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Georgia Public Service Commission

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334

DOCKET NUMBER 3430-U

IN RE: GENERIC HEARINGS CONCERNING INTRASTATE
TELEPHONE ACCESS CHARGES

INITIAL DECISION

I.

INTRODUCTION

This case is another chapter in the continuing saga following the divestiture of AT&T and the breakup of the old Bell system. In this docket the Commission is called upon to determine the structure and level of intrastate access charges for interexchange toll telephone services. Commission action is required because of prior action in the federal courts and at the FCC.

On August 24, 1982 Judge Harold H. Greene entered a Modified Final Judgment ("MPJ") adopting, with modifications, a proposed consent decree filed by the United States and AT&T in the case of United States v. American Telephone and Telegraph Company, Inc., 522 F.Supp. 131 (D. DC. 1982), affirmed sub nom, Maryland v. United States, 103 S.Ct. 1240 (1983). In that monumental decision the district court approved the divestiture of the Bell

Operating Companies from AT&T effective January 1, 1984. The purpose behind adoption of the MFJ was to end AT&T's alleged monopoly of the interexchange toll market and to promote competition between AT&T and other interexchange carriers (other common carriers or "OCC's"). In approving the proposed consent decree the district court found that:

[T]he overriding fact is that the principal means by which AT&T has maintained monopoly power in telecommunications has been its control of the Operating Companies with their strategic bottleneck position. The divestiture required by the proposed decree will thus remove the two main barriers that previously deterred firms from entering or competing effectively in the interexchange market.

First. AT&T will no longer have the opportunity to provide discriminatory interconnection to competitors. The Operating Companies will own the local exchange facilities. Since these companies will not be providing interexchange services, they will lack AT&T's incentive to discriminate. Moreover, they will be required to provide all interexchange carriers with exchange access that is "equal in type, quality and price to that provided to AT&T and its affiliates".

Second. Once AT&T is divested of the local Operating Companies, it will be unable to either subsidize the prices of its interexchange service with revenues from local exchange services or to shift costs from competitive interexchange services.

552 F.Supp at 171-172 (cites omitted). The central issues in this docket have therefore been framed by Judge Greene in the MFJ and by the FCC in its subsequent implementing orders. The general issues in this docket revolve around whether the OCC's are being provided with access that is "equal in type, quality and price to that provided to AT&T", the present state of competition in the interexchange market and the level and

structure of access charges.

On October 3, 1983 Southern Bell Telephone and Telegraph Company ("Southern Bell") filed with the Commission a tariff designed to implement access charges in the State of Georgia. This new tariff was required by the MFJ to replace the Division of Revenue's process that existed between the Bell Operating Companies, the independent telephone companies and AT&T. Because the divestiture of AT&T was to occur January 1, 1984, an intrastate access charge tariff had to be in place by January 1. On December 6, 1983 a hearing was held by the Commission in which all parties were permitted to express their views on the structure and level of the proposed access charge tariff. Given the impending January 1 deadline, no evidence was taken at that time. On December 7, 1983 the Commission issued an interim order placing into effect access charge tariffs which essentially mirrored those filed with the FCC by interstate carriers, with certain exceptions. Specifically, the Georgia tariff did not include a customer access line charge ("CALC"), also known as an end user fee, and the tariff for each telephone company would include a carrier common line charge at a level calculated to make the company whole for its expected loss of intrastate toll revenues.

Subsequently, the Commission was asked to consider several requests with respect to access charges, including an objection by MCI Telecommunications Corporation ("MCI") to the interim tariffs and a request by various local exchange companies ("LECs") for a modification of the access charges. As a result of these requests, the Commission issued a notice scheduling

generic hearings on access charges. These hearings were conducted on January 15 - 17, April 2 - 4 and May 9, 1985. Following the conclusion of the hearings, various parties filed briefs addressed to the issues.^{1/}

The issues, as brought out by the evidence and identified by the parties, are as follows:

(1) The structure of the access charges. This issue includes whether the Commission should retain the present mechanism of recovering nontraffic sensitive ("NTS") costs through the carrier common line charge ("CCLC") or through some alternative mechanism; whether the Commission should revamp the concept of the present access charge tariff and adopt a universal local access service ("ULAS") tariff proposed by the Consumers Utility Counsel; and whether the Commission should adopt an end user charge.

(2) The level of access charges. This issue includes whether present access charges reflect cost, whether there should be statewide pooling or averaging of access charges and the effect the level of access charges will have on local exchange rates.

