

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. M-100, SUB 118

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking to Establish Regulatory) ORDER REAFFIRMING AND
Fee Pursuant to G.S. 62-302) INTERPRETING RULE R15-1

11-30-89

BY THE COMMISSION: On August 12, 1989, the North Carolina General Assembly enacted Ratified Senate Bill 1320 (Chapter 787 of the 1989 Session Laws) entitled "An Act to Establish Regulatory Fees for Public Utilities to Defray the Cost to the Utilities Commission and the Public Staff of Regulating Public Utilities in the Interest of the Public." Ratified Senate Bill 1320 amended Article 14 of Chapter 62 of the General Statutes by adding a new section, G.S. 62-302, entitled "Regulatory fee." This act became effective on July 1, 1989, and applies to North Carolina jurisdictional revenues earned by public utilities on and after that date. It will expire on June 30, 1991, unless extended by the General Assembly.

G.S. 62-302 creates a regulatory fee to be paid quarterly by the public utilities regulated by the North Carolina Utilities Commission. This fee is to be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

On September 15, 1989, the Commission entered an Order in this docket adopting Rule R15-1 to implement G.S. 62-302 and the resulting regulatory fee for public utilities. The rule was made effective September 15, 1989, the date of issuance of the Order. The parties to this docket were allowed 30 days to file comments, including proposed amendments to Rule R15-1.

WHEREUPON, the parties to this proceeding subsequently filed the following

COMMENTS

NORTH CAROLINA POWER

North Carolina Power filed comments on October 13, 1989, in which it notes that Rule R15-1(b)(5) defines "North Carolina jurisdictional revenues" as "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction." North Carolina Power requests clarification with respect to what specific categories of "Other Operating Revenues," if any, are to be included in total North Carolina jurisdictional revenues for purposes of calculating the quarterly regulatory fee. North Carolina Power's most recent North Carolina jurisdictional cost of service study reflects Forfeited Discounts, Miscellaneous Service Revenues, Sales of Water, Rent from Electric Property and Other Electric Revenues in the Other Operating Revenues category. While North Carolina Power asserts that such revenues were not intended to be included in the calculation of jurisdictional revenues for purposes of the quarterly regulatory fee, the Company states that it has been advised by

Commission staff personnel that the intent of the statute was to include all categories of other operating revenues approved in its last general rate case. For that reason, North Carolina Power states that additional clarification of the definition of "North Carolina jurisdictional revenues" is necessary.

In the event that a portion of Other Operating Revenues are to be included along with jurisdictional electric revenues in determining revenues subject to the quarterly fee, North Carolina Power asserts that Rule R15-1(b) must be amended to specify the allocation basis (factors) to be applied to Other Operating Revenues for purposes of determining the jurisdictional portion. North Carolina Power currently allocates a portion of its Miscellaneous Service Revenues, Rent from Electric Property (subcategories), and Other Electric Revenue (subcategories) using nine different allocation factors. North Carolina Power recommends the use of composite factors developed from the latest year-end cost of service study, based on the methodology approved in each utility's last general rate case.

North Carolina Power states that Rule R15-1(e) requires utilities to reconcile their North Carolina jurisdictional revenues disclosed in the quarterly NCUC Form ES-1, Schedule 4, with the revenues to be reported in the quarterly Public Utility Regulatory Fee Report (NCUC Form RF). The reconciliation is required on a separate schedule included in the quarterly NCUC Form ES-1 Report. In ES-1, Schedule 4, total sales of electricity are assigned while other electricity revenues are allocated on a composite factor calculated from the prior year-end jurisdictional cost of service study.

