STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 15th day of July, 1999.

In the Matter of the Petition of Cass County Telephone Company for Approval of an IntraLATA Dialing Parity Plan and for Suspension and Modification of the FCC's Dialing Parity Rules	))))	Case No. TO-99-499

ORDER REGARDING REHEARING

On June 18, 1999, the Small Telephone Company Group (STCG)[1] filed a Motion for Clarification and Application for Rehearing in each of Case Nos. TO-99-254, TO-99-497, TO-99-498, TO-99-499, TO-99-500, TO-99-501, TO-99-502, TO-99-503, TO-99-504, TO-99-505, TO-99-506, TO-99-507, TO-99-508, TO-99-509, TO-99-510, TO-99-511, TO-99-512, TO-99-513, TO-99-514, TO-99-515, TO-99-516, TO-99-517, TO-99-518, TO-99-519, TO-99-520, TO-99-

1 For purposes of this proceeding, the Small Telephone Company Group consists of ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

521, TO-99-522, and TO-99-523. Although separate pleadings were filed in each of these cases, the text of each pleading is identical.

On June 24, 1999, and June 28, 1999, respectively, MCI Telecommunications Corporation (MCI) and Southwestern Bell Telephone Company (SWBT) filed responses to, *inter alia*, the application for rehearing filed by STCG. On July 8, 1999, STCG filed a reply to MCI's and SWBT's responses to its application for rehearing.

STCG believes that there is a difference between the way the mechanism for achieving revenue neutrality is described in the various ILDP Reports and Orders and in the PTC plan Report and Order. STCG believes that the PTC plan Report and Order does not limit the amount of any refund in the same way that the ILDP Reports and Orders do. The Commission in its Order Regarding Requests for Clarification and Motion to Modify Customer Notice, issued June 24, 1999, clarified its intention that the amount of any refund will be limited to the amount recovered through the surcharge. The refund cannot under any circumstances be greater than the amount collected through the surcharge plus interest, and it could be less, or it could even be zero.

STCG objects to the revenue neutral mechanism because it believes the mechanism will "refund revenues collected under existing permanent rate schedules." STCG apparently does not understand the mechanism the Commission has proposed. As noted above, **no revenues collected under existing permanent schedules will be subject to refund.**

STCG states that requiring a LEC to commit to filing a rate case improperly shifts the burden of proof to the LEC to prove that its rates

are reasonable. The LECs that file rate increases to implement revenue neutrality should rightly bear the burden of proof to show that such increases are necessary. Because of the time strictures placed upon the Commission by the FCC, there is simply not time to examine all relevant factors to determine whether the increase is warranted before implementing IntraLATA Dialing Parity (ILDP) and eliminating the Primary Toll Carrier (PTC) plan. Thus the Commission is allowing LECs to raise rates, if they choose, but only if they are willing to prove that the increase was necessary in a subsequent rate case. The time constraint does not mean that the burden of proof should shift away from the LEC that is raising its rates, it simply means that the proof necessarily comes after the surcharge is implemented on a subject to refund basis. If the LEC is unable to prove that the increase was necessary, it will be required to refund it.

STCG also asserts that the Commission's Report and Order is unlawful because using the mechanism it proposes would constitute retroactive ratemaking. This assertion is without merit. If a surcharge or a rate additive is expressly made subject to refund at the time it is collected, it is not unlawful retroactive ratemaking to require a refund. The Commission has made certain tariffs interim subject to refund pending the

resolution of appeals[2], and the Purchased Gas Adjustment rate charged by natural gas local distribution companies is collected on an interim subject to refund basis[3].

Faced with the LECs' assertion of a right to revenue neutrality, the Commission found itself on the horns of a dilemma. On one hand, the STCG states that it has a constitutional right to the exact level of revenues after the elimination of the PTC plan as it had under the PTC plan. On the other hand, there is the prohibition against single issue ratemaking. If the Commission concedes STCG's point, it will be violating the prohibition against single issue ratemaking by allowing LECs to raise rates based on the elimination of the PTC plan without examining any other factors or making a finding that their earnings will be deficient without this rate increase[4]. If the Commission contests STCG's constitutional argument, and does not allow LECs to increase rates without examining all relevant factors, it runs the risk of becoming involved in a lengthy appeal that could delay the implementation of

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2 "Interim rates have been utilized by the Commission to allow public utilities to collect revenues subject to refund pending judicial review after the Commission's order when those orders have been reversed by the circuit court. Although there is nothing to prohibit the Commission from authorizing interim rates, there is no authority for finding that execution of a circuit court judgment is in fact a remand for implementation of interim rates." State ex rel. GTE North, Inc. v. Missouri Public Service Commission, 835 S.W.2d 356 (Mo. App. W.D. 1992), at 368.

3 The lawfulness of the PGA process was recently upheld in State ex rel. Midwest Gas Users' Ass'n v. Public Service Commission, 976 S.W.2d 470, (Mo. App. W.D. 1998) and State ex rel. Midwest Gas Users' Ass'n v. Public Service Commission, 976 S.W.2d 485, (Mo. App. W.D. 1998).

4 In fact, the witness for the STCG conceded that no party had presented any evidence concerning the level of earnings the LECs would experience if they were not allowed revenue neutrality.

intraLATA competition. The Commission's Report and Order attempted to solve this dilemma by proposing a permissive method that would allow a LEC to achieve revenue neutrality while at the same time protecting ratepayers from paying excessive rates.

STCG objects to this method because it does not give its members an unfettered rate increase on the basis of its projected revenue losses. Even if a utility does have a constitutional right to a certain level of revenues[5], it cannot seriously be argued that the Commission cannot put reasonable conditions on the revenue neutrality process to protect consumers.

STCG also objects to the requirement in the Commission's revenue neutrality mechanism that would require a utility to file a rate case. The Commission agrees that in most circumstances it would not be appropriate to require a utility to file a rate case. However, here the Commission is not simply imposing the requirement "out of the blue," but rather as a part of a package of conditions imposed on LECs seeking revenue neutrality to protect ratepayers from paying unreasonably high rates. Not all LECs will be required to file a rate case, only those

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5 Although the Commission is attempting to allow LECs revenue neutrality, it does not necessarily agree that they have a constitutional right to it. A better statement of the concept is that a utility has a right to the opportunity to earn a reasonable return on the investment it has made to serve the public. It could be a "taking" to deprive a utility of this right without due process. It is not a taking to change a piece of the regulatory framework, and incidentally a piece of a utility's revenue stream, unless the change has the effect of denying that utility the opportunity to earn on its investment. As noted in Footnote 5, there has been no showing, and no attempt to make such a showing, that any LEC will be unable to earn a reasonable return on its investment as a result of the Commission's actions in this case.

that want to raise rates to achieve revenue neutrality. Given the circumstances, these conditions are fair and reasonable.

STCG raises a question about whether the intent of the Commission's Report and Order is to preclude LECs from filing a rate case prior to eight months after October 20, 1999. This was not the Commission's intent, and the Report and Order should not be read as precluding a LEC from filing a rate case at any time.

The Commission finds that STCG has not shown sufficient reason to grant rehearing, and will deny its application for rehearing.

IT IS THEREFORE ORDERED:

1. That the application for rehearing filed by the Small Telephone Company Group on June 18, 1999 is denied.

2. That this order shall become effective on July 15, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray
and Drainer, CC., concur
Schemenauer, C., absent

Mills, Deputy Chief Regulatory Law Judge