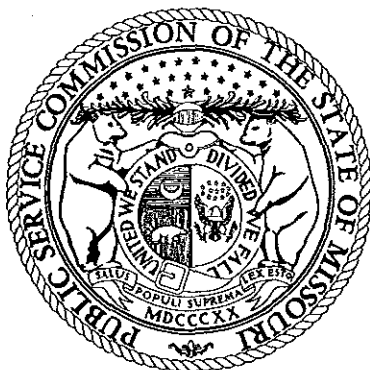


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of)
ALLTEL Communications, Inc. for a)
Certificate of Service Authority to)
Provide Basic Local Telecommunications)
Service in Portions of the State of)
Missouri and to Classify Said Services)
and the Company as Competitive.)

Case No. TA-99-298

REPORT AND ORDER

Issue Date: September 2, 1999

Effective Date: September 14, 1999

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of)
ALLTEL Communications, Inc. for a)
Certificate of Service Authority to)
Provide Basic Local Telecommunications) Case No. TA-99-298
Service in Portions of the State of)
Missouri and to Classify Said Services)
and the Company as Competitive.)

APPEARANCES

W.R. England and Sondra B. Morgan, Attorneys at Law, Brydon, Swearingen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for ALLTEL Communications, Inc.

Anthony K. Conroy, Attorney at Law, Southwestern Bell Telephone Company, One Bell Center, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Penny G. Baker, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History:

ALLTEL Communications, Inc. (ALLTEL) applied to the Commission on January 7, 1999, for a certificate of service authority to provide basic local telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994, and Sections 392.410 and .450, RSMo Supp. 1998. ALLTEL asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by

Sections 392.361 and 392.420, RSMo 1994. ALLTEL is a Delaware corporation with its principal offices located at One Allied Drive, P.O. Box 2177, Little Rock, Arkansas 72203-2177.

The Commission issued a notice and schedule of applicants on January 12, directing interested parties wishing to intervene to do so by February 11. Southwestern Bell Telephone Company (SWBT) filed its Application to Intervene on January 27. No other party requested permission to intervene. On March 5, the Commission issued an order granting SWBT's request to intervene. The Commission established a procedural schedule by its order issued on April 19 and set June 16 as the date for a hearing.

On June 4, ALLTEL and the Staff of the Public Service Commission (Staff) filed a Stipulation and Agreement. SWBT did not join in the Stipulation. Because the non-unanimous stipulation and agreement was opposed by SWBT, the matter proceeded to a hearing on the merits as required by 4 C.S.R. 240-2.115(2).

At the hearing, held on June 16, SWBT did not oppose most aspects of ALLTEL's application and the non-unanimous stipulation and agreement. The only area of contention between the parties concerns the switched access rates to be charged by ALLTEL and whether ALLTEL may be classified as a competitive telecommunications company.

Findings of Fact:

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make

the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

Contested Issues:

Switched access rates are charges imposed upon interexchange carriers by a local exchange carrier (LEC) to originate or terminate toll calls to the customers of the LEC. The interexchange carrier does not have a choice about which LEC will terminate or originate a given call.

That choice is made by the end user when they dial their phone. As a result, the interexchange carrier is essentially a captive customer of the LEC and there is a fear among interexchange carriers that a LEC could take advantage of the situation to charge exorbitant rates for providing switched access services.

In a pre-deregulation environment, a LEC's switched access service rates were subject to regulatory oversight to ensure that the rates charged to interexchange carriers were fair and reasonable. With the advent of competition, that regulatory oversight has been diminished. Therefore, without the imposition of some safeguards, a competitive local exchange carrier (CLEC) would be able to impose any exchange access rates that it chose.

The Missouri legislature, in allowing for the creation of competitive telecommunications companies, required that the Public Service Commission could classify a telecommunications company as a competitive telecommunications company "only upon a finding that all telecommunications services offered by such company are competitive telecommunications services." Section 392.361.3, RSMo 1994. As previously indicated switched access services are, by their nature, non-competitive. In order to avoid the potential problem of runaway switched access service rates while still allowing for the classification of telecommunications companies as competitive, the Commission has imposed certain restrictions on telecommunications companies seeking to gain competitive classification. Those restrictions are designed to ensure that the switched access service rates charged by the CLECs are tied to the rates that the Incumbent Local Exchange Carriers (ILECs) are allowed to charge.