According to the Company, Rule R15-1 does not specify whether a composite factor may be used in determining the quarterly amount for inclusion in the NCUC Form RF or whether a current factor must be developed. The total amount of revenue (for North Carolina Power) subject to allocation is only approximately .09% of total jurisdictional revenue on an annual basis. North Carolina Power assumes that this factor is likewise de minimus for other North Carolina utilities. Accordingly, North Carolina Power recommends the use of the same composite factor as used in the NCUC ES-1 Report in order to avoid any inconsistency in amounts reported.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Southern Bell filed comments in this docket on October 16, 1989, whereby the Commission was requested to amend Rule R15-1(b)(5) to delete the reference to revenues from "yellow pages advertising" as being subject to the regulatory fee calculus as North Carolina jurisdictional revenues. Southern Bell sets forth the following two arguments in support of its position.

1. The Inclusion Of Yellow Pages Revenues Is Contrary To Legislative Intent

Southern Bell asserts that during the legislative process that led to the enactment of Ratified Senate Bill 1320, the General Assembly specifically excluded yellow pages revenues from the definition of "jurisdictional revenues" in subsection (b)(4). Southern Bell states that in a draft of S.B. 1320, the General Assembly had defined "North Carolina jurisdictional revenues" as:

"all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant

to Commission order or rule, plus all yellow page advertising revenues, but not including tap-on fees or any other form of contribution in aid of construction." (Emphasis supplied by Southern Bell).

Southern Bell then notes that the General Assembly, in the final version of S.B. 1320, deleted the phrase "plus all yellow page advertising revenues." Thus, Southern Bell takes the position that the legislative history of Ratified S.B. 1320 evinces legislative intent to specifically exclude yellow pages revenues from the calculus used to determine the regulatory fee.

Southern Bell further notes that Commission Rule R15-1(b)(5) provides, in pertinent part, as follows:

"For telecommunications companies, all revenues and other receipts derived from access charges and yellow pages advertising are to be included as North Carolina jurisdictional revenues." (Emphasis supplied by Southern Bell).

According to Southern Bell, this language constitutes an attempt to amend the statute by Commission rule, which is beyond the power of the Commission and is, indeed, contrary to the intention of the General Assembly in enacting S.B. 1320, as shown by the legislative history of that bill. Accordingly, Southern Bell recommends that Rule R15-1 be amended to delete the above-quoted language and that the instructions to NCUC Form RF at paragraph 1 be amended to delete the second sentence of that paragraph, which contains the same language.

2. Yellow Pages Revenues Should Not Be Included In The Regulatory Fee Computation Because They Are Not "North Carolina Jurisdictional Revenues"

In S.B. 1320, the General Assembly defined "North Carolina jurisdictional revenues" as "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule . . ." Southern Bell takes the position that yellow pages revenues are not "realized from intrastate tariffs. . .;" nor are they "rates. . . (or) charges approved or allowed by the Commission or collected pursuant to Commission order or rule. . ." Thus, it is Southern Bell's opinion that revenues derived from yellow pages advertising are not "North Carolina jurisdictional revenues," as that term was defined by the North Carolina General Assembly, and those revenues should not be used in calculating the amount of regulatory fee.

Moreover, Southern Bell asserts that the service that produces those revenues--yellow pages advertising--is not a regulated service and is not subject to Commission jurisdiction. In support of its position, Southern Bell notes that the Supreme Court of North Carolina has held that "(t)he business of carrying advertisements in the yellow pages of its directory is not part of a telephone company's public utility business." Gas House, Inc. v. Southern Bell Tel. and Tel. Co., 289 N.C. 175, 184, 221 S.E.2d 499, 505 (1976) (hereafter "Gas House"). Southern Bell then notes that the Supreme Court subsequently held that those revenues were properly includable in ratemaking proceedings, even though yellow pages advertising is an unregulated service.

State ex rel. Utilities Commission v. Southern Bell Tel. and Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983) (hereafter "Southern Bell"). According to the Company, the Court was careful in Southern Bell, however, to avoid overruling the Gas House case and, therefore, crafted its opinion in Southern Bell so that those two cases could be read together. According to Southern Bell, it is clear that while yellow pages revenues may be considered by the Commission in ratemaking, the provision of those services is not a public utility enterprise and is not subject to Commission jurisdiction. State ex rel. Utilities Commission v. Southern Bell Tel. and Tel. Co., 377 S.E.2d 772 (N.C. Ct. App. 1989). Accordingly, Southern Bell takes the position that inclusion of yellow pages revenues in the calculus for determining the regulatory fee is an attempt to extend Commission jurisdiction to a service that the North Carolina Supreme Court has held is not a regulated service.

