Georgia Public Service Commission
244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334

DOCKET NO. 3522-U

IN RE: INTEREXCHANGE TELEPHONE CARRIER REGULATION AND PROPOSED RULE MAKING

INITIAL DECISION

APPEARANCES:

FOR THE GEORGIA PUBLIC SERVICE COMMISSION:

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I.

INTRODUCTION

This docket involves the question of the appropriate degree of regulation that the Commission should exercise over interexchange telecommunications providers within the State of Georgia and whether modifications to the Commission's rules and regulations are necessary with respect to the regulation of said carriers. At its Administrative Session of March 5, 1985 the Commission established the within docket and, on April 15, 1985, a notice went out to all interexchange carriers, local exchange companies and other interested parties advising of the establishment of this docket and inviting their participation. The April 15, 1985 memorandum included an outline of the scope of the issues to be considered in this docket, a copy of which is attached hereto as Appendix "A".

This matter came on for hearing before the Commission's Hearing Officer on August 13, 14 and 15, 1985. AT&T Communications presented the testimony of Robert E. Fortenberry, Vice-President for regulatory matters; Scott Taylor, Senior Vice-President with Lewis Harris and Associates; John T. Wenders, a professor of economics at the University of Idaho; Howard L. Reynolds, District Staff Manager - Marketing for AT&T

Communications; and Steven R. Vincent, District Manager in the Treasury Department of AT&T Communications, Inc. MCI and GTE Sprint jointly sponsored the testimony of Dr. Nina W. Cornell, an economist in private practice with the firm of Cornell, Pelcovits & Brenner Economists, Inc. MCI also presented the testimony of Kenneth W. Donaldson, Manager of Operations Engineering for MCI's Southeast Division, and Gyles Norwood, Senior Manager for Corporate Accounting for MCI. Southern Bell Telephone and Telegraph Company presented the testimony of Raymond B. Vogel, Operations Manager in the Rates, Costs and Tariffs Department for Southern Bell.

Following the conclusion of the hearing all parties were invited to submit briefs and proposed orders and the same were received from all parties except for the Georgia Association of Long Distance Companies, All-Tel of Georgia, Inc. and Empire Telephone Company.

II.

BACKGROUND

The question of the appropriate degree of regulation of interexchange carriers is an issue that has become important as a result of the divestiture of AT&T and the breakup of the former Bell System. The issue of interexchange carrier regulation is one of a series of issues that has confronted the Commission as a result of the new environment created by the breakup of AT&T and the corresponding opening up of the interexchange telephone market. See, for example, Docket No. 3430-U: Generic Hearings Concerning Intrastate Telephone Access Charges (September 16,

1985); Docket No. 3488-U: Generic Hearings Regarding Regulation Of Resellers Of Intrastate Interexchange Telecommunications Services (July 16, 1985); and Docket No. 3529-U: Generic Hearings With Respect To Deregulation Of Customer Premises Equipment (August 23, 1985).

A new era in the telecommunications industry in the United States commenced on August 24, 1982 when Judge Harold H. Greene entered a Modified Final Judgment ("MFJ") 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), aff'd sub nom, Maryland v. United States, 103 S.Ct. 1240 (1983). In that historic decision, the District Court approved the divestiture of the Bell operating companies from AT&T effective January 1, 1984. The stated 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 (also known as "Other Common Carriers" or "OCC's").

In implementing the divestiture provisions of the MFJ, the United States, including the State of Georgia, was divided into Local Access and Transport Areas ("LATAS"). Five LATAS were established in Georgia. Under the terms of the MFJ, Southern Bell was prohibited from providing telephone service between the LATAS. On the date of divestiture AT&T received all of Southern Bell's interLATA facilities and Southern Bell retained the intraLATA facilities. Therefore, as a result of the MFJ,

Southern Bell, which held a certificate of public convenience and necessity to serve the interexchange market statewide, could no longer provide this service.

On December 20, 1983 the Commission granted AT&T a certificate of public convenience and necessity to provide interLATA service only. Thereafter, other carriers applied for certificates of public convenience and necessity and they were issued as follows: MCI Telecommunications Corporation, July 17, 1984; GTE-Sprint Communications Corporation, July 17, 1984; Microtel, Inc., September 25, 1984; SouthernTel, Inc., January 15, 1985; and U.S. TELECOM, October 15, 1985. Whereas prior to December 20, 1983 Southern Bell was the only certificated intrastate toll carrier in Georgia, there are now six certificated interexchange intrastate toll carriers.

