

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of SBC )  
Ohio to Increase the Rate Associated With ) Case No. 90-5032-TP-TRF  
Toll Restriction. )

In the Matter of the Application of SBC )  
Ohio to Increase the Rate Associated With ) Case No. 90-5032-TP-TRF  
Call Trace. )

ENTRY ON REHEARING

The Commission finds:

- (1) On February 1, 2005, SBC Ohio made two zero-day tariff filings in the company's tariff filing proceeding (TRF docket), Case No. 90-5032-TP-TRF (90-5032), to implement price increases for its Toll Restriction and Call Trace service offerings. Pursuant to Rule 4901:1-6-02(A), Ohio Administrative Code (O.A.C.), incumbent local exchange telephone companies operating pursuant to a qualifying alternative regulation plan are authorized to utilize the streamlined filing requirements codified in Chapter 4901:1-6, O.A.C. SBC Ohio's application for approval of an alternative form of regulation was approved in a finding and order issued January 6, 2003, in Case No. 02-3069-TP-ALT, *In the Matter of the Application of SBC Ohio (formerly Ameritech Ohio) for Approval of an Alternative Form of Regulation*. Pursuant to Rule 4901:1-6-21(B)(2), O.A.C., tier 2 services such as Toll Restriction are not subject to any rate cap and may be priced at market-based rates. Similarly, pursuant to Rule 4901:1-6-20(B)(5)(a), O.A.C., rate changes within an approved range of rates for certain non-core tier one services, whether upward or downward, are subject to a zero-day notice-only filing under SBC Ohio's TRF docket. Thus, the price increase filings made in SBC Ohio's TRF docket went into effect on February 1, 2005.

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- (2) On March 1, 2005, the Office of the Ohio Consumers' Counsel, on behalf of the residential telephone customers of SBC Ohio, the Appalachian People's Action Coalition, the Neighborhood Environmental Coalition, and the Consumers for Fair Utility Rates (collectively "the Consumer Coalition") filed for intervention and sought a full suspension of the price increases that took place through separate tariff filings of SBC Ohio on February 1, 2005. In separate pleadings filed the same day, the Consumer Coalition sought rehearing of the Commission's "automatic approval of the applications" filed in the 90-5032 docket on February 1, 2005. In both the motions to intervene and suspend as well as in the applications for rehearing, the Consumer Coalition challenges the rate increases for Toll Restriction and Call Trace as unreasonable, unlawful and not in the public interest.

Regarding Toll Restriction, the Consumer Coalition argues that a rate increase for a service whose value has decreased over time, in the absence of cost justification, should be deemed to be per se unreasonable. Moreover, notwithstanding the Commission's final determination on the increase for Toll Restriction, the Consumer Coalition recommends that SBC Ohio should be required to educate customers regarding the availability of local-only service at the time the customer establishes service as well as when customers are facing disconnection for nonpayment of toll debt. Under a local-only scenario, the customer would not choose a long distance provider and, thus, no one in that household would be able to make any direct-dialed toll calls.

Regarding Call Trace, the Consumer Coalition maintains that the Commission erred by failing to ensure that the operation of SBC Ohio's Annoyance Call Bureau and Call Trace service has not been discontinued or diminished in any way and that the offering is necessary and adequate and remains in the public interest. The Consumer Coalition asserts that no rate increase can be justified without a representation by SBC Ohio concerning the level of services provided. Under the circumstances of this case, such a representation must include a

determination that the company's free Annoyance Call Bureau remains available under the same terms and conditions as existed when the service was initially approved in 1993.

- (3) Separately, Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition filed for intervention regarding SBC Ohio's Toll Restriction price increase.
- (4) SBC Ohio filed a consolidated memorandum contra the Consumer Coalition's motions to intervene, motions for a full suspension and applications for rehearing on March 11, 2005. In its memorandum contra, SBC Ohio argues that suspension is unwarranted because the tariff filings were fully compliant with the Commission's rules and Ohio law and are in the public interest. Regarding Toll Restriction, SBC Ohio maintains that the public interest is served when participants in a competitive market are free to manage their business, continue to compete and provide consumers with choices. In this instance, SBC Ohio notes that consumers have options available and that these options underscore the fact that Toll Restriction is both a discretionary and a competitive service.

Regarding Call Trace, SBC Ohio asserts that the Consumer Coalition's unsupported claim, that "the price increase is unjust and unreasonable if the functions of the Annoyance Call Bureau have declined," fails to provide a basis for suspending a price increase that is fully compliant with the Commission's rules. (Emphasis in original) SBC Ohio also argues that the Consumer Coalition should not be permitted to intervene in these cases inasmuch as the increases have already gone into effect in compliance with the applicable Commission rules and there is no reason or basis on which to suspend them. Thus, SBC Ohio maintains, there is no proceeding in which the Consumer Coalition can seek to intervene.

- (5) On March 18, 2005, SBC Ohio filed a memorandum contra the motion to intervene and motion for a suspension filed by the Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition.