CAROLINA TELEPHONE AND TELEGRAPH COMPANY

Carolina Telephone Company filed comments in this docket on October 17, 1989, on the following two issues:

1. Inclusion Of Yellow Pages Advertising Revenues In Jurisdictional Revenues

According to Carolina, the initial draft of the regulatory fee statute specifically provided that yellow pages advertising revenues would be included in jurisdictional revenues. However, after further negotiation and discussion, Carolina states that the reference to yellow pages advertising revenues was deleted from the bill. Under the bill as enacted, the definition of "North Carolina jurisdictional revenues" excluded any reference to yellow pages advertising revenues.

On the basis of the discussion and negotiations that took place in enacting the bill, Carolina asserts that it had a good-faith belief and understanding (which it believed was shared by all other parties) that yellow pages advertising revenues would not be subject to the regulatory fee. Consequently, Carolina states that it was both surprised and disturbed to see that under Commission Rule R15-1, yellow pages advertising revenues would be subject to the fee.

Carolina states that the most logical explanation it can offer as to why the Commission chose to re-insert yellow pages revenues into the definition of jurisdictional revenues is that the Commission is concerned that its authority to consider yellow pages advertising revenues for ratemaking purposes might be eroded by the new legislation dealing with the regulatory fee. Carolina opines that perhaps the Commission is concerned that exclusion of yellow pages revenues for regulatory fee purposes would jeopardize its authority to consider yellow page revenues for ratemaking purposes. Whatever reason(s) the Commission may have had for its action, Carolina states that it wishes to emphasize that its position that yellow pages revenues should be excluded from the regulatory fee is not meant as an indirect challenge to the Commission's authority to include yellow pages revenues for ratemaking purposes.

Carolina requests and recommends that the Commission delete the language from Rule R15-1 which would include yellow pages advertising revenues in the definition of "North Carolina jurisdictional revenues." Carolina believes that such exclusion would be consistent with the intent of the statute, and with the

general understanding among the parties involved in negotiating passage of the bill that yellow pages revenues would not be subject to the fee. Carolina further states that it believes that the Commission can (and perhaps should) include appropriate language in its final Order promulgating the regulatory fee rule that exclusion of yellow pages revenues for purposes of the regulatory fee is in no way a waiver of the Commission's authority to include yellow pages revenues for ratemaking purposes.

2. Inclusion Of Access Charges In Jurisdictional Revenues

According to Carolina, the inclusion of access charges under Rule R15-1 creates a potential "double impact" that raises significant policy issues which the Commission should recognize and consider in its deliberations. The imposition of the regulatory fee on access charge revenues which the local exchange companies derive from interexchange carriers will ultimately be passed on to end-users in the rates charged by the interexchange carriers. The Commission should be aware of this potential "double impact" that inclusion of access charges will create.

REPLY COMMENTS OF THE PUBLIC STAFF

The Public Staff filed reply comments in this docket on October 30, 1989, in which it addressed the following three issues:

1. Yellow Pages Revenues

The Public Staff states that it strongly disagrees with the assertion of Southern Bell that yellow pages revenues are not "jurisdictional revenues." According to the Public Staff, both before and since the breakup of the Bell monopoly, the Commission has routinely allowed the publishing of yellow pages and the collection of revenues associated with the advertisements. In determining Southern Bell's additional revenue requirement in general rate cases, the Commission has historically included the revenues from yellow pages operations among miscellaneous revenues, which, together with local and toll service revenues, make up total operating revenues. For example, the Public Staff notes that had it not been for revenues derived from yellow pages advertising, Southern Bell's rate increase in its last rate case, Docket No. P-55, Sub 834, would have been \$28,456,000 higher than it actually was. If those revenues had been excluded, tariffed rates and charges, which clearly produce revenues subject to the assessment, would have been higher. In the Order from which the Company appealed in Southern Bell, the Commission said:

