BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-328-C - ORDER NO. 2001-335

APRIL 16, 2001

IN RE: Consumer Advocate for the State of South Carolina, Complainant/Petitioner	)	ORDER DENYING PETITION FOR RECONSIDERATION
vs.	)	
Hargray Telephone Company, Inc., Defendant/Respondent	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration of our Order filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate).

Originally, the Consumer Advocate filed Complaints seeking new dockets to examine the rates, charges, and earnings of the various local exchange carriers under this Commission's jurisdiction, based on operations for the year 1999. The Consumer Advocate stated that the purpose of the Complaints was to obtain information to assist the Commission in its decision concerning the intrastate Universal Service Fund (USF) in Docket No. 97-239-C. The Consumer Advocate states that the Complaints did not request any changes in the companies' rates. The various companies responded to the Complaints, and requested that we dismiss said Complaints.

We treated the prayers in the various companies' answers as Motions to Dismiss, and conducted oral arguments on the matter on December 6, 2000 to consider the matter. We then issued our Orders dismissing, without prejudice, the Consumer Advocate's Complaints, finding that the Complaints did not state a cause of action for which relief could be granted.

In our original Orders in this matter, we found that the Consumer Advocate's Complaints did not allege that any existing rates in effect for the Company are unjust, unreasonable, discriminatory, or in any way in violation of any provision of law; or that the companies are earning or have earned a rate of return in excess of the Commission-authorized maximum rate of return. The Consumer Advocate states in his Petitions that these are irrelevant to the requests made by the Consumer Advocate in his Complaints, and is not a basis for denying an investigation of the Companies' earnings for use in consideration of the USF. Further, the Consumer Advocate notes that the current request does not seek any changes in the Companies' rates, charges, or approved rate of return regardless of the outcome of any investigation.

The Consumer Advocate states a belief that the specific purpose of the requested investigation is to comply with the requirements of the procedure for the establishment of the USF in Docket No. 97-239-C, which requires the Commission to investigate and determine the appropriate single-party residential and single-line business rates for the State of South Carolina for each incumbent local exchange company (ILEC) operating in South Carolina. Accordingly, according to the Consumer Advocate, the Commission must investigate the rates, charges, and earnings of every ILEC operating in South

Carolina, since he believes that reliance on the currently approved rates is not an adequate solution.

Further, the Consumer Advocate states that the Staff argued that desk audits were not enough to provide a full picture of a company's finances, and that failure to fully investigate a company's earnings will lead to prosperous companies receiving unneeded subsidies from South Carolina's ratepayers. Finally, the Consumer Advocate asserts that this must be done prior to instituting the USF.

We deny reconsideration in this case. We disagree with the Consumer Advocate's reasoning, and his conclusions. We believe that we properly dismissed the Consumer Advocate's complaint without prejudice, because the Consumer Advocate failed to state an appropriate basis for his claim. The Consumer Advocate's complaint does not allege any situation requiring a remedy, since it does not allege that any existing rates in effect for the companies are unjust, unreasonable, discriminatory, or in any way in violation of any provision of law. Further, the Complaint does not point to the companies earning more than their Commission-authorized maximum rates of return. Thus, no cause of action accrued.

Although the Consumer Advocate complains about the inadequacy of desk audits, he does not mention other investigative and monitoring procedures that the Commission Staff currently undertakes. For example, the Staff carries out compliance audits, which are more detailed than desk audits, and involve the Commission Staff literally traveling to the Company being audited to review its books and operations in detail. We believe that we properly took into consideration the fact that current audit procedures and other

monitoring methods are in place to appropriately investigate the earnings of regulated companies.

We also believe that we properly found in our prior Order in this Docket that an earnings review is not required prior to implementation of the State USF. It should be noted that the Complaint at issue here was filed some two weeks before a scheduled hearing in Docket No. 97-239-C, the USF proceeding. The Consumer Advocate could have raised the identical issues in that proceeding that he attempts to raise by separate Complaint here.

Further, the Consumer Advocate is incorrect is his assertion that an investigation into earnings is necessary in order to accomplish a determination of the appropriate single-party residential and single-line business rates for each ILEC in South Carolina. Such is not the case. First, no statute requires that this Commission undertake an investigation of "appropriate" rates. S.C. Code Ann. Section 58-9-280(E)(4) (Supp. 2000) provides that the size of the USF for a carrier of last resort shall be the difference between the cost of providing basic local exchange services and the maximum amount a carrier of last resort may charge for the services. Absent any specific action on the part of the Commission, the maximum amount a carrier of last resort may charge is its current tariffed rate approved by the Commission for the service in question. There is no requirement that the Commission investigate or change these rates. Furthermore, even if the Commission were required to examine and determine different maximum rates for basic local exchange services in the context of the USF proceeding, this would not have an impact on the Company's earnings because the USF is revenue neutral. Any increase

in rates in conjunction with implementation of the USF would serve to reduce the size of the USF rather than increasing revenues or earnings. The USF is defined by statute as the difference between what it costs the company to provide the service and the amount the Company can charge the end user customer for the service. If the Commission was to increase the maximum allowable charge, the difference between the two, and, hence the size of the USF, would be smaller. Earnings would be unaffected. In addition, any company seeking to recover money from the USF must first make dollar-for-dollar reductions in rates for services that contain implicit support for basic local service. Thus, the USF will not affect any company's earnings, but will be implemented in a completely revenue-neutral manner.

We would note that the Consumer Advocate cites other reasons for conducting an investigation, such as the length of time since the Company's last rate increase, decreasing costs in the industry, and diversification. None of these factors is a sufficient reason to undertake an investigation of the Company's earnings above and beyond the procedures already established by this Commission. For example, even if costs were declining in the industry, this would be taken into account in the Company's reported expenses and therefore in the annual rate of return calculation. The fact that a Company has not sought to increase local rates in many years is also a dubious reason to undertake an investigation. With regard to diversification, the companies are required to allocate expenses and unregulated lines of business, where appropriate, and subject to Staff audit. A separate investigation at this time into the companies' earnings without sufficient

justification would be duplicative of current Commission Staff audit procedures and would unreasonably tax the limited resources of both the Commission and the companies.

Again, however, we do not foreclose the Consumer Advocate from refiling his Complaints at a later date. There is no question that the telecommunications landscape is dramatically changing as these Orders are written. We reiterate our position that if such earnings reviews are to be held, they would be better held after the USF is up and running, so that we can examine the effects of the USF on the telecommunications landscape. We could also better examine the effects of costs and competition.

The Petition is denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)