The opening of the interexchange toll market to competition and the proliferation of interexchange carriers has made it clear that the Commission's existing rules, practices and procedures regulating telephone companies are outmoded and, in many instances, inapplicable. The broad question to be decided in this docket is the extent and nature of Commission regulation of interexchange carriers. The following specific issues have been raised by the evidence and briefs in this case: (1) the extent to which providers of interexchange telephone service should be certificated by the Commission and the requirements as to scope of service that should be applied to them; (2) the extent to which the Commission should continue to regulate the level of rates charged by the carriers. Specifically, the procedures to be applied to proposed rate decreases and proposed rate

increases; the data the carriers should be required to supply in support of rate increases and decreases; whether the Commission should continue to apply a rate of return approach to rate regulation; and whether carriers should be permitted to deaverage toll rates; (3) what reports should the carriers be required to make to the Commission and how should they be required to keep their books; (4) what service standards and customer deposit and termination rules should apply to the carriers; and (5) should there be different regulatory treatment between AT&T and the OCC's.

As with many issues in this new environment, the issues of the extent and nature of regulation involve questions of policy and the exercise of judgment. However, as with previous Commission decisions in this area, minimization of local exchange customer disruption and dislocation and the public policy to promote universal access to the telephone system at reasonably affordable rates underlie this decision. In addition, the Commission seeks to strike a fair balance between the interests of local exchange customers, users of the interexchange network, local exchange companies and the various interexchange carriers.

FINDINGS OF FACT

1.

Pursuant to the Modified Final Judgment entered in United States of America v. American Telephone and Telegraph Company, Inc., 522 F.Supp. 131 (D. DC 1982) the Bell Operating Companies, including Southern Bell, were divested from AT&T effective January 1, 1984. Prior to December 20, 1983 Southern Bell was

the only certificated intrastate toll carrier in Georgia. As a result of the MFJ, Southern Bell was prohibited from providing interLATA toll service effective January 1, 1984. In addition, as a result of the restrictions imposed on Southern Bell by the MFJ, the other local exchange companies in Georgia are unable to interface with Southern Bell to provided interLATA service.

2.

On December 20, 1983 the Commission issued a certificate of public convenience and necessity to AT&T authorizing it to provided interLATA service. That certificate, however, was not exclusive and the Commission subsequently issued certificates of public convenience and necessity to provide interLATA telecommunications services to MCI, GTE Sprint, Micro-Tel, SouthernTel and U.S. TELECOM.

3.

At the present time only AT&T provides originating interLATA service throughout the State. The OCC's, on the other hand, provide originating traffic only in the large metropolitan areas. The OCC's have therefore been able to concentrate on the most profitable markets. Because of geography and population density in some of the rural areas served by AT&T, AT&T actually fails to recover its cost of serving certain of those markets.

4.

The OCC's have made significant penetration in the market place. AT&T's evidence showed that 28% of Georgia business customers used carriers other than AT&T and that those customers made interLATA calls. In the residential markets, OCC's have

achieved approximately a 37% penetration level in the high usage segment. The OCC's presented no evidence as to their market share. Based upon the evidence presented, it is clear that the OCC's have made significant penetrations into their target markets while leaving the less profitable rural markets for AT&T.

5.

Under the MFJ, Southern Bell will be required to have all of its offices equipped with Feature Group "D" by September 1, 1986. Feature Group "D" is the so called "Equal Access" arrangement. It is a premium access connection and is substantially identical in quality, features and value to AT&T's connections (Feature Group "C"). In fact, Southern Bell has one of the most aggressive equal access programs in the nation. In addition, the independents are required to provide equal access arrangements within three years of a request for the service. To date, no OCC's have made such a request. In order to encourage OCC's to enter the independent telephone company markets, the Commission, in Docket No. 3430-U, ordered that the Feature Group "A" and "B" discounts of 12% be continued in the independents' territory until September 1, 1987.

6.

The OCC's include both facilities based and nonfacilities based carriers. Even those OCC's with their own facilities lease facilities from AT&T and other carriers. It is found as a matter of fact that the relative ease of entry into the marketplace acts as a competitive constraint on AT&T and the existing OCC's.

7.

At present there are at least twelve resellers of telecommunications service based in Georgia. Resellers act essentially as arbitrageurs, passing on to medium and smaller volume users volume discounts by buying discounted services and reselling them. The ease of entry and the relative growth of resellers also acts to keep the interexchange market competitive.

8.

It is found as a matter of fact that the interexchange telecommunications market in Georgia is competitive. It is further found that AT&T does not possess market power to the extent that it should be regulated differently from the OCC's. The ease of entry into the interexchange market, the level of market penetration already achieved by the OCC's, the existence of resellers who can arbitrage prices, that fact that AT&T serves the entire state including relatively uneconomic markets and that the OCC's have the ability to target the most profitable markets, all act as competitive constraints on AT&T's ability to engage in predatory pricing or to raise its rates to an excessive level above cost. These same market forces also act on the OCC's and prevent them from offering different prices for similar services except where justified by cost differences.

