

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Notice of Election of)
ALLTEL Missouri, Inc., to be Price-Cap-)
Regulated under Section 392.245,)
RSMo 2000.)

Case No. IO-2002-1083

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY AND COMMISSIONER JEFF DAVIS

Although the majority has used a more persuasive legal argument in its Second Report and Order denying ALLTEL's eligibility to elect price cap status, we still find that the plain meaning of the price cap statute (§392.245.2) controls.

The majority reasons that neither Missouri State Discount Telephone nor Universal Telecom, Inc. is offering basic local telecommunications services. This conclusion is drawn from the language in the orders granting the certificates to provide basic local service that seemed to condition the certificates upon the provision of all of the services that the Commission has deemed essential to qualify for state universal service fund support, as found in 4 CSR 240-31.010(5).

Both Missouri State Discount and Universal, however, are operating under tariffs approved by this Commission *after* the certificates to provide basic local service were granted. Those tariffs clearly state that certain of the services listed in 4 CSR 240-31.010(5) are not offered. By its approval of the tariffs, the Commission has allowed the companies to offer basic local service consisting of fewer services than the complete list contained in its rule related to the state universal service fund. Therefore, even if the Commission's definition of basic

local service were controlling, it is unclear what that definition is. We continue to believe, however, that the definition of basic local telecommunications service *for purposes of the price cap statute* must be the statutory definition of §386.020(4).

Therefore, we dissent from the majority's finding that ALLTEL is ineligible to elect price cap status.

Respectfully submitted,



Connie Murray, Commissioner



Jeff Davis, Commissioner

Dated at Jefferson City, Missouri,
on this 5th day of October, 2004.