Orders and with the Telecommunications Act of 1996. BellSouth's tariff should be accepted.

Charges for PIC Changes

In response to the complaint against its practice of charging for a PIC change during the initial selection of an intraLATA carrier of an existing customer, BellSouth cites ordering paragraph 21 of the December 29, 1994 Order which prohibits a charge to

⁵ BellSouth Brief at 3-5 and Telecommunications Act of 1996, § 276(b)(1)(D), (E) and § 276(b)(3).

"new" customers initiating service, but is silent regarding existing customers of the incumbent LEC.

MCI opposes LECs charging a PIC fee to existing customers on the grounds that it inhibits a customer's inclination to change its intraLATA carrier from the incumbent LEC and penalizes existing customers for making a choice previously unavailable to them.⁶ MCI requests that a grace period of six months be imposed for customers to make their initial choice of intraLATA carrier.⁷

InterLATA presubscription policies cannot be applied to the intraLATA market because interLATA presubscription was mandatory, and its costs were recovered through the interstate cost recovery process.⁸ However, when intraLATA equal access is made available, it is the customer's choice whether to switch carriers. Thus, when BellSouth incurs the additional costs of changing an existing customer's intraLATA carrier, it is appropriate for BellSouth to charge a PIC change fee. Furthermore, the Commission did not contemplate a grace period in its final Order in Administrative Case No. 323.

Complainants also raised the issue that BellSouth charges two PIC change fees when both an interLATA and an intraLATA selection are made simultaneously. BellSouth's current intraLATA PIC fee is \$1.49 and is based upon costs incurred in implementing interLATA equal access. The December 29, 1994 Order in Administrative Case No. 323, at ordering paragraph 21, states that the maximum charge for an

⁶ Direct Testimony of MCI at 16 and MCI Brief at 13-14.

⁷ MCI Brief at 14.

⁸ BellSouth Brief at 10 and 11.

intraLATA PIC change shall not exceed the charge for an interLATA PIC change (\$1.49). BellSouth contends it should not be required to provide PIC changes below cost.⁹ The Commission concurs so long as BellSouth remains within the established guidelines. However, when both an interLATA PIC change and intraLATA PIC change are made simultaneously, only the interLATA PIC charge of \$1.49 shall apply; not both.¹⁰

BellSouth Business Office Practices

Complainants allege that many of BellSouth's business office practices regarding intraLATA service are anti-competitive. They argue that these practices enable BellSouth to maintain its existing customer base, and to unfairly market its services in a manner that keeps customers unaware of their intraLATA market choices. In response, BellSouth asserts it has valid reasons for each of its practices.

BellSouth serves as a default carrier when its existing customers choose no intraLATA carrier. The Complainants allege that BellSouth should be required to accommodate a "no PIC" choice for new customers who refuse to designate an intraLATA carrier or who tell the business office that they will call back later with an intraLATA choice. Under the option of "no PIC," BellSouth becomes the default carrier. The current 2-PIC software, which enables customers to select different carriers for the interLATA and intraLATA market, will not accommodate a "no PIC" option without

⁹ BellSouth Prefiled Testimony at 6 and BellSouth Brief at 12.

¹⁰ This position affirms the Commission's decision in Case No. 95-168, Lisa Gail Gamble, Dawn Elizabeth Howard, Teresa Darcel Cope, and Linda Sue Medley, Complainants v. West Kentucky Rural Telephone Cooperative Corporation, Inc., Defendant, Order dated November 27, 1995.

BellSouth incurring additional costs to modify its switches. BellSouth argues it should not have to incur those costs, and that the Commission's intent with the 2-PIC option and the Commission's decision not to require balloting of intraLATA customer choices, was to force the IXCs to actively market customers. Allowing BellSouth and other LECs to designate themselves as the default intraLATA toll carrier when a customer refuses to make an intraLATA choice, for whatever reason, still places the emphasis where the Commission did in Administrative Case No. 323; IXCs will obtain toll customers only through active marketing efforts.

BellSouth currently uses terms such as "BellSouth's calling zone" and refers to a LATA as "local toll service." BellSouth also describes a LATA as the "BellSouth calling area." Complainants contend that these terms and description are misleading because they could lead customers to the mistaken conclusion that BellSouth is the only intraLATA toll carrier in its area.

