

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE TARIFF FILING OF BELLSOUTH)
TELECOMMUNICATIONS, INC. TO MIRROR) CASE NO. 98-065
FCC INTERSTATE ACCESS RATES)

O R D E R

On January 30, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed an access services tariff to mirror access rates approved by the Federal Communications Commission (FCC) for the interstate jurisdiction. The proposed tariff mirrored both the structure and the rates filed with the FCC and was to become effective February 1, 1998 in compliance with BellSouth's Price Regulation Plan. BellSouth's intrastate access tariff is required to mirror FCC access charges which have a similar intrastate component. In its February 2, 1998 Order, the Commission found that although the filing generally mirrored federal access rates, further investigation was necessary to determine the reasonableness of other changes not mirroring the interstate tariff. Thus, the tariff became effective on an interim basis subject to prospective modification from February 1, 1998.

Due to the impact upon other telecommunications carriers, the Commission scheduled an informal conference for May 29, 1998. Participants included BellSouth, AT&T Communications of the South Central States, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) (now MCI WorldCom, Inc.). The participants

agreed to file comments and further agreed that the matter then be submitted to the Commission for decision.¹

Discussion

On May 7, 1997, the FCC adopted an order (commonly known as the Access Reform Order)² to establish new rates and restructure existing interstate access rates. The FCC's Access Reform Order creates rates that recover costs on a more cost-causative basis. The Access Reform Order, among other things, created a flat-rate, per-line charge assessed upon an end-user's presubscribed interexchange carrier (IXC). This presubscribed interexchange carrier charge (PICC) enables local exchange carriers (LECs) to recover non-traffic sensitive common line costs not recovered through subscriber line charges (SLC). It is the creation of this new flat rate PICC that is the genesis of this investigation.

Prior to the issuance of the Access Reform Order, the interstate non-traffic sensitive (NTS) costs were recovered by carrier common line charges (CCLC) assessed on the IXCs and a SLC assessed to end-users. In the Access Reform Order, the FCC decided to phase-out CCLC and roll the associated NTS costs into the SLC rate and the newly-created PICC. In Kentucky, NTS recovery continues to be assessed on the IXCs in the form of an intrastate NTS access charge rate element.

¹ In addition, BellSouth filed similar tariffs reflecting changes to its interstate access rates effective August 1, 1998 and January 18, 1999. Modifications to the January 30, 1998 filing were subsequently filed effective May 1, and June 25, 1998; to the July 31, 1998 filing effective November 16, 1998; and to the January 15, 1999 filing effective March 3, 1999. This Order addresses all of these filings.

² CC Docket 96-262 Access Charge Reform, Order dated May 16, 1997.

In the wake of the Access Reform Order, BellSouth has mirrored those interstate access rates that are common to the Kentucky jurisdiction. However, BellSouth has been unable to mirror all NTS rate elements because its Kentucky tariff does not include, among other things, PICC or SLC rate elements. Rather than filing a tariff for an intrastate PICC or absorbing the revenue shortfall resulting from mirroring interstate rates, BellSouth chose to make up the revenue difference by increasing the intrastate NTS rate element.

AT&T argues that BellSouth's tariff filings are contrary to the Commission's principles regarding NTS cost recovery.³ The NTS rate element was introduced in 1991 as a Joint Motion of the industry and adopted by the Commission.⁴ AT&T also contends that the NTS rate was never intended to serve as a revenue guarantee and that the Commission has consistently reiterated its intent to reduce or eliminate the NTS rate element.⁵

AT&T further contends that the Commission's Order regarding the BellSouth Price Regulation Plan⁶ did not require a rigid mirroring of interstate rates in the

³ Comments of AT&T filed June 19, 1998 and Supplemental Complaint of AT&T filed February 9, 1999 (Comments of AT&T).

⁴ Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Tolls by Interexchange Carriers, and WATS Jurisdictionality, Order dated May 6, 1991.

⁵ Comments of AT&T, citing Order dated December 29, 1994 and Administrative Case No. 360, Universal Service and Funding Issues, Order dated May 22, 1998.

⁶ Case No. 94-121, Application of BellSouth Telecommunications, Inc. d/b/a South Central Bell Telephone Company to Modify Its Method of Regulation, Order dated July 20, 1995.

intrastate jurisdiction. MCI likewise asserts that the Price Regulation Plan limited BellSouth's mirroring only to those switched access rate elements that it had in common with interstate services.⁷

Both MCI and AT&T contend that BellSouth's tariff proposals contain differences in application between the interstate and intrastate jurisdiction, and that these differences must be corrected. In general, MCI and AT&T describe these differences as a mismatch of originating and terminating minutes of use between the intrastate and interstate jurisdictions and the differing jurisdictional treatment regarding marketing expenses and excess line port costs. Moreover, MCI requests a further change in the application between jurisdictions to disallow from BellSouth's intrastate NTS rate element the changes to the interstate SLC and the federal universal service fund. In summary, AT&T and MCI contend that the Price Regulation Plan does not permit surrogate mirroring of all interstate access rates and that the plan's mirroring provision is not to be construed as a blanket authorization to recover additional funds.

BellSouth asserts that its Price Regulation Plan and Section A36.1.2.c.2 of its tariff require that intrastate switched access rates mirror the interstate rates for all future changes⁸ and further asserts that the proposed changes are in compliance with its tariff. Moreover, BellSouth discusses the need for rate parity between the interstate and Kentucky jurisdictions in order to reduce tariff shopping and misreporting of jurisdictional minutes of use, both major problems in the early post-divestiture period.

⁷ Comments of MCI in opposition to BellSouth access tariff filing, filed June 19, 1998.

⁸ BellSouth's Post Informal Conference Comments filed June 22, 1998.

AT&T and MCI argue that BellSouth has inappropriately assigned the marketing expenses of the intrastate jurisdiction. In its orders addressing access reform, the FCC shifted interstate marketing costs to the end-user and away from IXCs. Likewise, other NTS costs were moved from the CCLC to the SLC and PICC, creating further disparities between interstate and intrastate jurisdictions. To recover its intrastate jurisdictional costs, BellSouth included the marketing costs and other shifts in its NTS rate rather than forego recovery altogether. Since the IXCs benefited from the lower switched access rates, BellSouth argues it should be permitted recovery of certain NTS costs through its NTS rate element.

The Commission must determine whether BellSouth properly mirrored interstate access charges in the Kentucky jurisdiction. Guidelines for access charges at the FCC and in Kentucky have been evolutionary. The disparity between jurisdictional minutes of use cannot be eliminated without reintroducing tariff shopping and the other undesirable outcomes. FCC rules on marketing cannot be applied to Kentucky where comparable rules do not exist. BellSouth should be permitted to recover its cost when disparities arise as a result of federal activity. BellSouth's intrastate tariff filings comply with past Orders and the Commission finds that the tariffs should be approved as filed. However, many issues concerning recovery of NTS costs are pending Commission review in Administrative Case No. 360. Furthermore, access reform should be reviewed as part of BellSouth's Price Regulation Plan review ordered in Case No. 94-121.

The Commission, having considered BellSouth's tariffs and the comments of parties, HEREBY ORDERS that BellSouth's access tariffs are approved.

Done at Frankfort, Kentucky, this 31st day of March, 1999.

By the Commission

ATTEST:

Executive Director