9.

Inter and intraLATA toll rates are presently set on an average basis throughout the state. Thus, all toll calls over the same geographic distance are charged the same rate regardless of the cost to serve the particular route involved. Many Georgia

telephone subscribers, particularly those in rural areas, are served by only one carrier. It would cause severe economic dislocations to permit carriers to deaverage toll rates particularly in those locations where subscribers have no available substitute carrier. It is therefore found as a matter of fact that it would not be in the public interest to permit the geographic deaveraging of toll rates by AT&T or by any OCC.

10.

Once a carrier enters a geographic market, customers come to depend upon that carrier's service. Particularly in those areas of the state served by only one carrier, permitting a carrier to withdraw from a market would leave those customers without toll service. Therefore, it is found as a matter of fact that the public interest requires that once a carrier enters a market that it may not withdraw from that market without Commission approval.

11.

It is found that competitive forces in the interexchange market should act as a curb against predatory pricing. It would also be in the public interest to permit carriers flexibility to reduce rates and offer new services on a timely basis. These factors constitute good cause for relaxing the present thirty day notice requirements of O.C.G.A. §46-2-25(a) as to rate decreases and new service offerings. While market forces should act to curb excessive rate increases, rate increases clearly have a greater impact on the telecommunications subscriber than do rate decreases. An insufficient showing has been made to relax the thirty day notice requirement as to rate increases.

12.

It is further found that competitive forces make strict rate of return regulation unnecessary. Rather, it should be sufficient to protect the public interest for carriers to demonstrate as to rate decreases that the service is not priced below cost and as to rate increases that present cost exceed expenses.

13.

The Commission has promulgated rules concerning telephone service contained in Chapter 515-12-1 of the Rules of the Georgia Public Service Commission. Many of those rules are inapplicable to, or ill suited for, interexchange carriers. It is clear that new rules need to be developed to deal with the new interexchange telecommunications environment. Those rules must address, at a minimum, customer deposit and service disconnection, reports to the Commission and quality of service. As to quality of service, it is found that it would be in the public interest to allow different carriers to provide different levels of service quality as this will increase customer choices and reduce prices. As to customer deposits, such deposits must be related to interexchange service only but must conform with the Commission's existing requirements. Customer disconnection rules also need to be modified as they relate to interexchange carriers and a requirement imposed that local exchange service may not be terminated for failure to pay interexchange toll charges.

CONCLUSIONS OF LAW

1.

This matter is before the Commission due to the opening up to competition of the interLATA toll market following the divestiture of the Bell Operating Companies from AT&T pursuant to the Modified Final Judgment entered in United States v. American Telephone and Telegraph Company, 552 F.Supp. 131 (D. DC 1982). The divestiture was designed to open the interexchange toll market to competition by providing equal access by all interexchange carriers to that market.

2.

O.C.G.A. §46-5-41 provides that no entity may construct or operate any telephone line, plant or system or any extension thereof without first obtaining from the Commission a certificate of public convenience and necessity. The Commission has previously held that resellers, both pure resellers and resellers with facilities, must obtain a certificate of public convenience and necessity from the Commission. The provision of interexchange toll service constitutes the operation of a telephone system requiring a certificate of public convenience and necessity. Therefore, no one may operate as an interexchange toll carrier without first obtaining from the Commission a certificate of public convenience and necessity.

3.

There is no legal requirement that a certificate of public convenience and necessity mandate that an interexchange carrier serve the entire state on an originating basis. Therefore,

existing interexchange carriers, except for AT&T, and new carriers entering the market will not, at this time, be required to serve the entire state on an originating basis.

4.

Many areas of the state are presently served by only one carrier. In addition, as carriers enter the interexchange market and obtain customers, those subscribers tend to rely on the presence of the new carriers. It would not be in the public interest to permit a carrier to cease serving all or any portion of its service area without prior Commission approval. In addition, O.C.G.A. §46-2-25(a) provides that no utility "subject to the jurisdiction of the Commission shall make any change in any rate, charge, classification, or service subject to the jurisdiction of the Commission, or in any rule or regulation relating thereto, except after thirty days notice to the Commission and the public . . .". Any carrier that wishes to change its service by ceasing to serve all or any part of its service territory must give the Commission thirty days notice and the Commission may, if deemed necessary, suspend the proposed change in service and conduct a hearing thereon pursuant to O.C.G.A. §46-2-25(b).

