

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 3rd  
day of April, 1987.

Case No. TO-84-222

In the matter of the investigation  
into WATS resale by hotels/motels.

Case No. TO-84-223

In the matter of the investigation  
into WATS resale applications for  
certificates of public convenience  
and necessity.

Case No. TC-85-126

In the matter of the investigation  
into the reasonableness of permitting  
competition in the intraLATA  
telecommunications market in Missouri.

Case No. TO-85-130

In the matter of the Missouri  
interLATA access charge and intraLATA  
toll pools.

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ORDER

On January 29, 1987, the Staff of the Missouri Public Service Commission (Staff), Office of the Public Counsel (Public Counsel), Southwestern Bell Telephone Company (Southwestern Bell), General Telephone Company of the Midwest, Alltel Missouri, Inc., United Telephone Company of Missouri, Contel System of Missouri, Inc., Fidelity Telephone Company, Missouri Telephone Company and Mid-Missouri Telephone Company (hereinafter collectively referred to as "signatories"), submitted a Joint Recommendation concerning the replacement of the intraLATA toll pool in accordance with the Commission's orders of July 24, 1986, September 17, 1986, and November 14, 1986.

The Joint Recommendation contains a Conceptual Framework for the replacement of the intraLATA toll pool. This Conceptual Framework is supported by all Missouri local exchange companies, Staff, and with the exception of the proposed NTS cost shifts, Public Counsel. In order to implement the proposed plan, the signatories have suggested a procedural schedule.

The signatories stated that prior to committing the resources necessary to continue work on the plan, they desired an indication from the Commission that the key elements of the Conceptual Framework are acceptable. To that end, the signatories suggested that all interested nonsignatory parties should be required to file comments regarding the Conceptual Framework no later than March 2, 1987, and reply comments, if necessary, no later than March 9, 1987.

On February 6, 1987, the Commission issued its order directing all interested parties to file comments as suggested in the Joint Recommendation. The deadline for the filing of reply comments was subsequently extended to March 11, 1987. Numerous parties have timely filed comments or reply comments herein.

There are four key elements of the Conceptual Framework which the signatories state must be acceptable to the Commission before any party can commit the resources necessary to complete the task of developing a plan for the replacement of the intraLATA toll pool. Those elements are:

(a) Primary toll carriers (PTCs) will shift NTS costs over an eight-year period as outlined in the Conceptual Framework.

(b) Five sets of Missouri local exchange carrier intraLATA toll rates will be in effect, some of which may be lower and others higher than the current statewide intraLATA toll rates.

(c) If presubscription is ordered for intraLATA toll traffic in Missouri, the structure, philosophy and details of the Conceptual Framework may not be appropriate.

(d) All revenue recovery mechanisms filed in accordance with the Conceptual Framework, both initially and concurrently with each subsequent increment

of NTS cost shifts, will be designed to maintain revenue neutrality for the applicable test period for each company and to be implemented without the necessity of a general rate case proceeding. The initial filing will be based on 1986 demand quantities and will be designed to be revenue neutral to the revenue received by each company from the Missouri intraLATA toll pool in 1986 as normalized through the fourth quarter of 1986.

As noted above, Public Counsel opposes the inclusion of the provision concerning NTS cost shifts in the Conceptual Framework. All signatories agree that this issue may be resolved on the basis of the record now before the Commission.

Public Counsel contends that there is neither a need nor a justification for an NTS cost shift. Public Counsel believes that the Commission's rejection of the previous NTS cost shift proposals was correct in that the proposals were economically dangerous and totally unsupported by any measure of evidence in the record. Public Counsel further believes, that since the record in this proceeding has not changed, the reasons for denying the newly proposed cost shift remain as vital as ever.

In its response to Public Counsel's comments, Southwestern Bell asserts that the record in this case is replete with testimony, evidence and reference to FCC and Joint Board actions which support the concept of an NTS cost shift. Southwestern Bell recognizes, however, that the proper allocation of NTS costs to a service (such as intraLATA toll) which arguably does not cause these costs is not a matter which can be absolutely proven. Since the proper allocation cannot be absolutely proven the issue is necessarily a matter of policy reserved to the expertise and discretion of the Commission. Southwestern Bell argues that in matters of policy the Commission is guided by the recommendations of the parties as expressed in pleadings, briefs and arguments but is not bound to decide such matters on "the weight of the evidence".

Having reviewed the evidence in the record with regard to the NTS cost issue, the Commission is of the opinion that it should defer decision on this issue until a further evidentiary hearing may be held. The purpose of this hearing would

be to consider testimony of both proponents and opponents of the particular NTS cost shift plan contained in the Conceptual Framework as well as other alternative positions that the parties may desire to present to the Commission. The Commission believes that its decision on this important issue should be based upon competent and substantial evidence addressing the underlying policy implications and the need for such a NTS cost shift plan at the intrastate level.