(3) Access charge differentials. This issues includes the alleged difference in value and cost of the various types of access, whether there should be a difference in price between the various forms of access to reflect difference in value or cost, and whether a discount should continue for Feature Groups A and B

^{1/}The listing of appearances is attached as Appendix A.

and, if so, at what level and for how long.

(4) LATA-wide termination. Whether LATA-wide termination of Feature Group A should be eliminated, thereby requiring the imposition of transport charges, and, if so, when and under what circumstances it should be eliminated.

(5) Whether resellers should be required to pay access charges and whether they should be able to provide intraLATA toll service.

(6) Whether the Commission should accept or reject numerous tariff changes proposed by Southern Bell and the independents.

The evidence and the positions of the parties were in most instances in sharp disagreement over the proper resolution of these issues. The issues presented here are complex and will have an important effect on the telecommunications industry and upon individual telephone subscribers. The resolution of these issues therefore involves the weighing of competing interests, coupled with judgment as to what is in the best public interest. This is also a dynamic process that will require adjustment and modification over time. It should also be noted that on many of the issues none of the parties had concrete data and their witnesses had to rely on opinion, judgment and, occasionally, conjecture. Finally, this order reflects a policy decision to minimize disruptions and dislocations of local exchange customers and to continue to promote the public policy of universal access to the telephone system at reasonably affordable rates.

FINDINGS OF FACT

1.

All interexchange carriers in Georgia are now able to obtain access to the intrastate toll market pursuant to the access charge tariffs filed with the Commission. The interexchange carriers and the LECs have been operating under the interim tariffs for over 20 months without substantial difficulty. Substantial penetration into the market has been made by certain of the OCCs, primarily in the metropolitan areas.

2.

The interim tariffs adopted by the Commission are generally consistent in structure with the tariffs approved by the FCC for interstate toll communications, except for the prohibition against the imposition of end user charges. Certain parties have proposed that an end user charge be phased in so that intrastate access tariffs are more consistent with interstate tariffs and so that the access charges are more cost based.

3.

Southern Bell and the independent telephone companies all testified that they currently recover access charges that are in excess of the direct costs of providing access to the interexchange carriers. However, no evidence or cost studies were presented as to the actual costs of providing access nor were any cost studies presented as to the costs associated with the NTS portion of the local loop. Moreover, the independents indicated that they did not presently have the ability to identify and quantify access charge costs. There is, therefore, no evidence

in the record by which the Commission can determine the NTS costs associated with providing access to the local loop nor is there any evidence by which the Commission can determine the level of an end user charge.

4.

The access charges for the LECs vary greatly. For example, Southern Bell's access charge is .0028 cents per minute while Ellijay Telephone Company's access charge is .2098 cents per minute. No evidence was presented as to the appropriateness of the access charges for each company nor was any evidence offered to explain the gross disparities between access charges. It is clear, however, that artificially high access charges impede entry of the OCCs into new service territories. It is also clear that access charges help to stabilize local exchange rates. However, no evidence was presented in this docket as to the appropriate level of access charges and the public policy issues of simulating competition in the rural interexchange markets while at the same time maintaining low local exchange rates. In addition, existing access tariffs were to be set at a level such that each LEC's revenue from access charges would be equal to its expected loss of intrastate toll revenues, absent the imposition of access charges, based on calendar year 1983. No party has proposed, and there is no evidence in the record, that the level of access charges should be changed from the level initially set in 1983. However, because of the lack of data, the Commission is unable to determine whether LECs are recovering more revenue than authorized which would mandate a reduction in access charges.

5.

Currently, access charges are pooled on an intraLATA basis and a bill and keep system is used by the LECs on an interLATA basis. If interLATA access charges were pooled it would result in a significant increase in Southern Bell's access charges with a resulting increase in toll rates. Insufficient evidence was introduced to justify interLATA pooling and, as noted above, no evidence was introduced that would justify, at this time, a change in access charge levels.

6.

Consumers Utility Counsel witness Ben Johnson proposed a new access tariff structure, the universal local access service "ULAS" tariff. This tariff would assess flat charges on all carriers based upon channel capacity, that is, installed capacity. Various parties opposed the ULAS tariff on the basis that it would be difficult and expensive to implement, would cause incentives for uneconomic bypass and it could cause inefficiently designed networks. For example, the tariff could encourage carriers to locate switches outside of the state and to switch their calls through the interstate network to avoid paying access charges. It is found that at the present time the ULAS tariff would be difficult and expensive to implement and could result in the design of inefficient networks. In addition, the ULAS tariff represents a major departure from the existing tariff structure and such a departure is not warranted at this time given the existing confusion accompanying divestiture.

7.