- (6) On March 21, 2005, the Consumer Coalition filed a consolidated reply to SBC Ohio's memorandum contra the motion to intervene and for a full suspension.
- (7) For the reasons discussed in more detail below, the Commission determines that the Consumer Coalition's motions to intervene, motions for a full suspension and applications for rehearing should be denied. According to Rule 4901:1-6-04(B), O.A.C., in order for a full suspension to be imposed ex post facto, a determination must be made that the service previously automatically authorized may not be in the public interest or is in violation of Commission rules and regulations. Since adoption of the competitive retail service rules in Chapter 4901:1-6, O.A.C., the Commission has permitted price increases for tier one non-core services and tier two services, like Call Trace and Toll Restriction, respectively, by competitive telecommunication carriers and by incumbent local exchange carriers subject to a qualifying alternative regulation plan. As noted above, SBC Ohio is subject to a qualifying alternative regulation plan and, thus, is permitted to operate under the provisions of the competitive retail service rules codified in Chapter 4901:1-6, O.A.C.

In reviewing the tariff filings for price increases involving Call Trace and Toll Restriction, the Commission finds that SBC Ohio's filings were compliant with applicable Commission rules and Ohio law. As noted *infra*, after the first two years of the plan, price changes for tier one non-core services such as Call Trace are permitted to be filed on a zero-day basis provided the price change falls within a range of rates. Pursuant to Rule 4901:1-4-05(C)(3)(b)(vi), O.A.C., incumbent local exchange carriers, like SBC Ohio, are permitted, 24 months after adopting a qualifying alternative regulation plan, to increase rates for tier one non-core services on a zero-day basis, up to a cap that is double the initial rate of the non-core service. Commission approval of this pricing mechanism means that the Commission has deemed every rate within this range of rates to be just and reasonable.

Tier two services, like Toll Restriction, have been deemed to be fully competitive and can be priced based upon the market subject only to a cost floor. In both instances, the price increases for Call Trace and Toll Restriction services fell within the pricing parameters set forth in the applicable rule. Also, contrary to the Consumer Coalition's position, there is no cost-of-service requirement for rate increases. Rather, the Commission has found that adequate advance notice of rate increases coupled with the ease by which customers can switch providers and/or the competitive alternatives available afford customers ample opportunity to make their own decisions regarding the use of one provider's services versus another or whether to purchase discretionary services or not. Certainly, based on the above, there is no justification for determining that these cases should be suspended as violating any Commission rules or regulations. Additionally, we find insufficient information available to determine, under these circumstances, that the price increases in the involved applications may not be in the public interest.

- (8) In addition to the above, the Commission also determines that the Consumer Coalition's motions to intervene, motions for a full suspension and applications for rehearing should be denied. Regarding intervention, the Commission finds that cause to grant the Consumer Coalition's motions for intervention under Section 4903.221, Revised Code, or Rule 4901-1-11, O.A.C., has not been shown. Further, given the nature of these TRF filings, we find that a hearing is not necessary to conduct an evaluation of these price increases, and granting intervention is not necessary for the Commission to fully consider the comments and arguments presented by the Consumer Coalition in this case. Therefore, the Consumer Coalition's motions for intervention are denied.

As to the Consumer Coalition's concerns regarding Call Trace, the Commission determines that nothing about the instant tariff filings in any way impacts or modifies the provisioning, terms or conditions of the free Annoyance Call Bureau offered by SBC Ohio. We reiterate that, in compliance with the March

31, 1993 finding and order approving the offering of Call Trace by The Ohio Bell Telephone Company (nka SBC Ohio), should SBC Ohio decide to discontinue or diminish the service offered by the Annoyance Call Bureau, SBC Ohio must first seek prior approval from the Commission.

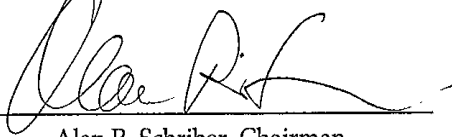
It is, therefore,

ORDERED, That the Consumer Coalition's motions to intervene, motions for a full suspension and the applications for rehearing be denied as set forth in this entry on rehearing. It is, further,

ORDERED, That, for similar reasons, the motion to intervene filed by Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition regarding SBC Ohio's Toll Restriction service is denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon SBC Ohio, the Consumer Coalition, their respective counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

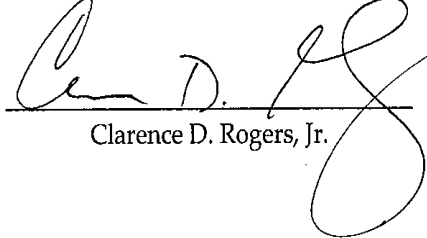


Alan R. Schriber, Chairman

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Ronda Hartman Fergus

  
Judith A. Jones

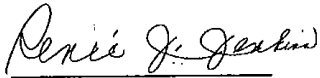
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Donald L. Mason

  
Clarence D. Rogers, Jr.

JRJ/vrm

Entered in the Journal

MAR 23 2005



Renee J. Jenkins  
Secretary