5.

There is no present requirement that a carrier seek Commission approval before entering a new market. It would be contrary to the public interest and would be a disinsentive to competition to require Commission approval before a carrier enters a new market. Therefore, it is found that no Commission approval is required for entry into new markets. However, as

discussed below, carriers will be required to apprise the Commission of their service territories on a regular basis.

6.

At the present time interexchange toll rates are set on an average basis without regard to the cost to provide any particular toll call. Many areas of the state, particularly the rural areas, are served by only one carrier. To permit the deaveraging of toll rates would cause significant increases for toll customers living in areas served by only one carrier and/or in rural areas. It is therefore concluded that it would be contrary to the public interest to permit any carrier to deaverage toll rates.

7.

One of the purposes of regulation is to simulate the effects of competition in a monopoly environment. Regulation serves to protect the public from unreasonable and excessive pricing schemes and service packages. In addition, regulation serves to protect the public interest by insuring adequate levels of service at reasonable cost. The introduction of competition into the interexchange telephone market obviates to some degree the need for strict regulation of pricing and service offerings.

8.

In Docket No. 3514-U the Commission ordered that the rates then on file for all certificated interexchange carriers were maximum rates and that all interexchange carriers could make rate reductions and adjustments to nondiscriminatory, compensatory levels below the maximum rates after fourteen days notice to the

Commission. The procedure set forth in Docket No. 3514-U has been in effect for over eight months and has worked well.

9.

O.C.G.A. §46-2-25 provides that the Commission, for good cause shown, may allow changes in rates and charges to take effect without requiring thirty days notice. The existing competition in the interexchange market and the public interest in allowing carriers to reduce rates and make new service offerings on an expedited basis constitutes good cause as set forth in O.C.G.A. §46-2-25(a). Therefore, the present interexchange rates shall be considered maximum rates and all carriers may make rate reductions and adjustments to nondiscriminatory, compensatory levels below the maximum rates after fourteen days notice to the Commission. In addition, carriers may make new service offerings by filing tariffs upon fourteen days notice to the Commission. The Commission may permit the rate change or new tariff to go into effect or, within the fourteen days, it may suspend the effectiveness of the same and conduct a hearing pursuant to O.C.G.A. §46-2-25(b). The standard that the Commission shall apply in determining whether the proposed rate or tariff is just and reasonable is whether it is priced below cost.

10.

In support of any rate decrease or new tariff offering the carrier should file data sufficient to establish that the rate is compensatory and is not priced below cost. Data similar to that filed by AT&T in Docket No. 3514-U shall be deemed sufficient on an interim basis. The Commission shall develop minimum filing

requirements for rate decreases and new tariff offerings.

11.

Although the increased competition in the interexchange market should help to insure that rates do not become excessive, there has been an insufficient showing to demonstrate that at this time good cause exists for reducing the thirty day notice period required by O.C.G.A. §46-2-25(a). Therefore, all proposed rate increases shall require thirty days notice to the Commission and the Commission may elect to suspend the new schedule and conduct a hearing pursuant to O.C.G.A. §46-2-25(b). However, it is concluded that the strict rate base/rate of return method of determining the just and reasonableness of rates is no longer necessary to protect the public interest in the new competitive marketplace. Carriers will, however, be required to furnish cost and expense data as to the proposed increase and data to show its overall revenue effect. The Commission will establish, by rule making, minimum filing requirements for rate increases.

12.

In order for the Commission to properly monitor developments in the interexchange market, to insure that interexchange carriers are complying with Commission rules and regulations and to insure that interexchange carriers are operating in the public interest, it is essential that all carriers file annual reports with the Commission. For example, it is essential that the Commission know the financial condition of each carrier, the number of customers served, the geographic area served, the type of facilities utilized and the nature of customer complaints.

Each carrier is presently required to file an annual report with the Federal Communications Commission (FCC Form P). Therefore, each interexchange carrier in Georgia shall be required to file an annual report with the Commission in the form of FCC Form P but jurisdictionally separated to show Georgia specific data. In addition, to facilitate monitoring and ease of comparison, all carriers shall maintain their books and records pursuant to the FCC Uniform System of Accounts and according to generally accepted accounting principles.

13.

