

STS

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the investigation of the)
provision of local exchange telephone)
service by entities other than certificated)
telephone corporations, including entities)
who may resell local exchange telephone)
service.)

Case No. TC-84-233

REPORT AND ORDER

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APPEARANCES

James E. Taylor, General Solicitor-Missouri, Paul G. Lane, Michael A. Meyer and William R. Drexel, Attorneys, Southwestern Bell Telephone Service, 100 North Tucker Boulevard, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

W. R. England, III, Attorney at Law, Post Office Box 456, Jefferson City, Missouri 65102, for: Chariton Valley Telephone Corporation, Citizens Telephone Company, Continental Telephone Company of Missouri, Wheeling Telephone Company, Stoutland Telephone Company, Fidelity Telephone Company, Eastern Missouri Telephone Company, General Telephone Company of the Midwest, Goodman Telephone Co., Inc., Seneca Telephone Company, Northeast Missouri Rural Telephone Company, Grand River Mutual Telephone Corporation, Kingdom Telephone Company, Steelville Telephone Exchange, Inc., Mid-Missouri Telephone Company, McDonald County Telephone Company, Missouri Telephone Company and Central Telephone Company of Missouri.

Gerald M. Sill, Attorney at Law, Post Office Box 80, Jefferson City, Missouri,

and

Michael Madsen, Attorney at Law, Post Office Box 235, Jefferson City, Missouri 65102, for Missouri Hospital Association.

Denton C. Roberts, Senior Attorney, Ann McElhenny and J. Richard Smith, Attorneys, 6666 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri.

Richard S. Brownlee, III, Attorney at Law, Post Office Box 1069, Jefferson City, Missouri 65102, for: Association of Long Distance Telephone Companies of Missouri (ALTEL of Missouri); Missouri Cable Television Association; Atlas Mobilfone, Inc.; Certified Communications, Inc.; Hedges & Associates, Inc., d/b/a Hedges Communications Co. and Dial U.S.; Mobile Radio Communications; Reynolds Communications, Inc.; CyberTel Cellular Telephone Company; and CyberTel Missouri Corporation.

Jeremiah D. Finnegan, Attorney at Law, and Hugh F. O'Donnell III, Attorney at Law, 4225 Baltimore Avenue, Suite 101, Kansas City, Missouri 64105, for Republic Telcom Corporation-Kansas; Pay Phones of Mid-America, Inc., d/b/a/ Pay Phones, Inc.; and Missouri Hotel and Motel Association.

Judith St. Ledger-Roty, Attorney at Law, 1200 18th Street, N.W., Washington, D.C. 20036, for Pay Phones of Mid-America, Inc., d/b/a Pay Phones, Inc.

Robert C. McNicholas, Associate City Counselor, 314 City Hall, St. Louis, Missouri 63103, for the City of St. Louis, Missouri, and James J. Wilson, City Counselor.

Steven A. Nixon, Attorney, U.S. Army Legal Services Agency, JALS-RL 3258, 5611 Columbia Pike, Falls Church, Virginia 22041, for the Department of Defense.

Mark P. Royer, Attorney at Law, 1100 Main Street, Suite 1405, Kansas City, Missouri 64105, for AT&T Communications of the Southwest, Inc.

Jack Hoke, Attorney at Law, 1650 East Battlefield, Suite 140, Springfield, Missouri 65804, for Payphones of Missouri, d/b/a American Payphones.

William Clark Kelly, Assistant Attorney General, Office of the Attorney General, Post Office Box 899, Jefferson City, Missouri 65102, for the State of Missouri.

Rodric A. Widger, Attorney at Law, 101 West McCarty Street, Post Office Box 1280, Jefferson City, Missouri 65102, for James Semmons, d/b/a Coin Operated Equipment Co.

Jerry W. Venters, Attorney at Law, 325 Jefferson Street, Post Office Box 1586, Jefferson City, Missouri 65102,

and

Michael V. Hasten, Attorney at Law, One First National Plaza, Suite 5000, Chicago, Illinois 60603, for Interline Communications Services.

Thomas M. Utterback, Attorney at Law, and Dale R. Joerling, Attorney at Law, 100 North Broadway, Suite 2000, St. Louis, Missouri 63102,

and

Elizabeth R. Sachs, Attorney at Law, 1401 N.Y. Avenue, N.W., Washington, D.C. 20005, for Manageable Information Systems, Inc.

Terry C. Smith, Attorney at Law, 2222 North Central Life Tower, St. Paul, Minnesota 55101, for Coin Communications, Inc.

Leland B. Curtis, Attorney at Law, and Robert A. Hutton, Jr., Attorney at Law, 230 South Bemiston, Clayton, Missouri 63105,

and

Henry D. Levine, Attorney at Law, 1920 N Street, N.W., Washington, D.C. 20036, for MCI Telecommunications Corporation, Inc.

Basil W. Kelsey, Attorney at Law, and Mark P. Johnson, Attorney at Law, 106 West 14th Street, Kansas City, Missouri 64105, for American Cablevision of Kansas City, Inc.; Missouri Cable Television Association; National Cable Television Association, Inc.; and GTE Sprint Communications Corporation.

Louis F. Bonacorsi, Attorney at Law, and Mark A. Bayles, Attorney at Law, One Mercantile Center, Suite 2900, St. Louis, Missouri 63101,

and

Walter M. Korchun, Attorney at Law, 8300 East Maplewood Avenue, Room 200N, Englewood, California 80111, for AT&T Information Systems Inc.

William H. Keating, Attorney, General Telephone Company of the Midwest, 11 Eleventh Avenue, Grinnell, Iowa 50112, for General Telephone Company of the Midwest.

H. Edward Skinner, Attorney at Law, 212 Center Street, Suite 900, Little Rock, Arkansas 72201, for ALLTEL Missouri, Inc.

Robert A. Lieberman, Attorney at Law, 27th Floor, City Center Square, Post Office Box 26010, Kansas City, Missouri 64196,

and

Garry L. Witt, Attorney at Law, Post Office Box 7033, Indianapolis, Indiana 46207, for Multi-Tenant Telecommunications Association.

Douglas M. Brooks, Public Counsel, and Joni K. Ott, Assistant Public Counsel, Office of Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel and the public.