"The classified directory, in which advertising appears, is an integral part of providing adequate telephone service; thus, the absence of the classified directory would diminish the value of telephone service to the Company's customers. Finally, this Commission has consistently over the years included directory advertising revenues and costs in determining Southern Bell's total cost of service." 71st Report of NCUC Orders and Decisions 669, 692 (April 3, 1981).

The Public Staff states that implicit in each of these decisions is the Commission's allowance or approval of the enterprise that produces the revenues, whether that enterprise be yellow pages operations or other

miscellaneous activities such as pole rentals. As the Supreme Court noted in Southern Bell:

"Under G.S. 62-42(5) [sic - should be 62-42(a)(5)] the Commission has the authority to order the utility to take action to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision." 307 N.C. at 547.

The Public Staff further notes that in June 1984, the Commission approved the transfer of certain assets related to Southern Bell's directory operations to BellSouth Advertising and Publishing Corporation (BAPCO). Docket No. P-55, Sub 839. While Southern Bell did not concede the Commission's jurisdictional authority to prohibit the transfer, the Company did represent that the publishing fee to be paid by BAPCO was designed "to provide the same net contribution to Southern Bell's revenue requirements that it would have received had BAPCO not been formed." Testimony of Victor A. Jarvis, page 4, lines 11-13. The issue of the retention percentage or publishing fee was reserved for the Company's pending general rate case, Docket No. P-55, Sub 834. In that case, the Commission concluded "that the fair and reasonable revenue retention factor to be utilized in determining the representative level of directory contribution in this proceeding is 48.5%." 74th Report of NCUC Orders and Decisions 590, 603 (November 9, 1984). The contract provided for a retention factor of 42.5%, but the Commission rejected that percentage and explicitly withheld approval of the whole contract. Id. at 602-603.

The Public Staff takes the position that the Commission has obviously had substantial regulatory involvement with the revenues generated by yellow pages. The fee required by G.S. 62-302 is a user fee enacted for "the purpose of defraying the cost of regulating public utilities." The General Assembly clearly intended to include yellow pages revenues as jurisdictional revenues. According to the Public Staff, the language of G.S. 62-302 lawfully can and does include yellow pages revenues.

The Public Staff further notes that Carolina and Southern Bell both argue, however, that legislative history demonstrates that the General Assembly did not intend to cover yellow pages revenues. Both companies rely on a Senate amendment to Senate Bill 928 that deleted a specific reference to yellow pages revenues. According to the Public Staff, that amendment was proposed to the Senate Finance Committee by Chairman William W. Redman, Jr., who specifically said, "Because the Utilities Commission believes that yellow pages revenues are collected pursuant to Commission Order, we believe that those revenues are, for that reason, already included in the term 'North Carolina jurisdictional revenues' without the necessity of being specifically mentioned in the legislation." The Public Staff further notes that Chairman Redman prefaced his remarks to the committee by stating that he was endorsing the amendment "[a]t the request of the local telephone companies," who "object to the specific references to yellow page revenues because no other revenue sources are specifically mentioned."

Thus, the Public Staff takes the position that the legislative history shows yellow pages revenues were undoubtedly covered by the term "jurisdictional revenues" and that the only reason for dropping the language was apparently to satisfy the local telephone companies' desire not to be

singled out. It certainly did not indicate any belief that the revenues were exempt from the assessment. Therefore, the Public Staff strongly disagrees with the telephone companies' interpretation of the legislative history and states that the Commission should not change Rule R15-1.