There are four access connections that will permit a carrier

to obtain access to the toll network. Feature Group A (FGA) and Feature Group B (FGB) are inferior forms of access that are presently available throughout the state. Feature Group C (FGC) is the premium form of access and is available only to AT&T. Feature Group D (FGD) is the so called "equal access" arrangement. It is also a premium access connection and is substantially identical in quality, features and value to Feature Group C. Under the MFJ, Feature Group D is to be available in all of Southern Bell's territory by September 1, 1986. Southern Bell presently estimates that 81% of its offices will have Feature Group D available by the end of 1985.

8.

The present tariff provides for a discount for Feature Groups A and B which was initially set at 35%, was reduced to 23% on January 1, 1985, and is scheduled to be reduced to 12% on January 1, 1986 and eliminated on September 1, 1986. Certain parties, including AT&T, proposed eliminating the discount and charging the LECs the same price for all feature groups. The OCCs proposed raising the discount to 55%, which is the level recently adopted by the FCC.

9.

Certain parties presented evidence tending to show that the cost of providing access was the same regardless of which feature group was employed. However, it is found as a matter of fact that there is a significant difference in value between Feature Groups A and B and Feature Groups C and D. One of the primary disadvantages of the inferior form of access is that it does not

afford one plus dialing. The lack of one plus dialing does present a competitive disadvantage to the OCCs. There was, however, no evidence presented to quantify the differences in value between the various feature groups nor to quantify the appropriate level of discount. It is found as a matter of fact that there should be price differentials between the feature groups due to the difference in value. In addition, it is found as matter of fact that the present discount is appropriate and should be phased out when equal access is available in Southern Bell territory on September 1, 1986.

10.

The OCCs have made little if any penetration into territory served by the independent telephone companies. While no OCC has ordered Feature Group D, realistically it is not presently available in the independents' territory. Therefore, it is found as a matter of fact that a discount is appropriate to encourage entry into the independents' territory. It is found that the 12% discount should continue in the independents' territory until September 1, 1987.

11.

The existing interstate and intrastate access tariffs provide for termination of FGA calls at any location within a LATA. LATA-wide termination is not, however, available with Feature Groups C or D. Therefore, AT&T must pay transport charges for the termination of all of its calls.

12.

During the present transition to equal access, it would be technically and economically inefficient to require the OCCs to

order FGA connections in all of the local areas to be served. In addition, LATA-wide termination of FGA calls assists in promoting competition and is also a benefit that counterbalances the inferior quality of FGA. However, it is found as a matter of fact that once equal access is available there is no technical, economic or regulatory reasons to continue to permit LATA-wide termination of Feature Group A when it is not available on the equal access arrangements.

13.

Resellers currently subscribe to local exchange service and pay PBX trunk rates to their switch locations. Southern Bell has proposed imposing a carrier common line access charge for all calls originated to the resellers switch. In other words, the proposed tariff would impose the same access charges on resellers as are imposed on facilities based carriers.

14.

Pure Resellers have been defined as non-facilities based carriers. See, Docket No. 3488-U, p. 6 (July 16, 1985). That is, resellers lease WATS lines and other services from facilities based carriers and then resell the service. However, even Pure Resellers must have facilities, if even only a switch. In addition, facilities based carriers often utilize the network in precisely the same manner as resellers. That is, they also lease WATS lines or private lines from AT&T and Southern Bell. See, Docket No. 3488-U, p. 6. No evidence was presented in this record to justify differences in treatment between the resellers and facilities based carriers and, in fact, the evidence of

record demonstrates no need for disparate treatment between the two.

15.

At the present time only Southern Bell and the independent telephone companies hold certificates of public convenience and necessity to provide intraLATA service. IntraLATA toll service may, however, be provided on Feature Group A due to technical shortcomings. Proposals were made by certain parties to permit the furnishing of intraLATA toll service by interexchange carriers. This is a matter of great public importance due to the impact intraLATA competition would have on the local exchange companies. There was insufficient evidence presented on this matter and this docket would not be an appropriate place to resolve these difficult questions.

16.

The proposed tariff also contains numerous changes and departures from the existing tariff. One such tariff modification would change the assumed minutes of use from 3,925 minutes per line to 9,000 minutes per line. This would result in a substantial increase in charges. There was insufficient evidence to support this or the other tariff modifications.

CONCLUSIONS OF LAW

1.