In the past the restrictions on switched access service rates have been accomplished through the filing and approval of a stipulation and agreement signed by Staff, the applicant, and, in most cases, SWBT as an intervenor. In this case the parties were unable to reach agreement on what the parties repeatedly referred to as the "standard" stipulation and agreement¹. The area in which the parties were not able to agree concerned the interpretation of a provision that would determine

¹ In fact, the Commission has never declared any particular stipulation and agreement to be "the standard" and stipulations and agreements have varied from case to case.

which ILEC's switched access service rates would establish the limit on ALLTEL's exchange access rates.

At the hearing, ALLTEL took the position that ALLTEL's switched access service rates might be allowed to vary from exchange to exchange depending upon which of the ILECs served that exchange. Thus, if ALLTEL were to offer services in an exchange served by Sprint, its switched access service rates in that exchange would be capped at the rates charged by Sprint. If ALLTEL were to serve an exchange served by SWBT, its switched access service rates in that exchange would be capped at the rates charged by SWBT. SWBT contends that ALLTEL's switched access service rates should be capped at the lowest rate charged by any ILEC within whose exchanges ALLTEL would be certificated to provide service. This would have the effect of requiring ALLTEL to charge no more than SWBT's switched access service rates in effect at time of certification, even in exchanges served by other ILECs.

The non-unanimous stipulation and agreement signed by ALLTEL and Staff provides that ALLTEL's certificate would contain, among others that are not contested by SWBT, the following restrictions:

- 1) Notwithstanding the provisions of Section 392.500, RSMo 1994, unless otherwise ordered by the Commission, ALLTEL's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large incumbent local exchange company(ies) for each service area within which ALLTEL seeks authority to provide service.

- 2) Any increase in switched access service rates above the maximum switched access service rates set forth in (1) shall be made exclusively pursuant to 392.220 and 392.230, and not 392.500 and 392.510.
- 3) That the certificate be subject to the conditions stated above and that the certificate becomes effective when the company's tariff becomes effective.

The non-unanimous stipulation and agreement contains one other change from stipulations and agreements to which SWBT has agreed in the past.

The non-unanimous stipulation and agreement removes the requirement found in previous stipulations and agreements that would require that ALLTEL prove that a requested increase of its switched access service rates above the established cap was cost-justified. Staff points out that the non-unanimous stipulation and agreement would still require ALLTEL to bear the burden of proving that the proposed rate increase is just and reasonable. The absence of the cost-justified requirement in the stipulation and agreement allows the Commission the discretion to determine whether a proposed increase in access rates is just and reasonable, without finding that it is cost-justified.

After carefully considering the evidence and the arguments of the parties, the Commission concludes that the non-unanimous stipulation and agreement signed by Staff and ALLTEL is a reasonable resolution of the issues presented and will be accepted. If ALLTEL is to effectively compete with an ILEC it may be necessary for it to charge the same switched access services rates as the ILEC. The non-unanimous

stipulation and agreement would allow the Commission the flexibility needed to make that determination at the appropriate time.

The non-unanimous stipulation and agreement's removal of the requirement that increases of switched access service rates above the capped rate be cost-justified allows the Commission greater flexibility in considering a request to increase switched access service rates. If the Commission finds that such an increase should be cost-justified, it is still free to impose such a requirement.

The Commission finds that with the restrictions imposed by this order, ALLTEL's switched access service may be classified as competitive, consistent with the protection of the ratepayers and promotion of the public interest. That finding also removes the basis for any objection to ALLTEL's classification as a competitive company. Therefore, ALLTEL and the services it offers will be classified as competitive.

If ALLTEL does propose to offer different switched access service rates in different exchanges depending upon the rates of the ILEC serving that exchange, it would, in effect, be geographically deaveraging its rates. Section 392.200.4, RSMo Supp. 1998, requires that any telecommunications company proposing to geographically deaverage its rates must show by clear and convincing evidence that such deaveraging is "reasonably necessary to promote the public interest and the purposes and policies of this chapter." This Report and Order does not decide whether or not ALLTEL may geographically deaverage its rates. Such a decision will be made either in the appropriate case when a tariff

proposing such deaveraging is before the Commission, or in the generic case (Case No. TO-99-596) that the Commission has established to consider this issue.