In reaching a decision on this subject the Commission must be given the opportunity to consider the theories underlying the alleged need for shifts and any supporting data available regarding the impact of the shifts upon primary toll carriers, secondary carriers and ratepayers, as well as other affected parties. Further, the Commission is of the opinion that to properly consider the issue of NTS cost allocation, it would be desirable to consider both intraLATA and interLATA NTS allocations in this proceeding.

Finally, it is unclear to the Commission whether the Conceptual Framework anticipates that the Commission will review and approve the specific contracts between the primary toll carriers and secondary carriers underlying the settlement plan. The Commission would like this issue addressed in the hearing.

The Commission concludes that while it is not necessary to adopt an NTS cost shift plan to eliminate the intraLATA toll pool, it would be in the best interests of the industry to resolve this issue on an expedited basis. For that reason the Commission will herein establish a procedural schedule to consider these matters.

The next element of the Conceptual Framework which the Commission will address concerns the issue of intraLATA presubscription.

Paragraph IV.F.2. of the Conceptual Framework provides, "In the event that intraLATA presubscription is implemented, the affected parties will have the option of withdrawing from the Conceptual Framework and cancelling the associated contracts." This provision reserves the right of any LEC to unilaterally withdraw

from the plan in the event that the Commission deems intraLATA presubscription to be in the public interest.

While the Commission understands the concerns of the LECs with respect to the prospect of the future requirement of intraLATA presubscription, the Commission is of the opinion that it is premature to accept or approve any statement of position or reservation of legal rights on this subject.

In the Joint Reply Comments filed by the signatories on March 11, 1987, there is a statement indicating that the Joint Recommendation merely requests that the Commission recognize that the current state of the law in Missouri is that there is no intraLATA presubscription. The Commission is willing to acknowledge that fact and additionally would acknowledge that if intraLATA presubscription is ordered, it may be appropriate to reexamine whatever mechanism is adopted to replace the intraLATA toll pool. Beyond that the Commission is not willing to accept or approve the provision of the Conceptual Framework concerning intraLATA presubscription.

Comptel and US Sprint state in their comments that the issue of intraLATA presubscription must be addressed as a part of this proceeding. The Commission is of the opinion that the rejection of the provision concerning intraLATA presubscription contained in the Conceptual Framework will allow the Commission and all interested parties sufficient flexibility and opportunity to consider this issue at some point in the future. The Commission further believes that injecting this issue into the proceedings at this stage would serve only to delay the termination of the intraLATA toll pool.

With respect to the remaining two "key elements" of the Conceptual Framework as set out above, the Commission is willing to state that it can in principle approve these provisions. The Commission notes however that a number of other significant issues have been raised in the comments filed herein. Based upon the assurances contained in the Joint Reply Comments that continuing negotiations will help to resolve many of these issues, the Commission will not attempt to address them herein.

The Commission recognizes, as do most of the parties, that the suggested schedule of proceedings is at best very ambitious, and if significant hearing time is required the schedule may have to be modified. The Commission hopes that the parties will continue to work diligently to resolve disputes that arise and gather the information necessary to timely submit a final plan for the elimination of the intraLATA toll pool.

It is, therefore,

ORDERED: 1. That the provision of the Conceptual Framework concerning the NTS cost shift plan cannot at this time be approved.

ORDERED: 2. That the provision of the Conceptual Framework, Paragraph IV.F.2 concerning intraLATA presubscription be, and the same is, hereby disapproved.

ORDERED: 3. That all interested parties shall file fifteen (15) copies of their prepared direct testimony and schedules addressing the issue of both interLATA and intraLATA NTS cost shifts with the Secretary of the Commission, and shall serve two (2) copies of the same on Public Counsel and all parties of record on or before May 1, 1987.

ORDERED: 4. That all interested parties shall file rebuttal testimony and schedules on or before May 15, 1987. Such testimony and schedules shall be filed with the Secretary of the Commission and served on all parties in the quantities set forth for direct testimony and schedules above.

ORDERED: 5. That a prehearing conference in this matter be, and is, hereby scheduled to commence at 10:00 a.m. on May 26, 1987, in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.

ORDERED: 6. That all parties shall be present at 10:00 a.m. on May 27, 1987 to mark exhibits and dispose of all preliminary hearing matters. All parties shall present their testimony, schedules and witnesses for examination and cross-examination at a hearing commencing at 1:00 p.m. on May 27, 1987 and continuing

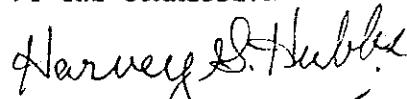
through May 29, 1987 as necessary. Said hearing shall be held in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.

ORDERED: 7. That the remaining two "key elements" of the Conceptual Framework as set forth herein above be, and the same are, hereby in principle approved.

ORDERED: 8. That in the event the parties are unable to proceed on the schedule set forth in the Joint Recommendation, the Commission shall immediately be notified and alternate schedule or schedules should be proposed.

ORDERED: 9. That this Order shall become effective on the 14th day of April, 1987.

BY THE COMMISSION

  
Harvey G. Hubbs  
Secretary

(S E A L)

Steinmeier, Chm., Musgrave,  
Hendren and Fischer, CC., Concur.  
Mueller, C., Absent.