This matter is before the Commission as a result of the divestiture of the Bell Operating Companies from AT&T pursuant to the modified final judgment entered in United States v. American

Telephone & Telegraph Company, 552 F. Supp. 131 (D. D.C. 1982). The divestiture was designed to open the interexchange toll market to competition by providing equal access by all interexchange carriers to that market. As part of the MFJ, local exchange companies are required to file access charge tariffs to be set on an intrastate basis by state commissions. The MFJ does not, however, preempt the right of this Commission to determine the structure or level of Georgia intrastate access charges. 552 F. Supp at 169. In addition to taking into account the provisions of the MFJ and subsequent FCC orders, the Commission is governed by the requirements of Georgia law that it determine the reasonableness of the rates, charges, classifications and services contained in the access charge tariffs. O.C.G.A. §§ 46-2-23 and 46-2-25.

2.

It is concluded that the current access charge tariff which mirrors the federal tariff, with the exception of the absence of an end user charge, is in the public interest. No probative evidence was introduced to establish the various cost components of access charges and it would therefore be imprudent to make any changes at this time. Specifically, it would not be in the public interest to adopt an end user charge for Georgia intrastate toll service. It is further concluded as a matter of law that the ULAS tariff would be difficult to administer, might produce economic and engineering inefficiencies, and would not be in the public interest.

3.

It is further concluded that there has been no probative

evidence introduced to justify a change in the current level of access charges. While certain parties contended that access charges exceeded the cost of providing the service, no evidence was presented to quantify the alleged subsidy. Moreover, the MFJ specifically permits subsidies, assuming such exist.

The decree would leave state and federal regulators with a mechanism - access charges - by which to require a subsidy from intercity service to local service. By means of these access charges, the regulators would be free to maintain local rates at current levels or they could so set the charges as to increase or decrease local rates.

552 F. Supp. at 169.

4.

Georgia law does require that the utility bear the burden of showing that any proposed changes in tariffs be just and reasonable. In this case the tariffs have been in effect for 20 months and have proved to be workable. It is therefore concluded as a matter of law that, based upon the evidence presented in this docket, the current access charges are just and reasonable.

5.

The existing access tariffs were to be set at a level such that each local exchange company would generate revenues from access charges equal to the intrastate toll revenues that it would have received under the previous separations and settlements procedure, based on calendar year 1983. Since the end of 1983 there has been increased competition in the intrastate toll market with presumably an increase in intrastate toll revenues. In order for the Commission to determine whether the current access charges are not resulting in an over-recovery,

each local exchange company will be directed to file revenue and cost data regarding its access charges. This data will also assist the Commission in examining the propriety of the access charges filed by each local exchange company.

6.

Based upon the differences in value of the various access charge arrangements it is concluded as a matter of law that the price differentials between Feature Groups A and B and Feature Groups C and D are just and reasonable. It is also concluded that the current discount schedule for the Southern Bell service area, presently 23% to be reduced to 12% on January 1, 1986 and eliminated on September 1, 1986, should be continued. As MCI's witness testified, it is virtually impossible to ascertain and assign a value to the actual differences in value between inferior and superior access based on technical calculations. Therefore, the amount of the differential and discount is necessarily one of judgment. The present discount schedule takes into account the difference in value as well as the competitive disadvantage occasioned by having access only to Feature Group A. Once equal access is available, the discount is no longer needed and the existing price differential reflected in the tariff will take into account the difference in value between the connections. No compelling reasons have been presented for increasing the discount to 55% and it is concluded that such a discount would not be warranted. However, the OCCs have not made significant penetration into the territories of the independents. In addition, in the short term only Feature Group A is available.

It is therefore concluded that the 12% discount will be extended to September 1, 1987 in the service areas of the independent companies only. This will help to encourage the OCCs to enter this market and such entry will be in the public interest.

7.

As to the proposal to eliminate LATA-wide termination of Feature Group A, it is concluded that it would not be economically efficient to limit LATA-wide termination of Feature Group A at the present time. Such termination would require a substantial expenditure of money and a redesigning of networks by the OCCs to deal with a short term problem. Therefore, commencing September 1, 1986 LATA-wide termination of Feature Group A will be eliminated wherever Feature Group D is available. Once Feature Group D is available, all interexchange carriers will be able to access the network on an equal basis. As a matter of public policy, carriers should not be able to continue to use Feature Group A for LATA-wide termination when Feature Group D is available. Moreover, the elimination of LATA-wide termination of Feature Group A will increase local exchange revenues thereby stabilizing local exchange rates. It is therefore concluded as a matter of law that it is in the public interest that LATA-wide termination of Feature Group A be eliminated wherever Feature Group D is available, commencing September 1, 1986.

8.

