6

File

THOMPSON
HINE & FLORY LLP

Attorneys at Law

RECEIVED
OCT - 5 1998
DOCKETING DIVISION
PUCO

Gerald A. Cooper
(614) 469-3223
gcooper@thf.com

October 5, 1998

Ms. Daisy Crockron
Chief of Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

Re: In the Matter of Telephone Service Company's Application to Add IntraLATA Presubscription
Case No. 96-1312-TP-ATA

Dear Ms. Crockron:

Enclosed for filing is an original and ten (10) copies of a memorandum contra to the motion of United Telephone Company of Ohio d/b/a Sprint and Sprint Communications Company, L.P. to intervene and suspend the company's presubscription implementation charge.

Please call me if you have any questions regarding this matter.

Very truly yours,

Gerald A. Cooper

Gerald A. Cooper
GAC/glm
Enclosures
cc: Clinton G. Conover, Vice President
Scott Potter
J. Raymond Prohaska, Esq.
Thomas E. Lodge, Esq.

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of	)	
Telephone Service Company to Add	)	
IntraLATA Presubscription.	)	
	)	CASE NO. 96-1312-TP-ATA
	)	
	)	
	)	
	)	

TELEPHONE SERVICE COMPANY'S MEMORANDUM CONTRA MOTION OF UNITED TELEPHONE COMPANY OF OHIO d/b/a SPRINT AND SPRINT COMMUNICATIONS COMPANY L.P. TO INTERVENE AND SUSPEND THE TELEPHONE SERVICE COMPANY'S PRESUBSCRIPTION IMPLEMENTATION CHARGE

I. BACKGROUND

Telephone Service Company (the "Company") implemented 1+ intraLATA dialing parity on August 8, 1997. Pursuant to the entry of this Commission approving the Company's intraLATA presubscription tariffs (the "Entry"), the Company filed its proposed 1+ intraLATA presubscription incremental cost recovery minutes of use (MOU) rate on August 21, 1998. In accordance with the Entry, the MOU rate became effective on September 21, 1998.

On September 17, 1998, United Telephone Company of Ohio d/b/a Sprint and Sprint Communications Company L.P. (collectively, "Sprint") filed a motion to intervene in this case and to suspend the MOU rate. Sprint alleges that the Company's proposal violates Section X.F. of the Local Service Guidelines promulgated by this Commission in Case No. 95-845-TP-COI (the "Guidelines") because it included only switched access minutes of interexchange carriers ("IXC") in its MOU rate calculation. For the reasons set forth below, Sprint's motion is without merit and should be denied.

II. ARGUMENT

Section X.F. of the Guidelines provides :

> The incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne by providers of telephone exchange service and telephone toll service. Costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes <u>generated on lines that are presubscribed for intraLATA toll service</u>. Recovery of these costs shall not include recovery of costs incurred for PIC charges during the initial 90-day no-charge period. (emphasis supplied)

During implementation of intraLATA equal access, the Company's customers were allowed to select an intraLATA carrier. If they did not do so, then they remained assigned to their "default" carrier, the primary carrier that had existed before intraLATA equal access. Thus, as implementation progressed, each access line either became presubscribed or it did not. When the Company calculated its MOU rate, the Company included all switched access minutes generated on lines that were presubscribed for intraLATA service. Contrary to Sprint's allegations, whether a carrier was an IXC or was a local exchange company was not a factor in determining which minutes were included; rather, in accordance with the Guidelines, the determining factor was whether the minutes were on presubscribed lines.

As used in the Guidelines, the term "presubscribed" must refer to those lines for which the customer has affirmatively <u>chosen</u> an intraLATA carrier to handle 1+ intraLATA toll calls; as a result, the term cannot include those lines which, by default, remained with the existing carrier that handled 1+ intraLATA calls prior to implementation of dialing parity. As a linguistic matter, Sprint's reading of the Guidelines -- that all originating intraLATA switched access minutes must be included in the calculation -- would render the phrase "generated on lines that are presubscribed for intraLATA toll service" superfluous.

Furthermore, the Company's assertion that "presubscribed" does not include lines of those customers who remained with the default carrier is the only fair and reasonable interpretation of Section X.F. of the Guidelines. The cost of intraLATA presubscription implementation would be borne by those for whose benefit the costs were incurred; indeed, such is the very reason why the Commission adopted a cost recovery mechanism. The carriers that benefit from the implementation 1+ intraLATA dialing parity are those that, by virtue of this implementation, are able to "presubscribe" customers that they otherwise would not be able to presubscribe. But for the implementation of 1+ intraLATA dialing parity, the new carriers would not have intraLATA toll customers in the Company's exchange area. By contrast, the existing intraLATA carrier, in this case the Company, does not have its intraLATA toll customers because of the implementation of 1+ intraLATA dialing parity, rather it has them *in spite of* the implementation of 1+ intraLATA dialing parity.

Accordingly, because the Company does not benefit from implementation of 1+ intraLATA presubscription, the Company should not pay for it. The Company has gained nothing from the implementation of dialing parity. In fact, the only result has been that it has lost intraLATA toll customers to other companies. It is entirely unreasonable, to suggest that one company must pay the costs necessary to allow a second company to erode the first company's customer base.

Basic business principles also dictate agreement with the Company's interpretation of Section X.F. of the Guidelines. The 1+ intraLATA presubscription implementation costs are costs of entering the intraLATA toll market and should be borne by those carriers that have chosen to enter the market. The Company did not "enter" the market when 1+ dialing parity was implemented; it was already there. Just like any other costs carriers would incur in entering a new market, the entering carriers should bear the costs of 1+ intraLATA presubscription implementation. Plainly, no-one would suggest that the Company pay for the advertising, equipment, labor or other costs associated with another carrier entering the intraLATA toll market. There is no reason to view the presubscription implementation costs any differently.

III. CONCLUSION

Based on the foregoing, the Company respectfully requests that the Commission find that Sprint's motion is not well taken and deny the same.

Respectfully submitted,

TELEPHONE SERVICE COMPANY

By: Thomas E. Lodge

Thomas E. Lodge (0015741)
J. Raymond Prohaska (0017567)
Gerald A. Cooper (0063389)
THOMPSON HINE & FLORY LLP
10 West Broad Street
Columbus, Ohio 43215-3435
(614) 469-3200 telephone
(614) 469-3361 *facsimile*

Its Attorneys

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Telephone Service Company's Memorandum Contra Motion of United Telephone Company of Ohio d/b/a Sprint and Sprint Communications Company L.P. to Intervene And Suspend The Telephone Service Company's Presubscription Implementation Charge* was served upon the following by regular U.S. Mail, postage prepaid, this 5th day of October, 1998.

Gerald A. Cooper

Gerald A. Cooper

Joseph R. Stewart
50 W. Broad Street, Suite 3600
Columbus, Ohio 43215

Lee T. Lauridsen
Sprint Communications Company L.P.
8140 Ward Parkway
Kansas City, Missouri 64114