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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 4th  
day of May, 1998.

In the Matter of the Proposed Commission Rules )  
4 CSR 240-31.010, et seq. (Missouri Universal ) Case No. TX-98-56  
Service Fund). )  
)

**ORDER DENYING APPLICATIONS FOR REHEARING AND CLARIFICATION**

The Commission issued an Order of Rulemaking (OR) in this case on April 15, 1998, establishing the framework for a Missouri Universal Service Fund (MoUSF). MCI Telecommunications Corporation (MCI), COMPTEL-MO (COMPTEL), and Southwestern Bell Telephone Company (SWBT) all filed applications for rehearing or clarification on April 14. MCI filed a response to the other parties' applications for rehearing on April 23; SWBT filed responses to COMPTEL's and MCI's applications on April 24; AT&T Communications of the Southwest, Inc. (AT&T) filed a response to SWBT's motion for clarification or rehearing on April 29; and SWBT filed a reply on May 11.

1. **MCI Telecommunications Corporation's Application for Rehearing or Additional Rulemaking**

In its OR the Commission provided that all disbursements from the MoUSF must be revenue neutral. 4 CSR 240-31.040(6)(B). The Commission stated that the details of achieving revenue neutrality would be determined in a separate proceeding. MCI argues in its application for rehearing that the Commission's OR leaves a potential ambiguity because Rule 31.040(6)(B), dealing with eligibility for MoUSF funding for high-cost areas, includes

the provision that "the effect of disbursements from the MoUSF shall be revenue neutral, with offsetting reductions in rates for other services to be determined by the commission." New Rule 31.050, which deals with eligibility for MoUSF funding for providers of service to low-income customers and disabled customers, does not include a similar provision. MCI suggests that the language of 31.040(6)(B) be repeated in 31.050(4), stating that without such language incumbent local exchange companies may argue that they are not required to reduce other rates to offset MoUSF distributions for discounted service to low-income customers and disabled customers. MCI proposes that the Commission either issue an order of clarification on rehearing or initiate a separate rulemaking to achieve this result.

SWBT filed a response arguing that the "potential ambiguity" suggested by MCI does not exist. SWBT points out that the Commission has established the principle of revenue neutrality for the MoUSF and has established a separate proceeding in which it will consider the proper method of maintaining revenue neutrality (Case No. TO-98-329). SWBT also states that, in the case of MoUSF support for eligible low-income customers or disabled customers, the amount of MoUSF support would be equal to the amount of the discount offered to the eligible customer. SWBT states that the MoUSF support received would be revenue-neutral on an access line basis because the company providing service to the eligible customer has already reduced its rate by the amount of the Commission-determined discount for that eligible customer. SWBT does not believe the Commission needs to make any modifications to 4 CSR 240-31.050.

The Commission has reviewed MCI's application and SWBT's response and finds that MCI's arguments do not present sufficient reason for

rehearing. The Commission stated in its OR that the details of how revenue neutrality can best be achieved would be addressed in a separate proceeding. MCI is actively involved in the technical conferences that are currently under way and will have an opportunity to make all relevant arguments regarding revenue neutrality when the Commission specifically takes up those issues. Furthermore, the Commission accepted recommendations by the Small Telephone Company Group, the Commission Staff, and the Office of the Public Counsel to eliminate the connection originally made in the proposed rule between Sections 31.040(6) and 31.050 for the reason that support for high-cost areas is different in purpose from support for low-income customers and disabled customers. The issue of revenue neutrality as it relates to services covered by Section 31.050 cannot be clearly defined until the appropriate discount level for service to low-income customers and disabled customers has been determined, and until the cost of providing such services has been determined, as well as available levels of federal subsidization.

2. Southwestern Bell Telephone Company's Motion for Clarification or, in the Alternative, Application for Rehearing

SWBT filed a motion for clarification or, in the alternative, rehearing on April 14. SWBT's motion is concerned with the definition of "net jurisdictional revenues" for the purpose of determining assessments for MoUSF support. The rule the Commission adopted, 4 CSR 240-31.060(2), states that "[a]ssessments for the MoUSF will be based on the Missouri net jurisdictional revenues of each telecommunications company and other nondiscriminatory factors as determined by the commission." The term "net" has been substituted for the term "gross" in subsections (3) and (4)(B) of that rule also. SWBT's concern is that the parties do not interpret the phrase "Missouri net jurisdictional revenues" in the same way. SWBT states

that the interpretation applied by AT&T would permit carriers that do not build their own facilities to deduct their costs of providing service (access charges and payments for unbundled network elements) from their revenues before being assessed for MoUSF funding. AT&T's proposal would result in facilities-based carriers being unable to deduct any of the costs associated with providing service from their assessed revenues. SWBT's position is that, if the Commission intended to interpret "net jurisdictional revenues" as AT&T interprets it, the result would be discriminatory to certain carriers. SWBT asks the Commission to clarify that it did not intend to adopt AT&T's interpretation. In the alternative, SWBT asks that, if the Commission did intend to adopt AT&T's interpretation, it should grant rehearing and revise 4 CSR 240-31.060 to determine assessed revenues in a nondiscriminatory manner.

MCI filed a response to SWBT's pleading on April 23, stating that MCI continues to support the use of revenues net of payments to other carriers as the definition of "Missouri net jurisdictional revenues." MCI states that all carriers would be making such payments in a competitive market and that the approach is, therefore, nondiscriminatory and prevents the same dollar of revenue from being assessed multiple times. In the alternative, MCI supports the use of end-user revenues as net revenues.

