

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE TRANSFER OF)
REGULATED ASSETS OF CHILLICOTHE LONG) CASE NO. 96-095
DISTANCE COMPANY)

O R D E R

On January 23, 1996, Cincinnati Bell Long Distance Inc. ("Cincinnati Bell Long Distance") filed with the Commission a letter dated January 22, 1996 stating it had purchased certain assets of Chillicothe Long Distance Company ("Chillicothe"), including all of Chillicothe's books, records and other data relating to Chillicothe's customer base and network providers and all of Chillicothe's contract rights related to such customers and network providers. Cincinnati Bell has also filed a description of the proposed services and markets; an adoption notice pursuant to 807 KAR 5:011, wherein Cincinnati Bell Long Distance adopts the tariff of Chillicothe on file with the Commission except for Speak Easy Calling Card service; a notice to Chillicothe's customers stating the intent of Cincinnati Bell Long Distance to acquire Chillicothe's assets used to provide those customers' long-distance service pending approval by the Public Utilities Commission of Ohio; and Cincinnati Bell Long Distance PSC Tariff No. 2 whereby Cincinnati Bell Long Distance incorporates Chillicothe's tariff as its own. According to the Adoption Notice, Cincinnati Bell acquired the assets of Chillicothe described herein on December 20, 1995. The January 22, 1996 letter of Cincinnati Bell Long

Distance, with attachments thereto, is hereby incorporated into the record of this case.

Subsequently, Chillicothe filed with the Commission on February 20, 1996, notification of the transfer to Cincinnati Bell Long Distance of all of its business except for provision of calling cards. This filing, with attached tariff, is also incorporated into the record of this case. As the filing explains, the right to use the name Chillicothe Long Distance Company having been sold to Cincinnati Bell Long Distance, Chillicothe has changed its name to SpeakEasy Network, Inc. Its tariff has been altered to (1) reflect its new name; and (2) delete all offerings other than travel card service.

In response to inquiries by Commission Staff, Cincinnati Bell filed on March 4, 1996, a request that the Commission approve the transactions described herein (hereinafter "Cincinnati Bell Long Distance Request").

Chillicothe, which was authorized to resell telecommunications services in Kentucky in Case No. 93-429,¹ is a utility as defined in KRS 278.010(3)(e), and is therefore subject to Commission jurisdiction pursuant to KRS 278.040.

Pursuant to KRS 278.020(4), all persons are required to obtain Commission approval prior to the acquisition or transfer of

¹ Case No. 93-429, Application of Chillicothe Long Distance Company for a Certificate of Public Convenience and Necessity to Transact the Business of a Reseller of Interexchange Telecommunications Services and for Approval of its Initial Tariff, Order dated March 2, 1994.

ownership or control, "by sale of assets . . . or otherwise," of a utility under the jurisdiction of the Commission. KRS 278.020(5) states that no one "shall acquire control, either directly or indirectly, of any utility" furnishing service in Kentucky without prior Commission approval. It therefore appears that KRS 278.020(4) and (5) apply to the transfer of Chillicothe's assets used to provide long-distance service and that failure to have obtained Commission approval prior to the transfer of these assets constitutes a violation of the statutes.

Cincinnati Bell Long Distance argues that, since control of Chillicothe as an entity was not transferred, prior Commission approval of the transaction was not necessary. (Cincinnati Bell Long Distance Request, at 1-2.) Cincinnati Bell Long Distance also explains that an apparent misunderstanding with Commission Staff resulted in its having concluded that the Commission would not require it to receive prior approval of the transaction. (Cincinnati Bell Long Distance Request, at 2.) Cincinnati Bell Long Distance further states it wishes to reach full and expeditious settlement with the Commission regarding any and all actions that could be brought by the Commission arising out of the transaction described herein. Accordingly, Cincinnati Bell Long Distance has submitted a check for \$100. As further grounds for its settlement proposal, Cincinnati Bell Long Distance argues that the Commission would have approved the transaction had application been filed prior to its consummation, since the transaction met the standards specified in KRS 278.020(4) and (5).

The Commission does not construe KRS 278.020(4) and (5) to limit the Commission's authority in the manner argued by Cincinnati Bell Long Distance. However, the Commission finds that Cincinnati Bell Long Distance is correct in stating that it has already been found to possess the financial, technical, and managerial abilities to provide reasonable service in Kentucky. See Case No. 9066.² Thus, the substantive, if not the procedural, requirements of KRS 278.020(4) are met. The Commission also finds that, except for the legal infirmity caused by the failure to obtain prior approval of the Commission, the transfer was made "in accordance with law, for a proper purpose and [was] consistent with the public interest." KRS 278.020(5). Finally, the filings of record indicate that the transfer had no adverse impact on Kentucky customers. The long-distance telephone service provided to these customers does not appear to have suffered in any way. Furthermore, the customers were notified of the impending transfer prior to its consummation. In short, the transfer would have been approved had it been timely filed.

Consequently, the Commission finds that the proposal of Cincinnati Bell Long Distance is a reasonable and cost-effective manner of resolving this matter, that the tariff filed by SpeakEasy Network should be approved, and that the Cincinnati Bell Long

² 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.

Distance PSC Tariff No. 2, whereby it incorporates the tariff of Chillicothe, should be approved with the following modifications:

1. Refer to Original Sheet 16, Section .07. Alter this section to comply with 807 KAR 5:006, Section 12.

2. Refer to Original Sheet 22, Section .02. Alter this section to comply with 807 KAR 5:006, Sections 12 and 14.

3. Refer to Original Sheet 22, Section 5.01. Alter this section to comply with 807 KAR 5:006, Section 14.

4. Refer to Original Sheet 25, Section .02. Delete last sentence in the paragraph. 807 KAR 5:006, Section 14.

5. Refer to Original Sheet 25, Section .03. Alter this section to comply with 807 KAR 5:006, Section 7.

The Commission, having considered the information provided by Cincinnati Bell Long Distance and SpeakEasy Network, Inc., and being otherwise sufficiently advised, HEREBY ORDERS that:

1. The terms offered by Cincinnati Bell Long Distance Inc., as described in this Order, are hereby accepted by the Commission in full settlement of any and all actions it could bring against Cincinnati Bell Long Distance Inc. and SpeakEasy Network, Inc. as a result of the sale of utility assets described in this Order.

2. The tariff of SpeakEasy Network, Inc. is hereby approved as filed on February 20, 1996.


3. Within 30 days from the date of this Order, SpeakEasy Network, Inc. shall file its tariff sheets in accordance with 807 KAR 5:011.


4. Cincinnati Bell Long Distance PSC Tariff No. 2, incorporating the tariff of Chillicothe, is hereby approved with the modifications described in this Order.

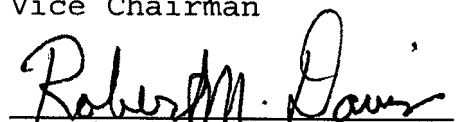
5. Within 30 days from the date of this Order, Cincinnati Bell Long Distance shall file its PSC Tariff No. 2 in accordance with 807 KAR 5:011 and the modifications described in this Order.

Done at Frankfort, Kentucky, this 15th day of March, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director