2. Access Charges

The Public Staff notes that Carolina has also alerted the Commission to a potential "double impact" if access charges are included as jurisdictional revenues. The Public Staff recognizes the issue Carolina has identified but does not believe it is a problem. This potential is realized in several areas of utilities regulation. A prime example would be when one regulated electric utility purchases power from another. Thus, normal utility business practices frequently result in this "double impact," and the Public Staff does not believe access charges are a special category. Rule R15-1 does not create any special hardship on any industry and is a fair way of assessing a user fee. The rule should not be changed.

3. Other Operating Revenues

North Carolina Power has raised issues relating to "Other Operating Revenues." According to the Public Staff, the language of the statute clearly includes those revenues within "North Carolina jurisdictional revenues." The only question, then, is how they should be allocated.

The Public Staff agrees that some allocation methodology is needed and, after discussions with North Carolina Power, proposes the following procedure. In determining quarterly miscellaneous revenues that cannot be directly assigned to the North Carolina retail jurisdiction, the electric utility should allocate these revenues by using a composite factor. That composite factor should be based on the company's most recent year-end per books jurisdictional cost-of-service study consistent with the last general rate case methodology as approved by the Commission. When the utility files its fourth quarterly report of miscellaneous operating revenues, that final report should be based on the current year's per books jurisdictional cost-of-service study also consistent with the Commission-approved methodology. This final report, however, should include a true-up of revenues previously reported on the basis of the composite allocation factor. This procedure will eliminate the need to perform quarterly cost-of-service studies to determine revenues subject to the Commission's rule.

REPLY COMMENTS OF CAROLINA TELEPHONE AND TELEGRAPH COMPANY

Carolina filed reply comments in this docket on October 30, 1989, in which it stated that to the best of its knowledge, information and belief, the North Carolina Utilities Commission has never issued an Order establishing rates for yellow pages directory advertising. According to Carolina, yellow pages advertising services are provided under contract, and not under tariffs which are required for a jurisdictional service offering. Carolina takes the position that yellow pages advertising revenues do not meet the definition under the new statute that limits the regulatory fee to ". . . all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule. . ."

Carolina states that it firmly believes that the legislative intent in enacting the bill which provides for the regulatory fee (Senate Bill 1320) was that yellow pages advertising revenues would not be subject to the fee. This legislative intent is particularly evidenced by the fact that the reference to yellow pages advertising revenues (which was present in the initial draft of the bill) was removed from the bill in the form that was finally enacted, and that the reference to yellow pages advertising revenues was deleted from the bill after considerable negotiation and discussion among representatives of the telephone industry, representatives of the Utilities Commission, and the legislative sponsors of the bill.

FURTHER COMMENTS OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

On November 8, 1989, Southern Bell filed a response in opposition to the reply comments filed by the Public Staff. According to Southern Bell, Chairman Redman's statement before the legislature addressed the belief of the Commission, not the law. That is, what Chairman Redman said to the Senate Finance Committee was that the Commission "has always treated yellow page revenues for ratemaking purposes as North Carolina jurisdictional revenues. . ." He further said that "the Utilities Commission believes that yellow page revenues are collected pursuant to Commission Order. . ." and that "we believe that those revenues are, for that reason, already included in the term 'North Carolina jurisdictional revenues'. . ." Finally, he concluded that in agreeing to the amendment, "the Commission . . . (was) not in any way waiving . . . (its) position that yellow page revenues are properly included in the cost of service of the local telephone companies."

Thus, Southern Bell states that it is clear from a close reading of the statement that Chairman Redman did not say, and the Senate Finance Committee did not have before it a statement, that yellow pages revenues would be included in the calculus for determining the regulatory fee. Rather, Chairman Redman, besides stating what the Commission believed, merely said that "yellow page revenues are properly included in the cost of service of the local telephone companies." Southern Bell then notes that the law in North Carolina is that yellow pages revenues are included by the Commission in ratemaking proceedings, and that is all that Chairman Redman said to the Senate Finance Committee and thus all that the Senate Finance Committee had before it when it amended Senate Bill 1320 to delete yellow pages revenues from the definition of "North Carolina jurisdictional revenues."