AT&T filed a response to SWBT's pleading on April 29. AT&T requests that the Commission clarify 4 CSR 240-31.060 to state that Missouri net jurisdictional revenues equals gross revenues net of carrier payments. AT&T argues that using this method of assessment is not discriminatory and was recommended by the Federal-State Joint Board on Universal Service, quoting paragraph 807 of the Recommended Decision by the Federal-State Joint Board, In the Matter of Federal-State Joint Board on

Universal Service, CC Docket No. 96-45, adopted November 7, 1996. AT&T states that, although the Federal Communications Commission (FCC) decided to base assessments on end-user revenues, it did not find that the use of gross revenues less payments to other carriers would be discriminatory.

SWBT filed a reply to AT&T's response on May 11, stating that the FCC rejected AT&T's proposed "gross revenues net of payments to other carriers" basis of assessment. SWBT points out that the FCC stated that this method of assessment would be likely to cause economic distortions that could be avoided by basing assessments on the end-user telecommunications revenues approach, citing to paragraph 850 of the Report and Order issued on May 8, 1997 in CC Docket No. 96-45. SWBT states that the FCC also determined that calculating universal service assessments based upon end-user revenues would be administratively easier to implement and less burdensome, and that Arkansas, Kansas, and Oklahoma have all decided to use the end-user revenue approach to assessments.

The Commission has reviewed SWBT's motion for clarification or rehearing and the responses filed by MCI and AT&T and finds that SWBT's application does not present sufficient reason for clarification or rehearing. The issue of what costs should be considered in evaluating a company's net revenues for purposes of MoUSF assessment must be taken up in the context of appropriate costing methodology. The parties have already requested a procedural schedule that calls for an evidentiary hearing on this general subject. To the extent that the issue of what constitutes net jurisdictional revenues needs further definition, it must be taken up in that case.

### 3. COMPTEL-Mo's Application for Rehearing

COMPTEL argues that the Commission should grant its application for rehearing on two issues: the end-user surcharge issue and the issue of payment of assessments through current revenues. COMPTEL argues that 4 CSR 240-31.060 is unlawful because it denies interexchange carriers the ability to add as a billing line item the amount of the assessment made under the rule. COMPTEL argues that the rule is inequitable, discriminatory, and highly prejudicial to interexchange carriers, and inconsistent with the FCC's rules on universal service assessment and collection. COMPTEL quoted a portion of the Commission's OR stating that "a direct end-user surcharge is not an option under section 392.248.3, RSMo Supp. 1997, which states that universal service shall be funded through assessments on all telecommunications companies in the state."

COMPTEL submitted comments in this case to the effect that, in lieu of a system that assesses a carrier based upon the prior year's jurisdictional revenue, the Commission should adopt a mechanism that imposes a "quasi-sales tax" on the customer's current jurisdictional billing for all telecommunications services. COMPTEL states that this procedure would result in a perfect match between jurisdictional revenues generated and the amount of assessment collected. COMPTEL argues that the procedure is equitable and nondiscriminatory.

MCI, in its Response to Applications for Rehearing filed on April 23, states that it does not agree that the Commission's rule denies interexchange carriers the ability to add as a billing line item a surcharge to recover Universal Service Fund assessments. MCI points out that the rules are silent on this issue and that the Commission's comment indicates that Section 392.248, RSMo Supp. 1997 does not allow the

Commission to directly fund universal service by the means of end-user surcharges.

SWBT filed a response to COMPTel's application for rehearing on April 24, stating that it is not clear from the Commission's OR whether the Commission has already determined that telecommunications companies may not recover their MoUSF assessments through the use of an end-user surcharge, or whether the Commission has only rejected a direct assessment on end users. SWBT makes the assumption that the Commission has rejected the recovery of MoUSF assessments through an end-user surcharge, and argues that the Commission may not authorize a price-cap-regulated local exchange carrier to recover its assessment through an end-user surcharge. See § 392.248.3, RSMo Supp. 1997. SWBT argues that it would be unlawful for the Commission to adopt a rule which would permit some companies (such as interexchange carriers) to recover their assessments through an end-user surcharge, while other companies (such as price-cap-regulated local exchange carriers) would not be allowed to recover their assessment in the same way.

The Commission has reviewed COMPTel's application, and the responses filed by MCI and SWBT, and finds that COMPTel's argument does not present sufficient reason for rehearing or clarification. The Commission intentionally left certain provisions of Chapter 31 open-ended because, until the costs of providing basic local service have been identified, and the Commission has determined how revenue neutrality may be maintained, it would be unwise to make specific findings on how MoUSF assessments are to be calculated. In addition, the Commission's OR does not eliminate the possibility of some sort of pass-through of MoUSF assessments, but only determines that a direct end-user surcharge in order to obtain MoUSF

funding is not permissible under Section 392.248.3, RSMo Supp. 1997. It would be premature for the Commission to make a determination as to how MoUSF assessments might be recovered by obligated carriers, since the cost of providing basic local telecommunications services has not yet been demonstrated, much less the level of assessments that will be necessary to reimburse companies servicing high-cost areas.

**IT IS THEREFORE ORDERED:**

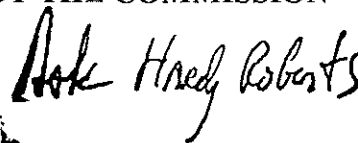
1. That MCI Telecommunications Corporation's Application for Rehearing or Additional Rulemaking filed on April 14, 1998 is denied.

2. That Southwestern Bell Telephone Company's Motion for Clarification or in the Alternative, Application for Rehearing filed on April 14, 1998 is denied.

3. That COMPTel-MO's Application for Rehearing filed on April 14, 1998 is denied.

4. That this order shall become effective on June 16, 1998.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

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

Wickliffe, Deputy Chief Regulatory Law Judge

RECEIVED  
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COMMISSION COUNSEL  
AND CHIEF OF COMMISSION