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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF COMMUNICATION)
CORPORATION OF INDIANA D/B/A TDS)
TELECOM FOR WAIVER OF)
REQUIREMENTS OF THE ORDERS IN)
CAUSE NO. 39369 AND TO ESTABLISH)
INSTANT MIRRORING OF INTERSTATE)
ACCESS TARIFFS)

CAUSE NO. 43977

APPROVED: MAY 04 2011

BY THE COMMISSION

Larry S. Landis, Commissioner
David E. Veleta, Administrative Law Judge

On December 21, 2010, Communication Corporation of Indiana d/b/a TDS Telecom (“CCI” or “Petitioner”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) requesting the waiver of the requirements of the orders in Cause No. 39369 and to establish instant mirroring of interstate access tariffs by the equivalent intrastate carrier access charges. On December 21, 2010, Petitioner filed the Direct Testimony of its witness, Paul E. Pederson, a State Government Affairs Manager in the Government & Regulatory Affairs Department of TDS Telecom.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was held in this Cause on March 21, 2011, at 3:00 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Petitioner and the OUCC were present and participated. No members of the general public appeared or sought to testify at the hearing.

Based on the applicable law and the evidence presented herein, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal and timely notices of the hearing held in this Cause were given and published by the Commission as required by law. CCI is a “public utility” as defined in the Public Service Commission Act, as amended, Indiana Code Ch. 8-1-2 and is subject to the jurisdiction of this Commission in the manner and to the extent as provided for by law.

2. **Background and Overview.** In Cause No. 39369, the Commission conducted an investigation into the maintenance of parity between intrastate carrier access charges and the equivalent interstate carrier access charges approved under price cap regulation. *In the Matter of the Investigation*, Cause No. 39369, 1993 Ind. PUC LEXIS 174 (IURC April 30, 1993), (hereinafter, “Third Order”). The Petitioner was a party to that proceeding, as were all other Indiana incumbent local exchange carriers (“ILECs”), all of which continue to be bound by the

Commission's orders in Cause No. 39369, and the Commission's 30-Day Filing requirements described at 170 IAC 1-6.¹ The Commission reaffirmed its policy of permitting access rate parity with streamlined tariff filing requirements. *Id.* at *11. The Commission defined such access parity as "having the same rates, terms and conditions associated with the provision of access services in both the interstate and intrastate jurisdiction[s]." *Id.* at *9. The procedures established in the Third Order include the following:

- a. Local Exchange Carrier ("LEC") to file interstate tariff and support data package with the Federal Communications Commission ("FCC") for approval, generally within 45 days.
- b. Within 10 days after filing with the FCC, the LECs will file an intrastate mirroring package with the IURC. This package will be filed under the 30-day filing regulations and will include revised interstate tariff sheets, checklist, summary or narrative explaining the proposed changes and other required data. The narrative is to contain a statement as to the controversial nature, if any, of this filing.
- c. Within five days after FCC approval of a LEC's interstate filing, the LEC will notify the Staff of the approval. Upon receipt of the notice, the Staff may then recommend approval of the pending mirroring filing via the Engineering minutes.
- d. Use of the 30-day filing procedure would still allow for complete and thorough review of these filings. With the 30-day filing procedures, any party so desiring may, by timely verified filing with the Chief Engineer, request the Commission to reject the filing or request the matter be set for formal hearing.
- e. The LEC's intrastate access tariff will contain: (a.) a statement of concurrence with its interstate access tariff; and (b.) tariff sheets, as requested, to provide those access services that do not mirror the interstate services.

Id. at *19-20. (*emphasis in original omitted*).