Michael C. Pendergast, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REPORT AND ORDER

On May 11, 1984, Southwestern Bell Telephone Company (SWB) filed an Application For Investigatory Proceeding in which SWB requested that a docket be initiated for the purpose of investigating the provision, including resale, of local exchange telephone service by noncertificated entities and various related issues. On June 4, 1984, the Commission issued its Order Establishing Docket in which the Commission: (1) granted SWB's request and established the investigatory docket; (2) established July 6, 1984, as the deadline for applications to intervene; (3) ordered that a prehearing conference be scheduled for July 23, 1984, for the purpose of clarifying and defining the course the investigation should pursue and to allow the parties to recommend a procedural schedule; and (4) ordered that the parties file, within ten days of the conclusion of the prehearing conference, a joint or separate recommendation(s) concerning further proceedings in the matter.

The following parties were granted intervention: CyberTel Cellular Telephone Company; CyberTel Missouri Corporation; the Department of Defense; Republic Telcom Corporation-Kansas; Missouri Hotel and Motel Association; Atlas Mobilfone, Inc.; Certified Communications, Inc.; Association of Long Distance Telephone Companies of Missouri (ALTEL of Missouri); City of St. Louis, Missouri; Mobile Radio Communications; Reynolds Communications, Inc.; Chariton Valley Telephone Corporation; Continental Telephone Company of Missouri; Citizens Telephone Company; Manageable Information Systems, Inc.; Wheeling Telephone Company; Goodman Telephone Co., Inc.; Eastern Missouri Telephone Company; Fidelity Telephone Company; General Telephone Company of the Midwest; Stoutland Telephone Company; McDonald County Telephone Company; Mid-Missouri Telephone Company; Missouri Telephone Company; Northeast Missouri Rural Telephone Company; Seneca Telephone Company; Steelville Telephone Exchange, Inc.; Kingdom Telephone Company; Grand River Mutual Telephone Corporation; AT&T Communications of the Southwest, Inc.; Missouri Cable Television Association; United Telephone Company of Missouri; Missouri Hospital Association; Central

Telephone Company of Missouri; AT&T Information Systems Inc.; Pay Phones of Mid-America, Inc., d/b/a Pay Phones, Inc.; James Semmons, d/b/a Coin Operated Equipment Co.; Hedges & Associates, Inc., d/b/a Hedges Communications Co. and Dial U.S.; the State of Missouri; National Cable Television Corporation, Inc.; American Cablevision of Kansas City, Inc.; Coin Communications, Inc.; Interline Communications Services; Allnet Communication Services, Inc.; Multi-Tenant Telecommunications Association; BFC Enterprises, Inc.; William G. Bowles, Jr., d/b/a Mid-Missouri Mobilfone; ALLTEL Missouri, Inc.; MCI Telecommunications Corporation, Inc.; United Business Communications; Payphones of Missouri, d/b/a American Payphones; and GTE Sprint Communications Corporation. United Technologies Corporation filed its petition for participation without intervention. Prior to hearing, the following parties withdrew their interventions: James Semmons, d/b/a Coin Operated Equipment Co.; CyberTel Cellular Telephone Company; CyberTel Missouri Corporation; BFC Enterprises, Inc.; and Payphones of Missouri, d/b/a American Payphones.

A prehearing conference was held on July 23, 1984. A Joint Response Of Parties To Commission Order Establishing Docket was filed on August 6, 1984, wherein the parties stated their respective initial positions on the issues raised in this proceeding and recommended a proposed schedule of proceedings. An Order Establishing Procedural Schedule was issued by the Commission on September 7, 1984.

On October 3, 1984, the Staff of the Missouri Public Service Commission filed its Motion To Modify Procedural Schedule wherein the Staff proposed that the coin telephone service issue be considered apart from the main proceeding and heard on October 30 and 31, 1984. The Staff motion was granted by the Commission on October 12, 1984.

As a result of these hearings, the parties involved in the coin telephone portion of the proceeding submitted a Stipulation And Agreement to the Commission for its consideration on October 30, 1984. The Commission rejected the stipulation as it

pertained to Commission regulation and jurisdiction over customer-owned coin telephone providers. The remainder of the stipulation was adopted by the Commission. Petitions for rehearing were filed by the Office of Public Counsel and SWB. The parties were then allowed to brief the issue of Commission jurisdiction over customer-owned coin telephone providers.

The hearings in the main proceeding were rescheduled and held January 7 through 17, 1985. A briefing schedule was established. The transcript was not waived. Briefs were filed by all interested participating parties.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

I. Southwestern Bell Application - Relief requested

At the request of SWB, by application filed on May 11, 1984, this proceeding was instituted to investigate the provision, including resale, of local exchange telephone service by entities other than certificated telephone corporations. SWB's application requests the Commission to: (1) precisely define local exchange telephone service and those activities which shall constitute the provision of all or a portion of local exchange services; (2) declare that it continues to be in the public interest that there be only one provider of local exchange telephone service in each geographic territory; (3) declare that the existing local exchange telephone companies currently authorized to provide local exchange telephone service in those geographic areas approved by the Commission should be the sole providers of local exchange telephone service unless and until it is demonstrated by clear and convincing evidence that the existing service so provided is inadequate, as judged by the existing statutory and Commission rules governing the adequacy of existing telephone service; (4) declare that any person, firm, corporation or other entity seeking to provide any portion of local exchange

telephone service is not entitled to do so absent certification by this Commission, and further, is not entitled to resell the facilities and services provided by local exchange telephone companies as any part of their offering of local exchange telephone service; (5) declare that no entity which is not certified by this Commission to provide local exchange telephone service may connect its facilities to those facilities provided by local exchange telephone companies for the purpose of providing a portion of local exchange telephone service.

II. Issues Defined

A. Shared Tenant Services (STS)

Testimony and argument in the case primarily focused on the provision of shared tenant service (STS). STS providers are typically landlords or real estate developers who provide telephone service to tenants or occupants of multitenant buildings, complexes or developed properties as part of an overall package of services.