Discussion of Uncontested Issues:

The Commission must also consider other issues that were not contested by the parties in deciding whether or not ALLTEL should be granted the certification that it seeks.

ALLTEL seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone Company, GTE Midwest Incorporated and Sprint Missouri, Inc. d/b/a Sprint. ALLTEL is not asking for certification in any area that is served by a small incumbent local exchange provider. ALLTEL proposes to operate in all of the exchanges described in Appendix A to its Application. ALLTEL is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Requirements of 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4)(D) requires an applicant doing business under a fictitious name to include in its application a copy of the registration of the fictitious name with the Secretary of State, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. ALLTEL has provided all the required documentation except for the proposed tariff. ALLTEL requests a

temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. ALLTEL agrees to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement.

The Commission finds that ALLTEL has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date. ALLTEL has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver will be granted.

The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and when ALLTEL files the required tariff it will be assigned a new case number.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1998, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission;

(3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

Attached to ALLTEL's Application as Appendix C is a copy of ALLTEL's unaudited December 31, 1997, financial statements showing the financial qualifications of the company. A description of ALLTEL's senior management team was attached to the Application as Appendix B.

Based upon its verified Application, as amended by the non-unanimous stipulation and agreement, there is sufficient evidence to find that ALLTEL:

1. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.
2. has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards.
3. has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

4. will offer basic local telecommunications service as a separate and distinct service;
5. has agreed to provide equitable access to affordable telecommunications services as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services, regardless of where they live or their income; and
6. has sought authority that will serve the public interest.

C. Competitive Classification:

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. Section 392.361.2, RSMo 1994. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3, RSMo 1994. The Commission has found that whether a service is competitive is a subject for case-by-

case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

There is sufficient evidence to find that ALLTEL should be classified as a competitive telecommunications company. ALLTEL's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on ALLTEL's ability to charge for its access services. Unless otherwise ordered by the Commission, ALLTEL's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for the large incumbent LEC for each service area within which ALLTEL seeks authority to provide service. Furthermore, any increases in switched access services rates above the maximum switched access service rates as set forth previously shall be made exclusively pursuant to 392.220, RSMo Supp. 1998 and 392.230, RSMo 1994 and not 392.500 and 392.510.

The non-unanimous stipulation provides that the following statutes be waived: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.340, RSMo 1994, and 392.330, RSMo Supp. 1998. The non-unanimous stipulation and agreement also provides that these Commission rules be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. ALLTEL has requested certification under Sections 392.420 - .440, RSMo 1994 and Sections 392.410 and .450, RSMo Supp. 1998, which permit the Commission to grant a certificate of service authority where it is in the public interest.

Subsection 392.361.3, RSMo 1994, states that the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services.

Subsection 392.361.4, RSMo 1994, states that the Commission may classify a telecommunications service as a competitive telecommunications service if the Commission determines that a telecommunications service is subject to sufficient competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest.

Subsection 392.361.5, RSMo 1994, states that by its order classifying a telecommunications service as competitive or a telecommunications company as competitive, the Commission may with respect to that service or company and with respect to one or more providers of that service, suspend the application of its rules or the application of certain statutory provisions.

Subsection 392.361.5, RSMo 1994, further provides that the Commission may suspend different requirements for different

telecommunications companies, if such different treatment is reasonable and not detrimental to the public interest.

Subsection 392.361.6, RSMo 1994, provides that if the Commission suspends the application of a statutory requirement under this section, it may require a telecommunications company to comply with conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1998, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1998.

Based upon the Commission's review of the applicable law, ALLTEL's Application, the non-unanimous stipulation and agreement and its findings of fact, the Commission concludes that ALLTEL's Application should be granted.

IT IS THEREFORE ORDERED:

1. That the Non-unanimous Stipulation and Agreement filed on June 4, 1999 is approved.
2. That the Application for Certificate of Service Authority and for Competitive Classification, filed by ALLTEL Communications, Inc. on January 7, 1999 is granted.
3. That ALLTEL Communications, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out

above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when ALLTEL Communications, Inc.'s tariff becomes effective.