Instant access rate parity has been approved for Indiana Bell Telephone Company, Incorporated, currently d/b/a AT&T Indiana, in Cause No. 40849 on March 19, 2001, and reaffirmed on May 24, 2001; Cause No. 42405 (the successor to Cause No. 40849); and Cause No. 43262 on June 27, 2007. As explained on page 3 of the Commission's Order in Cause No. 43262, under the instant mirroring process approved for the Ameritech Operating Companies, which include AT&T Indiana ("AT&T"), AT&T provides the Commission with electronic courtesy copies of any interstate access tariff filings that change interstate switched or special access services or rates that AT&T plans to mirror in Indiana. The intrastate tariff change has the same effective date as the mirrored interstate tariff change. No 30-day filing is required to gain approval of intrastate access tariff changes that mirror interstate access tariff changes. AT&T is not required to file any

¹ On April 30, 1993, the Commission issued its Third Order on Continuing the Lifting of the Stay of Processing Petitions to Maintain Parity Access and Order on Less than All the Issues in Cause No. 39369. *But see*, the Commission's emergency rulemaking, IURC RM # 11-02, which waives the applicability of the publication and notice requirements of 170 IAC 1-6-5(a)(5) and 170 IAC 1-6-6 when the underlying intrastate access tariff changes "have the sole effect of mirroring... rates, charges, ... as set forth in an applicable interstate access tariff" or if the filing has the sole effect of "making clerical or administrative changes, to be determined at the sole discretion of the Commission or its staff."

additional notice with the Commission when mirrored interstate access tariff changes are approved by the FCC. Since no filing is required at the state level, there is no need to reflect Commission staff recommendations in the Commission's minutes regarding 30-day filings. (*See Indiana Bell Telephone Company, Inc.* Cause No. 43262, 2007 Ind. PUC LEXIS 193, at *6 (IURC June 27, 2007). However, the streamlined process approved in Cause No. 43262 is only used when AT&T Indiana's intrastate access tariff mirrors its interstate access tariff. *Id.* at *7. If any intrastate access tariff changes do not mirror FCC approved changes to interstate access tariffs, AT&T must use the Commission's 30-day filing process described at 170 IAC 1-6, consistent with the provisions of the Third Order issued in Cause No. 39369. *Id.*

3. Petitioner's Evidence. CCI's petition was supported by the Direct Testimony of its witness, Paul E. Pederson, a State Government Affairs Manager in the Government & Regulatory Affairs Department of TDS Telecom.

Mr. Pederson noted the Commission's long history of allowing intrastate access rates to mirror interstate access rates. Indeed the Commission's March 17, 2004 Order in Cause No. 42144 reaffirmed the practice of mirroring by Indiana's rural ILECs (a/k/a "RLECs"):

... Continuation of Mirroring. This Commission's long-standing practice has been to mirror interstate carrier access rate structures and charges. Accordingly, the access charges paid by an IXC [interexchange carriers] to a LEC have been the same whether the interexchange call was jurisdictionally interstate or intrastate. This policy has advantages of simplicity, consistency and administrative efficiency for the Commission, the LECs and the IXCs.

In the Matter of the Commission Investigation, Cause No. 42144, 2004 Ind. PUC LEXIS 61, at *117 (IURC March 17, 2004).

Based on recent legislative changes to Indiana's telecommunications regulatory statute under H.E.A. 1279 (a/k/a P.L. 27-2006), Mr. Pederson also pointed to Indiana Code § 8-1-2.6-1.5(c), as support for continued mirroring of interstate access charges at the intrastate level under the new statute. Specifically, Indiana Code § 8-1-2.6-1.5(c) provides that "the Commission shall consider the provider's rates and charges for intrastate switched or special access service to be just and reasonable if the intrastate rates and charges mirror the provider's interstate rates and charges for switched or special access service."

Mr. Pederson stated that CCI, along with many of the small telephone companies in Indiana, has the National Exchange Carriers Association ("NECA") file and maintain its interstate access tariff with the FCC. When CCI receives notice from NECA of changes proposed to the interstate access tariff, it duplicates the filing for submittal to the Commission. The filing includes a summary of the changes and the date of FCC approval of the changes.

Mr. Pederson stated that, for administrative ease for all concerned parties, CCI resubmits and maintains the intrastate tariff with the Commission while the thirty-three (33) other small Indiana telephone companies who are NECA members simply concur with the CCI access tariff in Indiana.