This service is provided through a customer-owned private branch exchange (PBX). A PBX is essentially a telephone switch, similar to the local telephone company's central office, which is capable of switching voice and data communications between the sharing tenants, through the local exchange company's central office or directly to interexchange carriers. A PBX enables small- to medium-sized customers to aggregate their calling usage by sharing local exchange access lines, thus reducing the number of access lines required from the local exchange telephone company. The PBX further enables the tenants to communicate directly with one another without accessing the local switched network ("behind-the-switch" calling). In addition to the provision of telephone service, the STS provider offers numerous enhanced services, some of which include voice mail, data and word processing, heating, lighting and air conditioning control and building security as a part of its overall package to customers.

B. SWB's Arguments

SWB does not oppose the sharing of the PBX itself, nor the connection of the PBX to its facilities. SWB does oppose both the sharing of access lines from the PBX to the local exchange central office and intercustomer calling behind the switch, both of which the company considers to be resale of local exchange service.

SWB maintains the position that the provision of local exchange service by entities other than certificated local exchange telephone companies, including "resale" of local exchange telephone service by STS providers and behind-the-switch calling between different tenants in an STS building, has been and should continue to be prohibited by the Commission. SWB contends the STS providers are telephone companies as defined by statute and case law and must be certificated to perform their telephone service. SWB further contends that it is in the public interest to maintain the status quo and to continue to allow SWB to be the exclusive provider of local exchange service in its certificated area.

SWB has several reasons for its opposition to the sharing/resale of local exchange service. SWB believes the sharing of access lines and the provision of local exchange telephone service would adversely affect its revenue base. SWB contends STS providers would "cream-skim" by servicing only the low cost, high revenue customers. This would reduce revenues available to support the high cost, low revenue customers SWB is also obligated by statute to serve. If STS is allowed, a majority of the costs of the system would remain, and the burden of lost revenues would fall upon the remaining customers. SWB has utilized average and residual pricing in order to maintain universal service. SWB contends such pricing is inconsistent with competition and asserts it will be necessary to move prices for local exchange telephone service toward cost in the event competition is allowed. According to SWB, universal service would, therefore, be threatened.

Although SWB already experiences some stranded investment without STS arrangements, it asserts this problem will be exacerbated and more telephone plant

will become idle if sharing/resale of local access lines is permitted. SWB contends it will lose its ability to recover revenues on plant already placed for future use which remains unused due to STS. STS arrangements would also contribute to forecasting difficulties presently experienced by SWB in planning its network to meet present and future needs. SWB contends that STS arrangements will make it impossible for the local exchange telephone company to provide the quality of service heretofore maintained. SWB is also concerned that communication behind the switch will lead to the development of private networks which would directly compete with the local exchange telephone company's local switched network.

C. SWB's Solution - Partitioned Switches

To alleviate these problems, SWB suggests the Commission require STS providers to partition their PBX switches. Partitioning is a software change which would require each tenant to have its own access lines to the local exchange telephone company's central office and would preclude intercustomer communications behind the switch. According to the evidence adduced at the hearing, the partitioning would not preclude the use of most of the additional enhanced features of the PBX.

D. SWB's Proposed Tariff Definition of Local Exchange Service

SWB submitted proposed tariffs in this proceeding purporting to clarify the present prohibition of local exchange service, including the sharing of access lines and intercustomer behind-the-switch communications. Those proposed tariffs define local exchange service as ". . . all telecommunications service between different customers who are located within the local service area." Telecommunications service was defined, through the testimony of SWB witness Barry, as those telephonic communications which are directed and addressable as opposed to being disseminated to the public at large. This definition would also include data transmission ranging from subvoice grade telemetering service up to and including high speed, broad band data.

SWB's proposed tariffs allow a customer to extend his local exchange service to another on a temporary basis through the definition of an "authorized user". An authorized user is "anyone who is permitted by the customer to use the customer's service on a temporary basis where it otherwise would be impractical for such user to obtain local exchange service at that location. Potential customers may not be an authorized user for the purpose of avoiding becoming a customer." SWB's tariff definition of authorized user would permit hotels, motels and hospitals to continue sharing/resale due to the transient nature of their guests and patients which would make it impractical for them to obtain individual service. SWB maintains another proceeding will be necessary to address the concerns of the parties in formulating new tariffs in the event the Commission allows the provision of STS arrangements.

E. Other Parties' Positions

Of those parties participating at the hearing, the following appear to generally concur with the position of SWB: United Telephone Company of Missouri (United); the Independent Telephone Companies; ALLTEL Missouri, Inc. (ALLTEL); General Telephone Company of the Midwest (General); Missouri Telephone Company; and the Commission Staff (Staff).

Some of these parties have not supported SWB's position with regard to behind-the-switch calling. ALLTEL does not believe it is necessary to regulate that service, as it would probably have a de minimis effect on the revenues of the local exchange telephone company. Staff agrees that regulation of behind-the-switch calling is not necessary at this time, and believes the Commission may be preempted from exercising its jurisdiction in that instance. Public Counsel agrees that the FCC may have preempted behind-the-switch communications.

Public Counsel further presents a different exception. Although Public Counsel agrees that STS providers are telephone corporations and should be certificated, Public Counsel does not believe a blanket prohibition should be

instituted. Instead, Public Counsel suggests a determination of private benefit versus public detriment be made on a case by case basis.

The State of Missouri was interested in whether the proposed tariffs would allow it to continue providing telecommunications to student residence facilities which are a part of state educational institutions. SWB witness Barry stated they would be so allowed.

The interests of those parties opposing SWB's proposal fall generally within five categories. They are: STS providers and vendors of telecommunications equipment, interexchange carriers, the Hospital Association, the Hotel/Motel Association, and cable television representatives.

The STS providers contend they are not subject to Commission jurisdiction because they are not public utilities as defined by statute and case law. They maintain the services they perform are conducted pursuant to private contract and are not offered to the public in general.

The STS providers contend that a prohibition on their ability to provide service discriminates against and severely disadvantages small- to medium-sized customers, since large single entity PBX users are allowed to aggregate access lines and communicate intracustomer behind the switch. They further maintain that SWB's proposed tariffs would effectively stifle the evolution of competition and technology in the STS environment within the State of Missouri. STS providers assert this type of prohibition on the provision of STS infringes upon the federal right to use their customer premises equipment (CPE), such as a PBX, in ways that are "privately beneficial without being publicly detrimental." Com Services v. Murraysville Telephone Co., File No. E80-20, Memorandum Opinion And Order, June 29, 1981, 87 F.C.C.2d 654.