Southern Bell further states that it does not know what was in the collective mind of the Senate when it amended Senate Bill 1320 or what other statements were before the Senate Finance Committee at the time that the language including yellow pages revenues was deleted from the statute. Southern Bell notes that in attempting to determine legislative intent in accordance with the accepted canons of legislative construction, and with respect to this enactment, all we do know is that yellow pages revenues were excluded from the statute. This exclusion, Southern Bell submits, is the best and most reliable barometer of legislative intent, based upon well-established and well-recognized canons of construction. 73 Am Jur 2d, Statutes, § 171 (1974). Statements made to a legislative committee, on the other hand, especially when there is no record of the full proceedings of that committee, are generally regarded as unreliable. 73 Am Jur 2d, Statutes, § 174 (1974). For these reasons, Southern Bell contends that including yellow pages revenues

in the calculus for determining the regulatory fees is directly contrary to legislative intent, as manifested in the final version of the regulatory fee statute.

Southern Bell also states that the Public Staff argues that yellow pages revenues are collected pursuant to Commission order or tariff. But Southern Bell then asks, where is the tariff? Where is the Order? Where is the rule approving the provision of yellow pages service, or establishing rates for that service? Where is an Order allowing the service? According to Southern Bell, all the Public Staff can muster in answer to these questions is "implication." The Company then goes on to state that the answer to the question is that there is no order or tariff or rule approving yellow pages, because that service is not provided pursuant to Commission order, rule or tariff, because the Commission does not have jurisdiction over that service, except to consider those revenues for ratemaking purposes.

Accordingly, Southern Bell again urges the Commission to exclude yellow pages revenues from the term "North Carolina jurisdictional revenues."

WHEREUPON, the Commission reaches the following

FINDINGS AND CONCLUSIONS

G.S. 62-302 creates a regulatory fee to be paid quarterly by the public utilities regulated by the North Carolina Utilities Commission. This fee is to be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

For the 1989-90 fiscal year, the fee is 0.12% of each public utility's North Carolina jurisdictional revenues for each calendar quarter or \$6.25, whichever is greater. The statute defines the term "North Carolina jurisdictional revenues" as "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction."

By Order entered in this docket on September 15, 1989, the Commission adopted Rule R15-1 to implement the provisions of G.S. 62-302 regarding the regulatory fee. Subsection (b)(5) of that rule provides as follows:

"As used in this rule, the term 'North Carolina jurisdictional revenues' means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction. For telecommunications companies, all revenues and other receipts derived from access charges and yellow pages advertising are to be included as North Carolina jurisdictional revenues." (Emphasis added).

In defining the term "North Carolina jurisdictional revenues" for telecommunications companies to include all revenues and receipts derived from access charges and yellow pages advertising, the Commission was merely codifying two specific revenue sources which we have always treated as

jurisdictional revenues. We included this definition in Rule R15-1 in order to make it clear with regard to yellow pages revenues in particular that those revenues would in fact be subject to calculation and payment of the regulatory fee. We took this precaution primarily for two reasons.

First, many of the LECs, including Southern Bell in particular, have historically taken the position that yellow pages revenues are not North Carolina jurisdictional revenues and should not be subject to consideration as a component of the ratemaking process. The Commission strongly disagrees with that position. In the Order from which the Company appealed in the Southern Bell case, the Commission specifically concluded that:

"The classified directory, in which advertising appears, is an integral part of providing adequate telephone service; thus, the absence of the classified directory would diminish the value of telephone service to the Company's customers. Finally, this Commission has consistently over the years included directory advertising revenues and costs in determining Southern Bell's total cost of service." 71st Report of the NCUC Orders and Decisions, p. 692.