Mr. Pederson pointed to the Commission's approval of "instant mirroring" for AT&T in Cause No. 43262, as the model for the further streamlining of access tariff filing procedures CCI requested in this proceeding. Rather than follow the 30-day filing requirements for mirrored intrastate access charges established in Cause No. 39369, CCI seeks Commission approval for the same further streamlining already approved for AT&T in Cause No. 43262 and referred to therein as "instant mirroring."

Mr. Pederson stated the public interest would be served if CCI's proposal for "instant mirroring" were approved because it would provide simplicity, consistency, and administrative efficiency for the Commission, for CCI and for its intrastate access customers. Mr. Pederson further noted the Commission would still retain its authority over intrastate access rates after granting the further streamlining of filing procedures requested by CCI.

4. **OUCC Evidence.** The OUCC, after a review of the matter, did not offer any evidence in this Cause.

5. **Commission Discussion and Findings.** The Commission has long permitted intrastate access rates to mirror interstate rates. *See Petition of Indiana Bell Telephone Company, Inc.*, Cause No. 40849, 1997 Ind. PUC LEXIS 309 (IURC December 30, 1997), *Petition of Indiana Bell Telephone Company, Inc.*, Cause No. 42405, 2004 Ind. PUC LEXIS 253 (IURC June 30, 2004) and *Petition of Indiana Bell Telephone Company, Inc.*, Cause No. 43262, 2007 Ind. PUC LEXIS 193 (IURC June 27, 2007), all being AT&T matters. We also have approved mirroring for RLECs in our Order in Cause No. 42144 on March 17, 2004. *See, e.g., In the Matter of the Investigation*, Cause No. 39369, 1993 Ind. PUC LEXIS 257, and *In the Matter of the Investigation*, Cause No. 40785, 1997 Ind. PUC LEXIS, 312 (IURC December 30, 1997).

We note, as did Petitioner's witness Pederson, that the provisions of Indiana Code § 8-1-2.6-1.5(c), regarding the presumption of reasonableness of intrastate switched and special access rates and charges that mirror a provider's corresponding interstate access rates and charges in the event of a dispute or when those intrastate access rates and charges are included in an interconnection agreement or a statement of terms and conditions, shows continued legislative support for mirroring interstate access tariffs at the intrastate level even after Indiana's telecommunications regulatory law was significantly changed in 2006.

The Commission finds that, while the predicate factual conditions (a dispute or the inclusion of intrastate access rates and charges in an interconnection agreement or a statement of terms and conditions) are not before us, legislative intent would nevertheless be served by granting CCI's request (subject to the findings and requirements in this Order), in that it preserves mirroring, while further streamlining the regulatory process. *See*, Indiana Code § 8-1-2.6-1(6). Accordingly, we find that, when changes to CCI's interstate switched and special access services tariff² will be mirrored in its intrastate access tariff, CCI should provide electronic copies to the Commission staff of pertinent interstate tariffs and tariff filings and that such changes should be the same in CCI's intrastate switched and special access services tariff, with the same effective date as the interstate access tariff change. We further find that CCI should provide the electronic copies of mirrored FCC filings to the Commission no later than five (5) business days after the effective date of the change

² At the present time, CCI concurs in the NECA Tariff F.C.C. No. 5, rather than filing its own interstate access tariff with the FCC.

to CCI's interstate access tariff. While we find that electronic copies of the FCC filings are sufficient at the present time, and while we have no current plans to request paper copies, we may require that the filing include paper copies in the future, should that be deemed necessary.

We note there is currently a great deal of uncertainty at the federal level regarding rates, rate structures and applicability of interstate switched and special access, in light of several FCC proceedings, including proceedings on intercarrier compensation, reform of universal service, phantom traffic and special access issues, among others. Ongoing federal proceedings could also have an impact on compensation paid to certain carriers and recovery of certain costs and/or revenues by certain carriers.