AT&T Information Systems Inc. (ATTIS) in particular maintains that this Commission has no right to regulate CPE in light of the FCC preemption. ATTIS

maintains the FCC has determined that behind-the-switch calling is not local exchange service.

STS providers and equipment vendors further maintain that SWB will be better equipped to forecast its needs and therefore decrease any potential stranded investment, because real estate developers will often be able to inform the company of the building's tenant mix in advance. The STS providers argue that short-term stranded central office or distribution facilities may be used for a different purpose than initially intended or relocated for more efficient use. They suggest that retrofitting buildings may induce tenants to move to an otherwise unoccupied or undesirable building and, therefore, mitigate some of SWB's stranded investment.

The interexchange carriers' primary concern is that SWB's proposed definition of local exchange service is overbroad and would expand SWB's monopoly. Although they assert that the sharing of access lines should be allowed, they contend that if it is prohibited the tariff definition of local exchange service should not preclude direct customer access to the facilities of interexchange carriers or telecommunications between geographically separate locations of the same customer.

MCI echoes the concerns of the other parties with regard to discrimination, retarding of competition and technology, and the ability to transport high speed communications between different customers.

The Hospital Association agrees with SWB that hospitals should be allowed to provide telephone service for their patients due to the transient nature of their stay. The Hospital Association contends that SWB's definition of local exchange service, however, is overbroad and neglects to consider the statutory provision that grants Commission jurisdiction over only those telecommunications conducted "for hire". The Hospital Association asserts that no charges are levied for telephone service to patients; therefore, it is a private offering.

The Hospital Association further opposes SWB's definition of "customer", which treats Association members as separate customers. The Hospital Association

believes that definition is too narrow in scope and would not allow separate but related entities within a hospital setting to share access lines or communicate behind the switch, as has been allowed in the past.

The Hotel/Motel Association agrees with SWB's determination that telephone service provided by hotels and motels to their guests should be permitted. The Hotel/Motel Association does not agree with SWB's reasoning that the service should be permitted due to the temporary nature of the guests' use. The Association contends their provision of service should be allowed as it is not devoted to public use, and is provided pursuant to private contract.

The telephone service that is provided by hotels and motels is only incidental to the owner's primary business of renting rooms. The Association further contends that SWB's allowance of this service over the years evidences it is not publicly detrimental, and therefore should be allowed for its private beneficial nature.

The cable television representatives contend the FCC has preempted the state's right to regulate cable communications. The cable representatives further contend that the adoption of SWB's proposed definition of local exchange service would effectively prohibit cable systems from offering any nonvideo services under Missouri law. At this time, they are primarily concerned with their ability to provide high speed transmission of information in the future. The cable representatives maintain this service is not available on demand from SWB and does not compete with the local exchange monopoly because cable networks are not designed for switched voice service. They assert that no stranded investment will result because SWB does not have a network in place at this time.

III. Commission Findings on Contested Issues

A. Are STS Providers "Public Utilities"?

SWB's application was premised upon the legal argument that the provision of shared tenant telecommunications service in multitenant buildings or complexes

constitutes the offering of "local exchange telephone service" and brings the STS provider under the statutory definitions of a regulated "telephone corporation" and "public utility". Section 386.020(14) and (25), R.S.Mo. 1978. If SWB's fundamental legal premise is correct, then STS providers may lawfully operate in Missouri only if they receive certification from the Commission pursuant to Section 392.260, R.S.Mo. 1978. Other parties have argued that STS providers are not legally "public utilities" under the Commission's jurisdiction. These parties have argued that even if STS providers are "public utilities", the Commission's authority to regulate the resale or sharing of local exchange service has been preempted by the FCC. These jurisdictional issues will be addressed before the Commission reviews the significant public policy issues raised by the provision of STS.

The Commission must first determine whether STS providers are "public utilities" subject to the jurisdiction of this Commission. According to Chapter 386, R.S.Mo. 1978, in order to be a public utility the STS providers must be "telephone corporations". Telephone corporations are defined in Section 386.020(25) as ". . . every corporation, company, association, . . . partnership and person, . . . owning, operating, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telecommunication for hire."

The term "telephone line" is further defined as ". . . conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices . . . used, operated, controlled or owned by any telephone corporation to facilitate the business of affording telephone communication." Section 386.020(26), R.S.Mo. 1978.

Missouri case law has imposed the further requirement that such telephone communications must be offered "for public use". See State ex rel. Danciger and Co. v. Public Service Commission of Missouri, 275 Mo. 483, 205 S.W. 36 (1918). Relying on Danciger, the federal court in City of St. Louis v. Mississippi River Fuel

Corporation, 97 F.2d 726 (8th Cir. 1938), stated that the public use of a service is the deciding factor in determining whether an operation is a "public utility" under Missouri law. It concluded that "under Missouri law the term 'for public use' . . . means the sale . . . to the public generally and indiscriminately, and not to particular persons upon special contract." Id. at 730. The City of St. Louis court cited with favor the following definition:

"To constitute a public use all persons must have an equal right to the use, and it must be in common, upon the same terms, however few the number who avail themselves of it." Id.

SWB contends the provision of STS service is similar to the situation in State ex rel. and to use of Cirese, et al. v. Public Service Commission of Missouri, 178 S.W.2d 788 (Mo. App. 1944), wherein Cirese Power and Light Company manufactured electricity for its own buildings and sold the excess capacity to outside customers. Business was personally solicited as well as solicited indiscriminately by handbills and newspaper articles. The court found the company to be a public utility insofar as it held itself out "as willing to sell to all comers who desired service in the immediate vicinity of the plant . . . and did sell to all such customers." Cirese at 791. The court cited State ex rel. Lohman and Farmers Mutual Telephone Company v. Brown, et al., 323 Mo. 818, 19 S.W.2d 1048, 1049 (1929), when it held the company was not a public utility insofar as its facilities and activities were confined to the manufacture, distribution and sale of electricity to itself, its buildings and its tenants.