The LECs contend that resellers should be treated like facilities based carriers and pay access charges rather than being permitted to subscribe to local exchange service and pay

PBX trunk rates for access to the local loop. The evidence establishes that there is no rational way to distinguish between resellers and facilities based carriers. In the first place, resellers and facilities based carriers use the local exchange network in precisely the same manner. Secondly, permitting resellers to escape paying access charges constitutes unfair discrimination against facilities based carriers and also results in revenue losses to the local exchange companies. Third, the distinction between resellers and facilities based carriers is an artificial one. Facilities based carriers often provide toll service in precisely the same manner as resellers, that is, leasing WATS and other services from other facilities based carriers. In addition, resellers are themselves facilities based in that all interexchange carriers must have some facilities, if only a switch. It is therefore concluded that resellers should be treated the same as facilities based carriers and that all interexchange carriers, both resellers and facilities based, should be required to pay all applicable access charges.

9.

As to the issue of pooling of interLATA and intraLATA access fees, it is concluded that intraLATA pooling should continue and that the current method of recovering NTS costs for interLATA access fees be continued. The pooling of interLATA access fees would result in a significant increase in access charges for Southern Bell and no showing has been made that such an increase is just and reasonable. Moreover, until better cost data is developed, it would be imprudent to permit the pooling of

interLATA access fees.

10.

The proposed tariff provides for numerous revisions, modifications, clarifications and changes that have not been supported by the evidence. While Southern Bell's witness testified that these changes would not have any significance in terms of cost, structure or rate level, the evidence establishes that the change in the assumed minutes of use would result in a significant increase in access charges. No evidence was presented to support this change. It is therefore concluded that the LECs have failed to meet their burden of proof to show that these proposed changes are just and reasonable and it would be imprudent and improper for the Commission to approve these changes without such changes being fully identified and supported by evidence.

11.

The question of competition within the intraLATA toll market, particularly by resellers, was raised by the LECs. The question of whether to permit intraLATA competition raises significant legal, economic and public policy concerns. The issues are similar, but on a smaller scale, to those presented by the divestiture of AT&T. That is, should the local exchange companies continue to have a monopoly in the intraLATA toll market. This is a matter that cannot be decided based upon the record in this case and therefore a decision on this question will be deferred for further examination and study by the Commission.

Based upon the above findings of facts and conclusions of law,

IT IS THEREFORE ORDERED, that the access charge tariffs of every local exchange company in the State of Georgia remain in effect until it is necessary to adjust those tariffs to bring them into compliance with the provisions of this Order.

ORDERED FURTHER, that the amount of revenue that each local exchange company in the State of Georgia is authorized to recover through the NTS element of the access charge, i.e., the CCLC, shall be no greater than the amount each LEC would have received from such element in 1983.

ORDERED FURTHER, that each local exchange company shall file the following information with the Commission within 60 days from the effective date of this Order commencing with the first quarter of calendar year 1984 and within 30 days after the end of each quarter thereafter:

- (1) Total revenues received from the intraLATA pool;
 - (2) Total revenues received from interLATA access charges;
 - (3) Traffic sensitive costs of providing intraLATA access;
- and

- (4) Traffic sensitive costs of providing interLATA access.

If any company is unable to provide all or part of the information requested then, as to the information it is unable to provide, it shall seek an extension from the Commission within the applicable time limit which application shall explain in detail the problems in deriving the data and the time and expense

that would be needed to derive the data.

ORDERED FURTHER, that LATA-wide termination of Feature Group A access will be eliminated wherever Feature Group D is available commencing September 1, 1986.

ORDERED FURTHER, that to the extent access charges apply to interexchange carriers, those charges shall apply to all interexchange carriers, including resellers.

ORDERED FURTHER, that the current discount schedule (23% until January 1, 1986 then 12% until September 1, 1986) for Feature Groups A and B shall remain in effect for the service areas of Southern Bell (terminating in the Southern Bell service area on September 1, 1986) and that the 12% discount shall remain in effect in the service areas of the independent companies until September 1, 1987, at which time it shall terminate.

ORDERED FURTHER, that except as specifically set forth herein, the tariff changes and modifications are denied.

ORDERED FURTHER, that the Commission reserves the right to issue any further orders in this proceeding or to institute new proceedings addressing issues or problems not otherwise specifically addressed or resolved herein or which the Commission deems proper to address.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of taking any further action, holding further hearings or entering such further orders as may

be just and proper.

In the absence of an application for review to the Commission made within 30 days from the date of this Order, or an order by the Commission within said 30 days for review on its own motion, this decision shall, without further proceedings, become the final decision of the Commission.

SO ORDERED, this 16th day of September, 1985.



ROBERT B. REMAR
Hearing Officer, Georgia
Public Service Commission