

P.S.C. No. 913—Telephone

New York Telephone Company

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ACCESS SERVICE

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.15 Determination of Intrastate Charges for Mixed Interstate and Intrastate Access Service

The Access Services to be charged as intrastate are determined in the following manner:

- (A) Usage Sensitive Rate Elements (C)

 - (1) Jurisdiction Unknown (C)

When jurisdiction cannot be determined from the call detail recorded by the Telephone Company, the access minutes for each Feature Group and Call Type will be multiplied by the appropriate customer reported PIU to determine the interstate minutes of use for each Feature Group and Call Type. For each Feature Group and Call Type, the interstate access minutes will be subtracted from the total access minutes to determine the intrastate access minutes. (C)

When jurisdiction cannot be determined from the call detail recorded by the Telephone Company, the intrastate access minutes for each Feature Group and Call Type will be multiplied by the appropriate customer reported LUP to determine the intrastate intraLATA access minutes for each Feature Group and Call Type. For each Feature Group and Call Type, the intrastate intraLATA access minutes will be subtracted from the intrastate access minutes to determine intrastate interLATA access minutes. (C)
 - (2) Jurisdiction Known (C)

When jurisdiction can be determined from the call detail recorded by the Telephone Company, the interstate, intrastate intraLATA, and intrastate interLATA access minutes will be accumulated by Feature Group and Call Type. (C)
 - (3) Total Access Minutes (C)

For each Feature Group and Call Type, the actual access minutes specified in (2) above, will be added to the apportioned access minutes determined as provided in (1) above, to calculate the total interstate, intrastate intraLATA, and intrastate interLATA access minutes. (C)

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ACCESS SERVICE

2. General Regulations (Cont'd)**2.4 Payment Arrangements and Credit Allowances****2.4.1 Payments of Rates, Charges and Deposits**

- (A) The Telephone Company will, in order to safeguard its interest, require only a customer which has a proven history of late payments to the Telephone Company or does not have established credit to make a deposit prior to or at any time after the provision of a service to the customer to be held by the Telephone Company as a guarantee of the payment of rates and charges. No such deposit will be required of a customer which is a successor of a company which has established credit and has no history of late payments to the Telephone Company. Such deposit may not exceed the actual or estimated rates and charges for the service for a two month period. The fact that a deposit has been made in no way relieves the

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PFR Order

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held in the City of
Albany on May 16, 1996

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Lisa Rosenblum, not participating
Harold A. Jerry, Jr.
William D. Cotter
Eugene W. Zeltmann

Case 94-C-0715 - Complaint of AT&T Communications of New York,
Inc. Against New York Telephone Company
Concerning Alleged Improper Application of
InterLATA Access Minutes of Use to IntraLATA
Switched Access Service.

ORDER DENYING PETITION FOR REHEARING

(Issued and Effective June 13, 1996)

BY THE COMMISSION:

In our Order Granting Complaint, issued August 25, 1995, the Commission directed New York Telephone (NYT) to use AT&T-supplied usage information in billing for intraLATA switched access service when NYT cannot directly determine the jurisdiction of the usage. NYT was further directed to recalculate AT&T's billing and to credit AT&T for any past overpayments with interest within thirty days.

On September 25, 1995 NYT filed a Motion for Stay and a Petition for Rehearing on this order. In its Motion for Stay, NYT requested that it not be required to recalculate AT&T's access charges retroactive to January 1, 1993 and credit AT&T for any overpayment with interest, pending action on the contemporaneously filed petition for reconsideration. NYT also requested that it not be required to accept and use customer-provided multiple Local Usage Percentage (LUP) factors until

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proposed tariff revisions and changes to the company's billing system could be made.¹

In its petition for reconsideration NYT argued that the tariff construction adopted by the Commission was inconsistent with the provisions of the tariff; that the tariff only permits a single LUP factor to be applied to all of a customer's Feature Group D usage in each end office; and that the information to be used in determining the LUP was to be based solely on NYT data. NYT further argued that the Commission's tariff interpretation would create confusion resulting from the permissive, rather than required filing of customer-supplied information for various types of calls,² and how NYT would bill when those reports are not made.

NYT also referred to a proposed tariff filing that it would make on October 2, 1995, to demonstrate how, in its view, the Commission had misconstrued the then-effective, tariff provisions. NYT requested that the issues raised in the AT&T complaint be addressed through that October tariff filing, and solely on a prospective basis.