The evidence in this proceeding indicates that STS providers will most likely be entities which are either the owner, or affiliate or agent of the owner of a building or complex of buildings, when all such buildings are owned by the same owner or affiliate and are located upon contiguous or adjacent real estate. Those providers will limit participation in their shared tenant programs to the occupants of such building or buildings, and will not hold themselves out as entities who are providing telephone service to the general public. Although the STS provider may

widely advertise the availability of his shared tenant services, including telecommunications services, as an inducement to attract tenants to his building, only those persons or entities who are willing and able to relocate into an STS facility and enter into a contractual relationship with the owner of the building or complex will be afforded the opportunity to receive telephone services and other STS services offered by the STS provider.

STS provision is not the offering of a utility service to the public; it is the offering of a complex package of services of which telephone service is only a portion. STS service is so specialized that only those people wishing to avail themselves of the package are able to utilize the telephone service. These offerings will be made pursuant to private contract or lease. It is not clear from the record whether all tenants will necessarily be offered the same terms and conditions for all STS services. See City of St. Louis, supra.

Based upon the competent and substantial evidence in the record, the Commission finds that the telecommunications services and associated equipment offered by STS providers are not "for public use". STS services are not offered to the public generally and indiscriminately, but instead are offered to particular persons (e.g., tenants) pursuant to private contract or lease. The Commission therefore finds that telephonic communications and equipment provided by STS providers to their tenants would fall within the "private use" category discussed in the Danciger and Cirese cases. Having found that STS providers are not devoting their property to public use, the Commission concludes that shared tenant providers are not "public utilities" subject to the jurisdiction of this Commission. Certification of STS providers pursuant to Section 392.260 is not required. Since STS providers are not performing the service of public utilities, the Commission need not reach the issue of whether the sharing of access lines should be treated differently than the sale of access lines.

The Commission has made its finding that STS providers are not public utilities based principally upon a review of existing Missouri statutes and case law. The Commission also considered however, that a finding that STS providers were "public utilities" would have other regulatory implications for the STS industry and the Commission. For example, the Commission has certain statutory obligations and powers with regard to telephone corporations including, inter alia, the authority to:

- a) examine and keep informed as to the general condition of telephone corporations. Section 386.320, R.S.Mo. 1978;
- b) receive and process complaints made against telephone corporations. Section 386.330 and 386.390, R.S.Mo. 1978;
- c) assess each public utility including telephone corporations, its portion of the costs attributable to the regulation of public utilities. Section 386.370, R.S.Mo. 1978; and
- d) receive and maintain current rate schedules from each telephone corporation. Section 392.220, R.S.Mo. 1978.

In addition, SWB witness Barry testified that, if STS providers were considered certificated local exchange telephone companies, and not as local exchange customers, the STS providers would be required to:

- a) prepare and distribute a telephone directory;
- b) coordinate and provide N.P.A. (first three digits of the telephone number);
- c) arrange to contract for interexchange connections between its office and the other telephone companies; and
- d) enter into a compensation agreement for those connections.

The Commission finds these additionally compelling reasons why STS providers should not be treated as public utilities. The Commission believes that the public interest may be protected, as discussed herein, without subjecting the emerging STS industry in Missouri to the same obligations and degree of regulation required for traditional telephone corporations. Such regulation may needlessly

retard the development of the STS industry in Missouri. The Commission therefore has concluded that it should refrain from attempting to bring STS providers under its regulatory umbrella.

B. Federal Preemption

The Commission must next focus on the issue of federal preemption. The preemption issue may be segmented into two parts: (1) resale or sharing of local exchange access lines; and (2) high speed data transmissions.

Several proponents of STS have contended that the FCC has effectively preempted this Commission's authority to regulate the private use of customer premises equipment. Therefore, these parties have argued that the Commission is without authority to limit or restrict the provision of shared tenant services, including the resale or sharing of local exchange service.

The Commission believes that there is an important distinction between state authority to regulate the private use of customer premises equipment and the Commission's authority to regulate the resale or sharing of local exchange services provided by certificated telephone companies in Missouri. The Commission recognizes that the FCC has preempted state authority to regulate the private use of customer premises equipment under most conditions. Second Computer Inquiry, Docket No. 20828, Memorandum Opinion And Order, 84 F.C.C.2d 50 (December 30, 1980); North Carolina Utility Commission v. FCC, 552 F.2d 1036, 1050 (4th Cir. 1976), cert. denied, 434 U.S. 874 (1977). These decisions give deference to the customer's right to use its CPE in ways which are privately beneficial without being publicly detrimental. However, these cases should not be interpreted as a broad federal preemption of state authority over the resale or sharing of local exchange service. Although the FCC in recent years has successfully asserted its preemptive powers in areas which had traditionally been left to the states, it has not asserted jurisdiction over the resale of intrastate and local exchange services.

The Commission finds its ability to assert jurisdiction over the actual resale or sharing of local exchange service has not been preempted by the FCC. The Commission relies heavily upon the FCC's own language:

. . . PBXs, for example, have been registered since 1977, but the mere fact of such registration has not been construed as permitting the lines entering the PBX to be used by multiple subscribers on the theory that this registration has implicitly preempted and nullified local tariffs limiting resale.

In the matter of registration of coin-operated telephones under Part 68 of the Commission's rules and regulations, F.C.C. Docket 84-270, Memorandum Opinion And Order, p. 12, n. 24 (F.C.C. June 25, 1984).

In a more recent decision relating to the provision of customer-owned coin telephones, the FCC seems to again make clear that jurisdiction over the resale of intrastate services or local exchange services will remain with state commissions and that reselling restrictions imposed by the states have not violated any FCC orders:

Regulation of such resale of intrastate and local exchange service has heretofore been left to state authorities. Moreover, the terms and conditions under which intrastate pay telephone offers are made to the public involve questions of an essentially local nature. . . . [The use of telephones] for intrastate and local exchange pay service, however, would be subject to any applicable resale regulations in the tariffs of such services. Thus, [the Commission] did not alter the traditional regulatory framework where state authorities regulate intrastate and local pay telephone services.

Universal Payphone Corp. Request for Declaratory Ruling,
Memorandum Opinion And Order, F.C.C. 85-222 at para. 15, p. 7
(released May 6, 1985).