In the context of this decision, we find that authorizing CCI to engage in instant mirroring of certain interstate access charges does not indicate our review, consideration, support, or endorsement of FCC ratemaking methods and procedures for developing interstate rates for intrastate purposes. Nor does this Order in any way constitute a derogation of the Commission's sole authority to set intrastate access charges pursuant to Section 251(g) of the Telecommunications Act of 1996, sole exercise of which is wholly reaffirmed. Furthermore, this Order in no way limits the Commission's authority over intrastate access charges as set forth in Indiana Code § 8-1-2-88.6.

This Order is purely administrative in nature. By continuing to accept the results of parity, we are not thereby accepting the methodology used to set the underlying interstate access rates or any particular methodology used to set the underlying interstate access rate structures.

Finally, we find that this Order does not address those situations in which Petitioner's intrastate access tariff does not mirror its interstate access tariff. We find that CCI should continue to use the Commission's 30-day filing process described at 170 IAC 1-6, consistent with the provisions of the Commission's Third Order in Cause No. 39369.

The Commission notes that Communications Division Technical Staff typically collects, and CCI typically files, all intrastate filings for a single month in an aggregated manner for that month, in order to promote administrative efficiency for both CCI and the Commission staff. We find that this is a reasonable approach to the filing and processing of tariffs and this Order is not intended to modify that practice.

Pursuant to the evidence of record in this Cause, and being duly advised in the premises, we find that Petitioner's request for approval of instant mirroring of interstate access charges in Petitioner's intrastate access tariff should be granted, subject to the findings and requirements set forth herein.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Subject to the findings and requirements set forth herein, CCI's petition for waiver of certain requirements of the filing procedures established or referenced in Cause No. 39369 is granted in those instances in which the proposed changes to its intrastate carrier access tariff mirrors, concurs in, or adopts changes to the applicable interstate access tariff, and is relieved of the obligation to follow Steps 2, 3 and 4 of the procedures shown on page 9 of the Commission's Third

Order in Cause No. 39369 and the obligation to follow the Commission's 30-Day Filing Rules set forth at 170 IAC 1-6.

2. When changes to the interstate switched and special carrier access services tariff applicable to CCI will be mirrored, concurred in, or adopted in its intrastate access tariff. CCI shall submit electronic copies to the Commission staff of any interstate access tariff filing. Such changes will be the same in CCI's intrastate switched and special carrier access tariff, with the same effective date as the mirrored interstate access services tariff change. CCI shall submit electronic copies of the applicable NECA interstate tariff filings to the Commission no later than five (5) business days after the effective date of the change to the interstate access tariff.

3. For any new intrastate access tariff that is not based on an interstate access tariff or that represents an exception to the intrastate mirroring of CCI's interstate switched and special access services tariff, Petitioner shall continue to use the Commission's 30-Day Filing Rule at 170 IAC 1-6, consistent with Steps 2, 3, and 4 shown on Page 9 of the Third Order in Cause No. 39369. However, objections to such a filing shall be filed and addressed consistent with the requirements set forth at 170 IAC 1-6-7, rather than Step 4 on Page 9 of the Third Order in Cause No. 39369. Notwithstanding these requirements, Commission staff may continue to collect, and CCI may continue to file, all intrastate filings for a single month in an aggregated manner for that month.

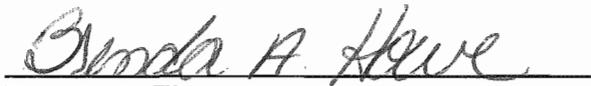
4. In accordance with the Commission's Emergency Rule, IURC RM# 11-02, for intrastate tariff changes that are solely administrative or clerical in nature, instant mirroring or other streamlining of the 30-day process (e.g., a 1-day turn-around administrative process) may be authorized for CCI, at the sole discretion of the Commission or its staff.

5. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: MAY 04 2011

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



**Brenda A. Howe,
Secretary to the Commission**