The Commission's present rules governing telephone service, Chapter 515-12-1 of the Rules of the Georgia Public Service Commission, were drafted and promulgated prior to the breakup of At&T and the development of competition in the interexchange market. Many of these rules are inapplicable or ill suited to interexchange carriers. However, regulation concerning the quality of service, the initiation of service, and customer deposits, disconnection and complaints are still necessary to protect the public. As to quality of service, it is not necessary that uniform quality of service rules be applicable to all carriers because customers may desire a choice based upon lower quality and, presumably, lower price. Minimum service standards appear to be all that is necessary. Interexchange carriers also need to be regulated as to reasons for denying service, amounts of customer deposits, and service disconnection. In particular, it is necessary to insure that local exchange service is not terminated for failure to pay interexchange toll bills.

14.

The OCC's argue that AT&T should be subject to stricter regulation while the Commission should forebear from regulating them. The OCC's argue that AT&T possess market power and that barriers to entry into the marketplace dictate that AT&T be regulated to prevent predatory and other discriminatory pricing techniques. The evidence in this Docket fails to establish the need for disparate treatment between AT&T and the OCC's. Given the number of OCC's who have entered the interexchange market, it is apparent that there are not significant barriers to entry. The OCC's have also established a significant share of the interexchange market, concentrating on the more lucrative metropolitan areas. On the other hand, AT&T is required to serve the entire state, including relatively unprofitable markets. Equal access arrangements will be available in all of the Southern Bell territory no later than September 1, 1986. As noted in Docket No. 3430-U, Southern Bell estimated that 81% of its offices would have Feature Group "D" available by the end of 1985. In addition, the Commission has retained a 12% discount on Feature Group "A" service in the independent telephone company territories until September 1, 1987.

15.

The OCC's have failed to meet their burden of proof to establish that AT&T should be more strictly regulated than the OCC's. The interexchange market is sufficiently competitive so that no carrier or groups of carriers should be given advantages. The purpose of the divestiture of AT&T was to generate

competition in the interexchange market and to have market forces replace regulation. The interexchange market in Georgia is now sufficiently competitive that regulation may be relaxed as to all carriers.

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

IT IS THEREFORE ORDERED,

(1) That all entities providing interLATA telecommunications services must hold certificates of public convenience and necessity issued by the Commission pursuant to law;

(2) That interexchange carriers shall not presently be required to provide originating service throughout the State but that if any carrier desires to cease serving all or any portion of its service territory it must give the Commission thirty days notice and the Commission may suspend the proposed service change and conduct hearings pursuant to O.C.G.A. §46-2-25(b);

(3) No interexchange carrier may deaverage toll rates. Toll calls to points of equal distance shall continue to be priced equally;

(4) All rates presently on file for interexchange carriers shall be deemed maximum rates and all carriers may make rate reductions and adjustments to nondiscriminatory, compensatory levels before the maximum rates after having given the Commission fourteen days notice. In addition, carriers may introduce new service offerings by filing tariffs with the Commission to be effective after fourteen days notice. All rate reductions and all new tariffs shall be accompanied by cost data demonstrating that the new rate or service is not priced below cost. The

Commission may, in its discretion, choose to suspend the rate reduction or tariff pursuant to the provisions of O.C.G.A. §46-2-25(b);

(5) The Commission shall adopt minimum filing requirements for rate reductions and new service offerings that shall require cost and expense data establishing that the service is not priced below cost. All interested parties are invited to submit to the Commission staff proposed minimum filing requirements within ninety days of the date of this Order. In the interim, the data filed by AT&T in Docket No. 3514-U shall be deemed sufficient;

(6) All rate increases shall require thirty days notice to the Commission as required by O.C.G.A. §46-2-25(a) and the effective date may be suspended by the Commission for the purpose of conducting a hearing. Rate increases shall be supported by cost and expense data for the proposed increase and data showing the overall revenue effect on the carrier. The Commission shall adopt minimum filing requirements for rate increases and all interested parties are invited to submit proposed minimum filing requirements within ninety days of the date of this Order;

(7) All carriers, including AT&T, shall be subject to equal regulatory treatment;

(8) All interexchange carriers shall be required to keep their books and records according to generally accepted accounting principles and in accord with the FCC Uniform System of Accounts. Each carrier shall file an annual report with the Commission in the form of FCC Form P but jurisdictionally allocated for Georgia specific data. Each annual report shall be

filed by April 1 of the succeeding year;

(9) The Commission will promulgate new rules for telephone service applicable to interexchange carriers, including rules applicable to quality of service, applications for service, customer deposits, customer disconnections and customer complaints. All interested parties are invited to submit to the Commission proposed rules for telephone service that address the issues discussed in this Order.

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 thirty days from the date of this Order, or an Order by the Commission within said thirty days for review on its own motion, this decision shall, without further proceedings, become the final decision of the Commission.

SO ORDERED this 8th day of January, 1986.

ROBERT B. REMAR, Hearing Officer
Georgia Public Service Commission