The Commission is cognizant of the pending FCC proceeding in which IBM has requested a ruling declaring that the FCC has preempted state regulation that precludes the sharing or resale of local exchange service in connection with STS systems. In re State Regulation of Shared Telecommunications Service Systems, File No. ENF 85-45. If the FCC had previously preempted state authority over the resale or sharing of local exchange service in connection with STS systems, it is doubtful that the FCC would have requested public comment on IBM's request for declaratory ruling in this proceeding.

It has been asserted that the FCC has also preempted any Commission jurisdiction over high speed data transmission. The Commission is aware that a Petition For Declaratory Ruling was filed with the FCC by Cox Cable Communications, Inc., Commline, Inc., and Cox DTS, Inc. That petition requested the FCC to preempt state and local laws which restrict cable operators from offering data transmission services. A decision granting preemption was announced in that case August 7, 1985. The Cox decision dealt solely with federal preemption over an institutional network. In Re Cox Cable Communications, Inc., et al., Memorandum Opinion, Declaratory Ruling, and Order, File No. CCB-DFD-83-1 (F.C.C., September 5, 1985). The Cox opinion states:

"[W]e have made the finding that any state regulation of institutional services offered by cable companies that acts as a de facto or de jure barrier to entry into the interstate communications market must be preempted." (In Re Cox Cable Communications, Inc., at 25).

The Commission has considered the arguments of the parties with regard to high speed data transmissions and finds that there is insufficient evidence in the record to determine whether SWB or the cable representatives have a network in place, other than an institutional network, ready to provide service without substantial modifications. Therefore, the Commission believes it is premature to make a determination at this time as to whether or not the provision of high speed data services by cable companies is the provision of local exchange service and should be regulated by the Commission.

C. Should the Sharing of Access Lines and Intertenant Calling be Permitted in STS Buildings?

No party to this proceeding has argued that STS customers should not be permitted to share a private branch exchange (PBX) or other CPE in buildings served by an STS provider. STS customers may derive numerous benefits from the sharing of a PBX and related facilities. According to ATTIS witness Queen and MIS witness Irwin, these benefits include: (1) centralized management and integration of telecommunications and information management services; (2) least-cost routing of interLATA traffic; (3) modem pooling and multiplexing; (4) centralized attendant

services; (5) combined voice and data management movement; (6) discounted long distance services; (7) message center services; (8) high speed data transmission and facsimile; and (9) conference calling. In addition, STS providers may offer their customers the following services: (1) heat, light, air conditioning and humidity control; (2) fire and security services; (3) word processing and data base retrieval; and (4) other office automation services. SWB witness Marcell also testified that STS is a relatively new telecommunications marketing concept which provides reduced cost and/or higher technology communications services for small and medium customers through economies of scale achieved through the sharing of a PBX. According to Mr. Marcell, these sharing benefits had previously been enjoyed only by the large customer (Exhibit 12, pp. 2-3). It is clear from the evidence that there are significant benefits to be derived from the sharing of a PBX by small and medium-sized businesses in an STS arrangement.

The critical issues are whether the Commission should permit (1) the sharing of access lines and (2) "intertenant" calling or "behind-the-switch" calling in STS arrangements. On these issues, there is significant disagreement among the parties.

Several witnesses discussed the potential benefits of permitting the sharing of access lines and behind-the-switch calling in STS arrangements. Staff witness Kern testified that the most obvious advantage associated with the sharing of access lines is the potential local service cost reductions received by those customers who participate in the sharing arrangement. He also testified that the sharing of access lines may result in a more efficient use of local exchange facilities, particularly between the central office and the building or buildings served by the STS providers.

Republic Telcom witness Pelcovits explained why the sharing of local access lines is more efficient than requiring each tenant to use only dedicated subscriber loops or a partitioned PBX (Exhibit 44, pp. 5-10). She testified that by aggregating

the local calling needs of customers at a single location through the use of a shared PBX, the total amount of facilities needed to serve those customers may be reduced. The shared PBX would require fewer access lines to serve all the tenants than would be needed if each tenant used its own PBX and was individually hooked up for local exchange service. According to Dr. Pelcovits, the larger the number of users who combine their demand for telephone service between two points (e.g., STS building and central office of the telephone company), the greater the savings in facilities, including local access lines. Other STS proponents testified that the cost savings resulting from the sharing of access lines was an important element in making the total package of services provided by the STS providers attractive and economically feasible.

Witnesses Queen and Thompson testified that the local exchange company would experience reduced administrative and maintenance expenses if the sharing of access lines was permitted. Since the STS provider would be the customer of the local exchange company rather than several individual tenants in the building, billing and other administrative costs may be reduced.

As previously discussed, SWB witnesses opposed the sharing of access lines and behind-the-switch calling in STS arrangements for several reasons. According to these witnesses, the sharing of local access lines will result in a revenue reduction to the local exchange company. Secondly, stranded investment and forecasting problems will be exacerbated, especially if the telephone companies remain the providers of last resort for the individual tenants in STS buildings. Thirdly, universal telephone service may be impaired and the traditional ratemaking process would be irrevocably altered if local access line sharing and behind-the-switch calling is permitted.

SWB witness Marcell explained the company's opposition to intertenant calling behind a shared PBX in STS buildings. According to Mr. Marcell, intertenant calling would have the effect of reducing the number of exchange access lines that

would otherwise be provided by the telephone company. Secondly, the company was concerned that major buildings within significant business districts in a metropolitan area could each be tied together with a shared switch, and those discrete business districts could be brought together through privately provided trunks to create a private network of all major businesses in the area. Such private networks would be significant competition to the local exchange company.

D. Regulatory Considerations

In this proceeding, the Commission is faced with difficult and often conflicting public policy goals as they relate to the provision of local exchange service by certificated local exchange telephone companies and the emerging shared tenant services industry in Missouri. The Commission must balance, among other public policy goals, the need for universal access to basic telephone service, the need to encourage technical and economic efficiency in the telecommunications network, and the need to avoid deterring technological advancements. The Commission must balance the specific interests of the tenants of STS buildings, the remaining ratepayers of the local exchange telephone company, and the financial interests of the telephone company itself. The Commission is also mindful of the procompetitive national telecommunications policy and the need to promote economic development in the State of Missouri.

As it reviews various public policy options in this proceeding and other major telecommunications proceedings, the Commission must keep in mind several priorities. First, universal telephone service at affordable rates must be maintained. An extensive and pervasive telecommunications network is vital to economic development and growth, the health and well-being of our citizens, and our national defense.

