

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 151

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of Duties and Obligations of) ORDER CONCERNING
Telecommunications Carriers with Respect to the) PETITION
Transport and Termination of CMRS Traffic)

BY THE CHAIR: On February 25, 2003, the Alliance of North Carolina Independent Telephone Companies (Alliance), along with TDS Telecom and ALLTEL Carolina, Inc. (all collectively, the Coalition) filed a Petition asking the Commission to investigate and determine the respective rights, duties, and obligations of telecommunications carriers (including an appropriate intercarrier payment structure) with respect to the transport and termination of Commercial Mobile Radio Service (CMRS) traffic. Among other things, the coalition requested that the Commission set this matter for hearing but hold the hearing in abeyance pending the completion of a settlement process mediated by the Public Staff. The coalition also included a motion for immediate injunctive relief to prevent BellSouth Telecommunications, Inc. (BellSouth) from unilaterally terminating, adjusting or amending the existing mechanism for payment of terminating access charges associated with CMRS traffic delivered by BellSouth to various independent telephone companies (ICOs) pending resolution of the issues in this proceeding.

Specifically, the Coalition noted that the volume of CMRS traffic has increased substantially in recent years. CMRS carriers connect their facilities to the public switched network through contractual arrangements with wireline carriers. In many cases, the traffic originated by CMRS carriers is completed by ICOs. The traffic is not segregated and is indistinguishable from other traffic delivered to an ICO over ILEC facilities. Historically, the ILEC delivering this traffic to ICOs has provided compensation to the ICOs for terminating transport and access services. There is no contractual relationship between the originating CMRS provider and the terminating ICO.

Recently, several ILECs have indicated an intent to cease or reduce termination payments for ICOs. BellSouth has indicated that it intends to cease compensating ICOs for terminating access and transport services with respect to CMRS traffic as of the end of February 2003. The Coalition believes that this will force ICOs to either provide this service for CMRS traffic without compensation and therefore suffer substantial economic harm or take steps to identify and block this traffic with the Commission's consent.

Public Staff Filing

On February 27, 2003, the Public Staff filed a Notice of Intervention and Joinder in Motion for Injunctive Relief. The Public Staff also agreed to facilitate and participate in a collaborative process with all interested parties to investigate, discuss, and possibly resolve the issues raised in the Coalition's Petition.

BellSouth Response

On February 27, 2003, BellSouth filed a Response to the Motion for Immediate Injunctive Relief, requesting that the Commission deny the Coalition's Motion or, in the alternative, structure the relief granted to the Coalition so that BellSouth bills the CMRS providers on behalf of the ICOs while this matter is pending and join all CMRS providers as parties to this proceeding. BellSouth voiced no objection to the informal settlement procedure, assisted by the Public Staff, proposed by the Coalition.

BellSouth admitted that every telephone company in North Carolina has an obligation to interconnect, directly or indirectly, with every other telephone company to preserve the ubiquity of the network. BellSouth explained that, under the IntraLATA Toll Originating Responsibility Plan (ITORP), the carrier originating the toll traffic collects the appropriate revenue from the subscriber placing the call and, if the call terminates to a subscriber of another telephone company, the originating telephone company is obliged to pay the terminating telephone company for terminating the call. The charge is generally based on terminating intrastate access charges.

CMRS providers who terminate traffic to ICO subscribers have an obligation to pay for the termination of that traffic, just as they have an obligation to pay BellSouth for any transiting function. In the past, BellSouth has accepted CMRS traffic destined for ICO subscribers, has paid the ICO for termination, and has then billed the CMRS provider for both the transit and termination functions. This system has been necessary because, among other things, the CMRS traffic could not be identified as such.

However, BellSouth maintained that this is not a satisfactory arrangement for several reasons. First, CMRS traffic is defined as local traffic according to the Federal Communications Commission (FCC), and CMRS providers claim that all they owe the ICOs is reciprocal compensation for these calls, not terminating access charges. Second, because the calls received from CMRS providers are not sent over separate trunks and thus BellSouth must rely on estimates from the CMRS providers to determine a "factor" for calculation, BellSouth believes that it has been undercompensated for such traffic. As BellSouth has been moving to meet point billing (MPB) with CMRS providers, it is now possible to deliver call records to the ICOs to distinguish the traffic and enable the ICOs to bill the CMRS providers directly. Third, ICOs have been receiving access charge payments that they are not entitled to receive, resulting in unjust enrichment.

BellSouth stated that the ICOs have known of BellSouth's concerns for years. Because of lack of progress in removing itself as the "banker" for the ICOs, BellSouth has informed the ICOs that it would no longer perform the "banker" function for the ICOs with respect to traffic originated by CMRS providers with whom BellSouth has an MPB agreement. BellSouth knows of no legal obligation it is under to pay the ICOs for this traffic.

**North Carolina Telephone Cooperative
Coalition, Inc. Filing**

On February 28, 2003, the North Carolina Telephone Cooperative Coalition, Inc. (NCTCC) representing various Telephone Membership Corporations (TMCs) filed in support of the Petition of the Coalition and stated that the NCTCC shared the Coalition's concerns. The NCTCC also expressed concerns about actions similar to those of BellSouth undertaken by the ILECs in North Carolina operated by Sprint Corporation (Sprint). The NCTCC asked that Sprint be ordered to make back payments from the time compensation was reduced or eliminated and that Sprint immediately reinstate payment of terminating compensation pending resolution of outstanding issues. The NCTCC also requested that the NCTCC be included as a member of any industry task force named to seek resolution of this matter.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

After careful consideration, the Chair concludes the following:

1. The Coalition's motion for immediate injunctive relief should be denied without prejudice, but BellSouth's alternative recommendation, that BellSouth bill the CMRS providers on behalf of the ICOs while this matter is pending, remitting to the ICOs the payment received from the CMRS providers, should be adopted. While the Chair is not without sympathy for the position of the ICOs or to the preservation of the status quo insofar as possible during the pendency of this proceeding, it does not appear that the Coalition has been able at this time to meet both prongs of the test for the issuance of the injunction - i.e., (1) the petitioner must be able to show the likelihood of success on the merits and (2) the petitioner is likely to sustain irreparable loss or injury unless the injunction is issued or the issuance is necessary for the protection of petitioner's rights during the course of litigation. Since this is the case, the alternative proposed by BellSouth appears to be at least a palliative solution and has the potential to afford the ICOs some relief during the pendency of this proceeding.