In the Southern Bell case, the North Carolina Supreme Court expressly rejected a narrow and restrictive interpretation of a telephone company's public utility function as defined in the Public Utilities Act. For instance, in response to Southern Bell's contention that its directory operations were not an essential part of its public utility function because the transmission of messages across telephone lines did not depend on the availability of yellow pages, the Court said:

". . . Although Southern Bell is technically correct in its contention that actual transmission of messages across telephone lines is not dependent on the existence of the yellow pages, such an interpretation of the public utility function is far too narrow. Southern Bell's utility function is to provide adequate service to its subscribers. To suggest that the mere transmission of messages across telephone lines is adequate telephone service is ludicrous." 307 N.C. at 544.

Finally, in explicitly affirming the Commission's finding that the classified directory (or yellow pages) is an integral part of providing adequate telephone service, the Supreme Court stated that:

". . . Through G.S. 62-30 and G.S. 62-32 the legislature has granted the Commission 'such general power and authority to supervise and control public utilities of the State as may be necessary. . . ' G. S. 62-30. 'The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish . . . reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service.' G.S. 62-32(b).

"Although G.S. 62-30 and G.S. 62-32 appear to provide the Commission with ample authority to include directory advertising in ratemaking proceedings, Southern Bell argues that G.S. 62-3(23)d limits that

authority by providing: 'If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provision of this Chapter.' § 62-3(23)d. In response to this contention we simply point out that the directory advertising operation of Southern Bell is not a separate enterprise from the transmission of telephone messages. The yellow pages are a very useful and beneficial component in providing telephone service to the public." (Emphasis added). 307 N.C. at 545.

By Order entered in Docket No. P-55, Sub 834, on January 9, 1984, the Commission specifically held that directory revenues and costs should be included in the calculation of Southern Bell's North Carolina intrastate jurisdictional revenue requirement and that directory revenues are generated because of the integral relationship of the directory to telephone service. 74th Report of NCUC Orders and Decisions, pp. 598, 601. Thus, it is clear that the Commission has consistently treated yellow pages revenues as jurisdictional revenues. That being the case, the Commission is of the opinion that yellow pages revenues are, and should also be treated as, jurisdictional revenues for purposes of the regulatory fee imposed by G.S. 62-302. The fee required by G.S. 62-302 is a user fee enacted for "the purpose of defraying the cost of regulating public utilities." The Commission has historically had substantial regulatory involvement with the revenues generated by yellow pages as well as adjudicating consumer complaints generated by the yellow pages. It is, therefore, appropriate to apply the regulatory fee to yellow pages revenues in order to defray the cost of such regulation.

Our second reason for including a specific reference to yellow pages revenues in Rule R15-1 was to make clear our position that those revenues are in fact subject to the regulatory fee notwithstanding the amendment to Senate Bill 928 by which the Commission itself proposed to delete the specific reference to yellow pages revenues. Chairman William W. Redman, Jr., made the following statement on behalf of the Commission during his appearance before the Senate Finance Committee in support of the amendment:

"At the request of the local telephone companies, the Utilities Commission has agreed to amend this bill to delete the phrase 'plus all yellow page advertising revenues,' on page 2 at lines 10 through 11 of Senate Bill 928. The Utilities Commission has always treated yellow page revenues for ratemaking purposes as North Carolina jurisdictional revenues and has been supported in that decision by the North Carolina Supreme Court. The local telephone companies object to the specific reference to yellow page revenues in this legislation because no other revenue sources are specifically mentioned. Because the Utilities Commission believes that yellow page revenues are collected pursuant to Commission Order, we believe that those revenues are, for that reason, already included in the term 'North Carolina jurisdictional revenues' without the necessity of being specifically mentioned in the legislation. We wish to make it clear, however, that by agreeing to this amendment, the Commission is not in any way waiving our position that yellow page revenues are properly included in the cost of service for local telephone companies"

We agree with the Public Staff that the above-quoted statement did not indicate any belief on our part that yellow pages revenues would be exempt from the fee assessment.