Second, the public should be permitted to enjoy the benefits of competition in workably competitive markets, while being protected from the potential abuses of

monopoly or market power in the remaining markets: markets capable of becoming workably competitive must be identified, and then permitted to develop.

Third, until workably competitive markets have been clearly identified and developed, it may be necessary for regulatory policies to encourage new competition without damaging remaining monopoly customers. During this developmental period, it will be necessary to carefully monitor these markets to ensure that noncompetitive services do not subsidize the competitive services.

E. Public Policy Conclusions Regarding the Sharing of Access Lines and Intertenant Calling in STS Arrangements

Based upon the evidence submitted in this proceeding, the Commission has concluded that it is both possible and appropriate to design tariffs which will permit the sharing of access lines and intertenant calling in STS buildings, while protecting the legitimate interests of the remaining ratepayers and the financial interests of the local exchange company and its shareholders. The Commission will not require that STS providers serve their customers through the exclusive use of partitioned PBX switches. Instead, the Commission will order additional proceedings to develop permanent tariffs which will permit the sharing of access lines and intertenant calling in STS arrangements under specific conditions discussed herein. Until permanent tariffs can be developed and approved, the Commission will authorize the interim provision of STS, including the sharing of access lines and intertenant calling, under conservatively drawn limits.

It is clear from the evidence that it is more efficient technologically for several tenants in an STS building to aggregate their calling needs through a shared PBX and thereby utilize fewer access lines, than it would be to require each tenant to subscribe individually to separate access lines. It is also apparent that it would be more efficient to permit intertenant calling behind a shared PBX than to require all calls between STS tenants to be routed through the shared PBX to SWB's central office utilizing the local loop, and returning through the local loop to the STS provider's PBX before the call is completed. By permitting behind-the-switch

calling, STS tenants will not have to access the local exchange company's network and utilize its central office capacity to complete calls between the tenants. The Commission therefore concludes that the sharing of access lines and permitting intertenant calling within STS buildings will promote the efficient use of the telecommunications network. Rather than attempting to impede the efficient use of telecommunications network facilities, the Commission finds it more constructive to concentrate on drawing careful and reasonable limits to be applied to the emerging STS industry that will promote the most efficient use of the network while protecting the interests of the remaining ratepayers and the stockholders of the local exchange company.

There has been little empirical evidence presented in this proceeding to demonstrate how much revenue a local exchange company would lose from shared tenant service ventures. Although SWB's witness Marcell estimated \$10 million to \$30 million of revenue would be "at risk" if the Commission permitted the sharing of access lines, the Commission is not convinced that his estimate is a reasonable projection of the amount of revenue that would be lost. His estimate did not take into account the fact that some customers may already be utilizing a PBX, and therefore some of those revenues would not truly be "at risk". Although Marcell's estimate excluded potential revenue loss from the reduction in the number of access lines and certain vertical services, it did not adequately consider increased revenues that would be expected to result from such services as direct inward dialing (DID). Nor did his estimate consider that the availability of STS may stimulate demand for telecommunications services and facilities, thus generating additional revenues for local exchange companies. Other parties to this proceeding provided their own estimates of lost revenue related to the provision of STS. The estimates varied widely. Some witnesses indicated there would be some lost revenues; however, other witnesses suggested that SWB would increase its revenues as a result of increased DID and related cost savings.

The Commission is not convinced by the evidence in this proceeding that "behind-the-switch" calling in STS buildings represents a significant threat to the revenues of the local exchange company, assuming the existence of reasonable tariff restrictions which would prohibit the development of extensive private networks. Communications between tenants, in most instances, would be expected to be infrequent.

The Commission concludes that it is unable to determine from this record the precise revenue effect of the provision of STS upon the local exchange company. However, the Commission finds that, even if there is a possibility of some revenue reduction from the sharing of access lines in STS buildings, this potential adverse impact upon the local exchange company is more appropriately addressed through rate design and appropriate tariff provisions than by requiring STS customers to subscribe to more physical connections than required to meet their telecommunications needs. Although several parties suggested the Commission was preempted by the FCC from regulating "behind-the-switch" calling, the Commission need not reach that issue since it has found that intertenant calling should be permitted.

SWB argues that the sharing of access lines in STS arrangements will result in additional "stranded investments" and facilities planning difficulties. The problem of stranded investment may occur when there are short-run changes in revenues and costs, with revenues decreasing more rapidly than costs. SWB is concerned that the sharing of access lines will result in the abandonment of existing local exchange plant that will remain in rate base without producing revenues. Staff witness Goldammer also testified that extensive development of STS could result in stranded investment for the telephone company, and result in increasing local exchange rates for remaining ratepayers.

The Commission recognizes that there may be some potential in the short run for the development of "stranded investment" as a result of the sharing of access lines in STS buildings. However, the Commission believes that in the long run the

decision to permit the sharing of access lines will result in fewer economic resources being expended by society as a whole for the purpose of gaining access to telecommunications services.

The evidence in this proceeding also indicates that, at least initially, STS is likely to be found in new buildings, rather than retrofitted structures. If the telephone company, in conjunction with real estate developers and STS providers, employ reasonable facilities planning, the Commission believes most "stranded investment" concerns will be largely mitigated.

From SWB witness Crosby's testimony, it appears that telephone company plant in the past has been installed without specific anticipation of particular customer demand. In other words, SWB has planned its local exchange network before it knew with any certainty the specific needs of particular customers in a given area. As a result, there has always been some risk of stranded investment.

At the time of hearing and prior to the existence of STS in Missouri, SWB had an average "hot fill" factor of 60 to 65 percent. This percentage may indicate that there is presently underutilization of local exchange plant (in some areas) which is being recovered in rates. The Commission hopes that SWB can increase this percentage, to some extent, by improving its long term forecasting and facilities planning. The evidence also indicated that spare plant resulting from the sharing of access lines stands a reasonable chance of being utilized to serve other customers in the area. Such plant might be used for a different purpose than originally intended or relocated for more economic use. In some cases, it may be possible to defer future construction, thereby helping to reduce the overall construction budget of the local exchange company.