4. That ALLTEL Communications, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2, RSMo 1994 - uniform system of accounts
392.270, RSMo 1994 - valuation of property (ratemaking)
392.280, RSMo 1994 - depreciation accounts
392.290.1, RSMo 1994 - issuance of securities
392.300.2, RSMo 1994 - acquisition of stock
392.310, RSMo 1994 - stock and debt issuance
392.320, RSMo 1994 - stock dividend payment
392.340, RSMo 1994 - reorganization(s)
392.330, RSMo Supp. 1998 - issuance of securities,
debts and notes

Commission Rules

4 CSR 240-10.020 - depreciation fund income
4 CSR 240-30.040 - uniform system of accounts
4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

5. That the request for waiver of 4 CSR 240-2.060(4)(H), which requires the filing of a 45-day tariff, is granted.

6. That ALLTEL Communications, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement that will allow ALLTEL to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

7. That ALLTEL Communications, Inc. shall give notice of the filing of the tariffs described above to all parties or participants. In addition, ALLTEL Communications, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

8. That ALLTEL Communications, Inc.'s certification and competitive status are expressly conditioned upon the requirement that, notwithstanding the provisions of Section 392.500, RSMo 1994, unless otherwise ordered by the Commission, ALLTEL's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large incumbent local exchange company for each service area within which ALLTEL seeks authority to provide service. Furthermore, that any increases in switched access service rates above the maximum switched access service rates set forth in this order shall be made exclusively pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, RSMo 1994, rather than Sections 392.500 and 392.510, RSMo 1994.

9. That ALLTEL Communications, Inc.'s certificate of service authority shall become effective when its tariff becomes effective.

10. That this order shall become effective on September 14, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Schemenauer, and
Drainer, CC., concur;
Murray, C., concurs with separate
concurring opinion, and certify
compliance with the provisions
of Section 536.080, RSMo 1994.
Crumpton, C., absent

Dated at Jefferson City, Missouri,
on the 2nd day of September, 1999.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of ALLTEL)
Communications, Inc. for a Certificate of)
Service Authority to provide Basic Local)
Telecommunications Service in portions of)
the State of Missouri and to classify said)
services and the company as competitive.)

Case No. TA-99-298

CONCURRING OPINION OF COMMISSIONER CONNIE MURRAY

I concur.

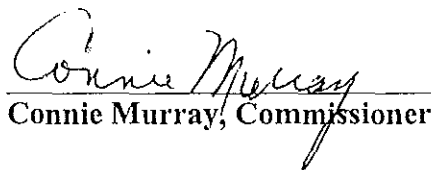
The Non-Unanimous Stipulation and Agreement contains language about the switched access rate cap that is ambiguous and may not actually create an obligation for ACI to keep any of its exchange access rates at any capped level. However, all stipulation and agreements to date contain similar ambiguities and all contain language that allows the competitive local exchange companies (CLECs) to exceed whatever cap the stipulation and agreement provides by filing a tariff and showing by clear and convincing evidence that it is in the public interest to do so.

The concerns expressed by Staff and SWBT about the classification of exchange access services as competitive are addressed sufficiently by the express applicability of § 392.200, 220 and 230 contained in this and the previous stipulation and agreements. No CLEC can charge for exchange access services until it has Commission approved tariffs for such services. Under the terms of the Stipulation and Agreement, the Commission must examine the proposed rates under the more restrictive tariff provisions that typically apply to non-competitive services. At the time the CLEC files its tariff the incumbent local exchange company (ILEC) or any other interested party may intervene and request a hearing. Indeed, the Commission could not allow the CLEC,

under § 392.200, to deaverage rates absent a finding that to do so would be reasonably necessary to promote the public interest.

I see no potential detriment to SWBT, the public, or any other party from the granting of ACI's certificate to provide basic local telecommunications service in portions of the state served by SWBT, Sprint and GTE, or from classifying ACI as a competitive company, conditioned upon the continued applicability of § 392.200, 220 and 230. While SWBT would like to include language requiring an additional showing that increases above the capped rates be "cost justified", the statutory requirement of a showing of "reasonably necessary to promote the public interest" gives the Commission latitude to determine exactly what elements it considers necessary for approval of tariffs which result in deaveraged rates.

Respectfully submitted,



Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 2nd day of September, 1999.