In conclusion, we hereby reaffirm Rule R15-1(b)(5) in view of the fact that yellow pages revenues are clearly collected pursuant to Commission Order as detailed above. Furthermore, the duty to publish and distribute directories to each telephone subscriber is, in the first instance, one that emanates from the Commission pursuant to rule and tariff. In this regard, Section A2.3.11 of the General Subscriber Service Tariffs entitled "Provision and Ownership of Directories" mandates that Southern Bell and the other local exchange companies shall publish directories for dissemination to their subscribers to facilitate the use of telephone service. New directories must be issued by the LECs approximately every twelve (12) months. This tariff was filed and allowed to become effective pursuant to G.S. 62-130 and G.S. 62-134, both of which deal with the Commission's authority to make or change "rates."

G.S. 62-3(24) sets forth an expansive definition of the term "rate" as follows:

"Rate" means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification. (Emphasis added).

G.S. 62-131(b) provides that every public utility shall furnish adequate, efficient, and reasonable service. The Public Utilities Act also sets forth an expansive definition of the term "service" in G.S. 62-3(27); i. e., ". . . any service furnished by a public utility, including . . . any ancillary service . . . used in connection with such service." (Emphasis added).

Under G.S. 62-42(a)(5), the Commission may also require a public utility to perform any acts necessary "to secure reasonably adequate service . . . to serve the public convenience and necessity." Our Supreme Court has held that the yellow pages operations of a telephone company could fall within the purview of this statutory provision. 307 N.C. at 547.

Thus, it is clear from the foregoing that the LECs have a duty to publish and disseminate telephone directories for the purpose of facilitating the use of telephone service. The manner in which that duty is discharged is properly subject to oversight and regulation by the Commission. The decision to make yellow pages advertising an incidental or ancillary service component of its directories was a business decision. However, such advertising is a directory-related service which the Commission and our Supreme Court have previously determined to be an integral part of providing adequate telephone service. The yellow pages are a single entity, an intermingled package, which cannot be separated into classified listings and advertisements. The use of directories by the LECs to sell advertising is ancillary to the operation of their public service which is sufficient to bring the revenues in question within the definition of the term "North Carolina jurisdictional revenues" as set forth in G.S. 62-302.

The Commission also affirms the inclusion of access charges within the definition of North Carolina jurisdictional revenues as set forth in Rule R15-1 for purposes of the regulatory fee. Notwithstanding the so-called potential "double impact" identified by Carolina Telephone Company, access charges are clearly jurisdictional revenues as defined in G.S. 62-302. Rule R15-1 does not create any special hardship on any industry or any utility within an industry and is a fair way of assessing a user fee to defray the cost of regulation.

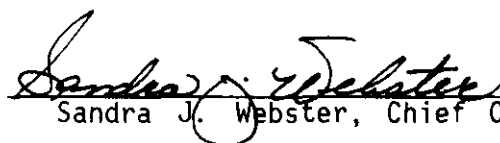
We also agree with the Public Staff and North Carolina Power that an allocation methodology should be developed to determine the allocation factors to be applied to Other Operating Revenues for purposes of determining the jurisdictional portion of such revenues. Therefore, in determining quarterly miscellaneous revenues that cannot be directly assigned to the North Carolina retail jurisdiction, each electric utility should allocate those revenues by using a composite factor. That composite factor should be based on the company's most recent year-end per books jurisdictional cost-of-service study consistent with the last general rate case methodology as approved by the Commission. When the utility files its fourth quarterly report of miscellaneous operating revenues, that final report should be based on the current year's per books jurisdictional cost-of-service study also consistent with the Commission-approved methodology. The final report should, however, include a true-up of current calendar year revenues previously reported on the basis of the composite allocation factor developed for the previous calendar year. This procedure will eliminate the need to perform quarterly cost-of-service studies to determine revenues subject to Rule R15-1.

IT IS, THEREFORE, ORDERED that Rule R15-1 is hereby reaffirmed and interpreted in conformity with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of November 1989.

NORTH CAROLINA UTILITIES COMMISSION


Sandra J. Webster, Chief Clerk

(SEAL)