BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: PROPOSED TARIFF BY SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY TO COMPLY WITH THE FCC MEMORANDUM OPINION AND ORDER IN DOCKET NO. 88-221 TO DEREGULATE CUSTOMER-DIALED ACCOUNT RECORDING.	DOCKET NO. 881301-TL ORDER NO. 20655 ISSUED: 1-25-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNDON

ORDER DENYING TARIFF

BY THE COMMISSION:

BACKGROUND

On September 22, 1988, Southern Bell Telephone & Telegraph Company (Southern Bell) filed a proposed tariff revision to deregulate the provision of its Customer Dialed Account Recording (CDAR) feature, offered as a component of the bundled ESSX tariff. CDAR is an optional feature which allows an ESSX customer to automatically attach an "account" code (up to eight digits) to calls made from ESSX stations. This code might then be used for some type of later cost allocation or accounting function by the customer. Under the Southern Bell tariff, all rates and service descriptions associated with CDAR would be deleted from Southern Bell's ESSX tariff. The existing tariff lists CDAR at rates of $53.00 per system to establish the new feature, $.005 per each message, and $16.50 to change the system account code. There are no existing customers for this service.

Southern Bell filed the proposal in response to a decision by the Federal Communications Commission (FCC) in North American Telecommunications Association; Petition for Declaratory Ruling Under Section 64.702 of the [Federal Communications] Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, Memorandum Opinion and Order in Docket No. 88-221, 3 FCC.Rcd 4385 (1988) (CDAR Order), authorizing the Bell Operating Companies (BOCs) to continue offering CDAR but, declaring it to be an "enhanced service" and subject to all of the progeny of decisions regarding that category of services. The upshot of this decision was to require Southern Bell to offer CDAR on a structurally unseparated basis yet account for it as nonregulated activity. Detariffing of CDAR was to be accomplished by October 1, 1988.

DISCUSSION

If this proposal were approved, future customers would have to purchase this feature as an optional deregulated service. Customers interested in the offering would have to deal with a separate Southern Bell affiliate or subsidiary to arrange for service. Since CDAR is a service feature that resides in and is provided out of the regulated Southern Bell switch, Southern Bell would contract with a separate affiliate or subsidiary to provide the service. All revenues and expenses associated with providing CDAR would be allocated from Southern Bell's regulated operation of the switch to accounts below the line, using Part X allocation procedures.

We find that, from a service offering perspective, there is no need to deregulate CDAR at this time. CDAR is one of the many competitive service elements offered through the ESSX service tariff. The actual marketing of this element is the same as followed with other competitive service elements available to ESSX customers. Southern Bell indicates that it plans to continue offering the service, though no customers currently subscribe to it. We find no justification from the company as to why CDAR should be marketed differently from the other competitive ESSX service elements.

The CDAR Order chronicles the Administrative History of CDAR leading to the FCC's classification of it as an "enhanced service". By simply classifying the service, that agency sought to automatically preempt this service from this Commission's jurisdiction. See Second Computer Inquiry, 77 FCC.2d 384 (1979) (CI II), aff'd. sub nom, Computers and Communications Industry Associated v. F.C.C., 693 F.2d 198 (D.C. Cir. 1982), cert. den., Louisiana P.S.C. vs. United States, 461 U.S. 938 (1983). The CDAR Order does not expressly state that the FCC intended to preempt state regulation of CDAR.

We find that Southern Bell may retain CDAR in its tariff for intrastate services, and not conflict with the FCC's CDAR order. Several factors justify such an opinion. First, this service clearly falls within the definition of a "telephonic service for hire", and thus, Southern Bell's provisioning of it is subject to our jurisdiction under Chapter 364, Florida Statutes. Another chief factor is the U.S. Supreme Court's decision in Louisiana Public Service Commission v. F.C.C., 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986). The Court ruled in Louisiana that the FCC was expressly prohibited from preempting state regulation of depreciation guidelines for facilities used in intrastate communications, even though there would be mixed traffic carried over the facilities. The Court ruled that this holds true when it is possible to allocate between INTERstate and INTRAstate components of service and the costs associated with each. We find that the CDAR feature is such a service. It is offered from a central office to a local customer, essentially as a billing supplement to the local customer. Though the feature may be used on an interstate call, the information tracked by CDAR is kept and maintained in the central office. Moreover, as the Court ruled in Louisiana, any allocation between jurisdictions should be handled as dictated

by the Communications Act of 1934, and not by FCC fiat. In this instance, the Part X accounting procedures would provide the Communications Act guidelines. Therefore, we declare the CDAR feature to be a regulated feature in Florida and hereby acknowledge that Southern Bell may allocate a percentage of revenues and costs for interstate usage of this feature below the line to satisfy the CDAR order.

Although we have adopted no standardized procedures to date for allocating costs from regulated to nonregulated activities, Commission Rule 25-4.345 does require that a company's accounting system be designed to allocate common costs between the company's regulated and nonregulated operations. Allocating common costs between services or operations is otherwise known as a fully distributed costing methodology. Pursuant to these guidelines, Southern Bell has filed a cost allocation manual that meets our guidelines and should be used to allocate the costs and revenues for CDAR between regulated (intrastate) and unregulated (interstate).

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the proposed tariff revisions of Southern Bell Telephone & Telegraph Company to its General Subscriber Service Tariff are hereby denied as outlined in the body of this order. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 25th day of JANUARY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), as amended by Chapter 87-345, Section 6, Laws of Florida (1987), to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.