The Commission has opened the intraLATA market to competition. Customers have to contact BellSouth for local service. BellSouth's identification of itself with intraLATA toll calling harms other providers who do not have such a natural entre. BellSouth must therefore change its description of the calling area to ensure that it does not unfairly advance its own intraLATA toll service. Accordingly, BellSouth should submit new language to the Commission for approval. The Commission declines to supply specific language to BellSouth for its use.

When a new customer makes its initial contact to BellSouth or an existing customer contacts BellSouth for a non-toll-related service, BellSouth should not market

its toll services unless the subject is introduced by the customer. When marketing its toll services, BellSouth shall not refer to its intraLATA services prior to advising the customer that other choices of intraLATA carriers exist. BellSouth shall not describe itself as the owner of intraLATA toll traffic either during phone conversations with customers, or in customer bills, or telephone directories. Thus, BellSouth shall immediately cease from using the phrase, "BellSouth's calling zone" or "BellSouth's calling area" when referring to the intraLATA toll calling area. These principles shall be followed by BellSouth in all of its contacts with customers.

Finally, when a customer does not designate BellSouth as its intraLATA toll provider, yet makes a 0+ or 0- intraLATA call, BellSouth operators handle the call. Complainants allege this use of intraLATA toll operators is anti-competitive. If a customer has selected another carrier for intraLATA calls, then the customer should be required to dial "00" to reach his presubscribed carrier, according to BellSouth. Complainants want BellSouth to be required to inform 0+ or 0- callers that they have a choice of carriers to complete their calls. If a competitive carrier is then chosen, Complainants argue that BellSouth should transfer the call to the designated carrier. The Commission finds that this is a marketing issue and that Complainants may address the perceived problem by marketing efforts which include instructions for completing all types of calls, including intraLATA 0+ or 0- calls. Consequently, the Commission finds that BellSouth need not change its intraLATA toll operator procedures.

The Commission contemplates that it may have to address additional complaints regarding carriers' marketing practices on a case-by-case basis in the future.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. BellSouth may freely negotiate with a payphone premises provider for the provision of intraLATA traffic. Should the premises provider select an intraLATA toll carrier other than BellSouth, BellSouth may remove the payphone from the premises. Accordingly BellSouth's tariff is accepted.

2. BellSouth may assess a PIC charge to its intraLATA customers making an initial selection for an intraLATA toll provider other than BellSouth.

3. BellSouth may only assess an interLATA PIC charge when its customers change the interLATA PIC and the intraLATA PIC in the same transaction.

4. BellSouth is not required to accommodate a "no PIC" option for customers who refuse to make an intraLATA carrier designation and BellSouth may default the customer to itself.

5. BellSouth shall immediately discontinue use of such phrases as "BellSouth's calling zone" or "BellSouth's calling area" in its marketing of intraLATA services.

6. BellSouth shall use the following principles in marketing intraLATA services:

a. When a new customer makes its initial contact to BellSouth or when an existing customer contacts BellSouth for a non-toll-related service, BellSouth shall not market its toll services unless the subject is introduced by the customer.

b. When marketing its toll services, BellSouth shall not refer to its intraLATA services prior to advising the customer that other choices of intraLATA carriers exist.

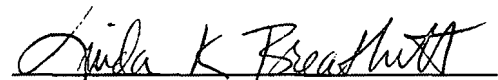
c. BellSouth shall not identify itself as the owner of intraLATA toll traffic during telephone conversations with customers, or in customer bills, or telephone directories.


7. BellSouth may provide intraLATA toll operator services for customers who have selected another provider yet make a 0+ or 0- intraLATA call.

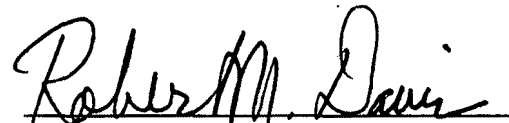
8. BellSouth shall submit, within 30 days of the date of this Order, its proposed changes for its business office practices related to the marketing of intraLATA toll service.

Done at Frankfort, Kentucky, this 13th day of August, 1996.

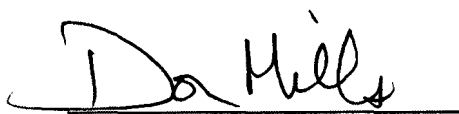
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