Finally, the company stated its belief that our August 25, 1995 Order reflects a radical interpretation of the NYT tariff provisions, different from that which prevailed prior to the adoption of the Performance Regulation Plan³ for NYT. In its view, the effects of the Order constitute a "PSC Mandate" under that plan, allowing it to recover from ratepayers any amounts due AT&T.

¹The tariff changes became effective February 10, 1996. The billing system changes were likewise made in February, 1996.

²The call types include the 800 type calls that were the subject of this complaint, as well as 700, 900, directory assistance and mass announcement services.

³Case 92-C-0665, Order Approving Performance Regulatory Plan Subject to Modification (issued and effective June 16, 1995); Case 92-C-0665, Opinion No. 95-13, Opinion and Order Concerning Performance Regulatory Plan (issued and effective August 16, 1995).

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On October 12, 1995, AT&T Communications of New York, Inc. filed a Brief in Opposition to the NYT Petition. AT&T noted that the NYT petition was procedurally flawed, and failed to meet the Commission's rules for filing such a petition, as it did not identify a specific error of law or fact in the Commission's Order, nor did it point to any changed circumstance.¹ AT&T then disputed NYT's claim that AT&T's data had not been shown to be accurate, noting that NYT never challenged the accuracy of the AT&T-provided data either when such data was offered to NYT or in its original response against AT&T's complaint. Rather, NYT chose to rely on the argument that the validity of AT&T's data was legally irrelevant.

AT&T also disputed NYT's assertion that the Commission's construction of NYT's tariff would create considerable confusion to the detriment of NYT's customers, pointing to the absence of any evidence that customers of NYT are confused about the meaning of the Order or about their rights or responsibilities following its issuance. AT&T also referred to that portion of our Order that stated that since this proceeding is a billing dispute, the Commission's decision is limited to the facts and circumstances presented therein and any concerns about claims other carriers might raise will be dealt with when those situations arise.²

Finally, AT&T rejected NYT's argument that there was an industry understanding of the determination of LUP factors, emphasizing that NYT offered no evidentiary support for this statement. Moreover, AT&T concluded that the argument was

¹"Rehearing may be sought only on the grounds that the Commission committed an error of law or fact or that the new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing." (Section 3.7(b))

²Order, p. 9.

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irrelevant because our Order stated "[T]he tariff is not ambiguous, so we need not address NYT's arguments in detail."¹

NYT responded to this brief on October 20, 1995, replying to what it had identified as new issues raised in the AT&T brief.

At our February 7, 1996 Session, the Commission approved NYT's proposed tariff filing made on October 2, 1995. The tariff established explicit requirements for the filing of jurisdictional reports by the interexchange carriers, augmented NYT's rights to audit customer-supplied data, and established a two-year period for billing disputes. NYT did not identify any revenue effect for this tariff filing.

The effect of this filing on the instant complaint is to limit the interval of contested charges from January 1, 1993 through February 9, 1996. All subsequent billings have made use of AT&T-supplied usage information.

DISCUSSION

AT&T is correct that NYT's petition failed to identify specific errors of law or fact in our Order, and did not allege any new circumstances warranting rehearing.² NYT merely restated the arguments contained in its original filings. Nevertheless, the Commission has re-examined all the documents in this proceeding. That review confirms our original finding that the tariff in question required the use of AT&T-supplied usage information in billing switched access service when NYT could not identify the jurisdiction of the usage. Accordingly, the NYT Petition for Rehearing will be denied.

Further, our Order did not require NYT to make any tariff changes, nor to operate in a manner contrary to previous Commission decisions concerning switched access charges. NYT's then-existing tariff had provisions that covered instances when

¹Order, p. 9.

²We will not address the requested stay as that issue has been effectively rendered moot by the actions of the parties.

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the jurisdiction of a call could not be determined, and allowed the use of customer-supplied information that could be updated on a quarterly basis. Our Order requiring NYT to act according to its tariff was not a regulatory mandate pursuant to the Performance Regulation Plan. Therefore, NYT is not entitled to recover revenues under that plan caused by its refunding of overbilled amounts to AT&T.

The Commission Orders:

1. The Petition for Rehearing filed by New York Telephone Company is denied.
2. This proceeding is continued.

By the Commission,

(SIGNED)

John C. Crary
Secretary