2. The Coalition's proposal that any hearing be held in abeyance pending completion of a settlement process involving the Public Staff should be accepted. All parties that have filed comments in this docket endorse this approach. Accordingly:

a. Utilizing the good offices of the Public Staff, as expeditiously as possible, all parties interested in the matter shall meet to discuss the issues related to appropriate compensation for CMRS traffic.

b. As soon as practicable after meeting, the parties shall advise the Commission of how long the settlement process should reasonably take so that the Commission can set an appropriate deadline.

c. At the conclusion of the settlement process, the parties shall advise the Commission of the extent of their agreement upon outstanding issues together with recommendations as to the timing and extent of further proceedings.

3. The Commission hereby formally initiates a proceeding in this docket to investigate the respective rights, duties, and obligations of telecommunications carriers involved in the transport and termination of CMRS traffic. At the appropriate time, this proceeding will be converted into an arbitration proceeding under Sections 251 and 252 of the Telecommunications Act of 1996, so that the rights, duties, and obligations of CMRS carriers relative to other telecommunications carriers can be fully adjudicated. If necessary, a hearing will be convened on an expeditious basis after the settlement process has been completed. The caption to this docket shall be as set out above.

4. Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central) shall respond to the filing of the NCTCC not later than Friday, March 7, 2003. The NCTCC may file a response to the Carolina/Central filing by Friday, March 14, 2003.

5. The following shall be made parties to this proceeding: the Coalition, the Public Staff, all incumbent local exchange companies (ILECs), and the NCTCC. Petitions to intervene by other interested parties shall be filed by April 1, 2003. The Chief Clerk shall mail copies of this Order to all CMRS providers and all competing local providers (CLPs).

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of February, 2003.

NO. *Geneva S. Thigpen* TIES COMMISSION

Geneva S. Thigpen, Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- | | |
|---|-----------------------------------|
| <input type="checkbox"/> Hand | Russ Minton, Esquire |
| <input type="checkbox"/> Mail | Citizens Communications |
| <input checked="" type="checkbox"/> Facsimile | 3 High Ridge Park |
| <input type="checkbox"/> Overnight | Stamford, CT 06905 |
| | |
| <input type="checkbox"/> Hand | Charles B. Welch, Esquire |
| <input type="checkbox"/> Mail | Farris, Mathews, et al. |
| <input checked="" type="checkbox"/> Facsimile | 618 Church St., #300 |
| <input type="checkbox"/> Overnight | Nashville, TN 37219 |
| | |
| <input type="checkbox"/> Hand | Mr. David Espinoza |
| <input type="checkbox"/> Mail | Millington Telephone Company |
| <input checked="" type="checkbox"/> Facsimile | 4880 Navy Road |
| <input type="checkbox"/> Overnight | Millington, TN 38053 |
| | |
| <input type="checkbox"/> Hand | Jon E. Hastings, Esquire |
| <input type="checkbox"/> Mail | Boult, Cummings, et al. |
| <input checked="" type="checkbox"/> Facsimile | P. O. Box 198062 |
| <input type="checkbox"/> Overnight | Nashville, TN 37219-8062 |
| | |
| <input type="checkbox"/> Hand | Henry Walker, Esquire |
| <input type="checkbox"/> Mail | Boult, Cummings, et al. |
| <input checked="" type="checkbox"/> Facsimile | P. O. Box 198062 |
| <input type="checkbox"/> Overnight | Nashville, TN 37219-8062 |
| | |
| <input type="checkbox"/> Hand | James Wright, Esq. |
| <input type="checkbox"/> Mail | United Telephone - Southeast |
| <input checked="" type="checkbox"/> Facsimile | 14111 Capitol Blvd. |
| <input type="checkbox"/> Overnight | Wake Forest, NC 27587 |
| | |
| <input type="checkbox"/> Hand | Dan Elrod, Esquire |
| <input type="checkbox"/> Mail | Miller & Martin |
| <input checked="" type="checkbox"/> Facsimile | 150 4 th Avenue, #1200 |
| <input type="checkbox"/> Overnight | Nashville, TN 37219 |

- Hand
- Mail
- Facsimile
- Overnight

James Lamoureux, Esquire
AT&T
1200 Peachtree St., NE
Atlanta, GA 30309

- Hand
- Mail
- Facsimile
- Overnight

Donald L. Scholes, Esquire
Branstetter, Kilgore, et al.
227 Second Ave., N
Nashville, TN 37219

- Hand
- Mail
- Facsimile
- Overnight

Timothy Phillips, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, TN 37202

- Hand
- Mail
- Facsimile
- Overnight

James R. Kelley, Esquire
Neal & Harwell, PLC
2000 First Union Tower
150 Fourth Avenue North
Nashville, Tennessee 37219-2498

- Hand
- Mail
- Facsimile
- Overnight

Stephen G. Kraskin, Esquire
Kraskin, Lesse & Cosson, LLP
2120 L Street NW, Suite 520
Washington, D.C. 20037