In addition, the Commission would note that stranded plant and forecasting problems are likely to occur as a result of any customer connecting its PBX to SWB's network--whether the customer is a single business or an STS provider. The Commission has concluded that the mere potential for "stranded investment" in the

short run is an insufficient reason to prohibit the sharing of access lines in STS buildings.

The ability to make long-run adjustments in local exchange facilities may be limited to the extent that a company is required to function as a "provider of last resort". If the local exchange company is required to serve any and all tenants in an STS building who desire service from the utility, then plant capacity must, at any particular point in time, exceed current usage to take into account the possibility that tenants in an STS building will decide in the future to take service directly from the telephone company. For the reasons stated below, the Commission will not require local exchange companies to act as a "provider of last resort" for tenants who voluntarily decide to occupy an STS building. This decision should help to reduce the potential for stranded plant and reduce, to some extent, forecasting and facilities planning difficulties.

Throughout these proceedings, the Commission has considered the impact of STS on local exchange users outside the STS building. A fundamental issue and concern has been the potential impact of the sharing of access lines and intertenant calling in STS buildings upon the concept of universal telephone service at affordable rates. The emergence of competitive forces in a previously monopoly market may bring pressure for cost-based pricing and deaveraging of rates. However, SWB witness Barry has testified that cost-based pricing and deaveraging of rates may occur notwithstanding the Commission's decision regarding the sharing of access lines in this proceeding.

Although SWB maintains that there is no tariff solution that will adequately address its concerns with regard to the sharing of access lines in STS buildings, other parties have disagreed. Public Counsel's witness Finder proposed tariff provisions which he believes address the concerns set forth by SWB. General Telephone does not want the Commission to take action precluding the possibility of filing tariffs permitting STS if the problems set forth by SWB are satisfactorily

resolved. Several of the parties who generally opposed the sharing of access lines, including ALLTEL and Staff, have suggested that another proceeding would be necessary to determine adequate tariff solutions if the Commission permits the sharing of access lines in STS buildings. The Commission also notes that numerous jurisdictions have adopted or are considering tariffs which permit the sharing of access lines in STS buildings, define the relationship between the STS providers and the telephone company, as well as establish the terms, conditions and rates to be charged for connecting STS providers to the local exchange network. The Commission believes that rates and tariffs can be developed to alleviate or at least mitigate the concerns raised by opponents of STS herein. The Commission finds that an appropriate pricing system and careful construction of reasonable limits on allowable STS applications will promote the goal of universal telephone service in Missouri.

Finally, the Commission finds that it is not necessary or in the public interest to draw an artificial line segregating the small and medium-sized customer from the benefits of current PBX technology enjoyed by large customers. The Commission finds it is reasonable to allow small and medium-sized customers to utilize a PBX and its enhanced features in a similar manner as large, single entity customers use this technology. The Commission has found herein that it is more efficient for several customers to aggregate their communications needs and utilize fewer access lines than to require them to subscribe individually to separate access lines with excess capacity. The Commission does not believe that a requirement that STS providers utilize a partitioned switch will promote the efficient use of the telecommunications network. If the Commission required the exclusive use of partitioned PBXs in the provision of STS, it would effectively sacrifice engineering efficiencies to ensure against the mere possibility that the local exchange telephone company would lose some revenues, experience "stranded investment" or be required to modify its traditional facilities planning procedures. While it is appropriate to attempt to avoid substantial revenue erosion for the local telephone company and

unnecessary stranded investment due to STS, the Commission believes these goals may be largely accomplished through rate design and tariff provisions.

F. Tariff Restrictions Being Considered

Although the Commission believes at this time that appropriate tariff provisions can address SWB's concerns regarding any potential detrimental effects on the local exchange company resulting from STS, the multiple connection of PBXs could create a telephone network that would essentially compete with the local exchange company's provision of service. At this time the Commission finds that there would be detriment to the local exchange company and its ratepayers by duplicating the local network through the multiple connection of PBXs. Therefore, the Commission wishes to construct a definition of allowable STS provision which would not jeopardize the local exchange network. The Commission is considering a definition including, but not limited to, the following:

The local exchange telephone company shall provide access lines to a provider of shared tenant services (STS) where such shared tenant services (including sharing of access lines and intertenant communications) are to be provided:

- (1) only within a single building; or,
- (2) only within a complex of buildings under common ownership or management, where the buildings are located on a single tract or adjoining or contiguous tracts of ground and are used for related purposes (such as a medical complex, industrial park, shopping mall, retirement village or airport complex); and,
- (3) through one PBX and not connected PBXs; and,
- (4) all users of shared tenant services through the single PBX have a contractual relationship with the STS provider or its agent which includes property interests and services other than telecommunications services; and
- (5) the STS provider is utilizing a PBX which is registered with the FCC and inside wiring which conforms to the standards of the local exchange company.

The Commission does not wish to institute permanent tariff provisions adopting its proposed definition without further input from the parties specifically addressing it. Some of the questions the Commission would like to see addressed in the next phase of this proceeding are:

(a) Should STS be allowed in cooperatives and condominiums?

(b) Should STS be allowed in separate office buildings on adjacent city blocks which are under the same ownership or under common management?

(c) Is the single-PBX restriction reasonable and, if not, how can it be modified while still preventing the construction of large-scale alternative local exchange networks, particularly in urban centers?

(d) Should interbuilding STS applications be restricted to buildings affiliated by use (such as medical complexes) rather than affiliated only by ownership or management?

(e) Should it be specified that STS is permitted within individual buildings, separately owned, which are located on land owned by a common third party, but is not permitted between such buildings?

(f) Should STS include facilities under one roof or which are physically contiguous and adjoining, although not under common ownership, and meet items (3) and (4) of the proposed definition above?

Therefore, the parties should be prepared to address these definitional limitations, and their appropriateness and viability, and suggest alternatives and proposed tariff language for implementing such restrictions, in the next phase of this proceeding as ordered below. The parties should also be prepared in the next phase to address the most appropriate basis for establishing rates for STS access lines (e.g., should rates be set on a measured, rather than flat rate, basis, and at what rate level should either measured or flat rates be set?)

G. Miscellaneous Issues

1. Provider of Last Resort

As previously stated, the Commission finds it is no longer necessary for SWB to remain the "provider of last resort" for customers in STS buildings who desire

to receive service from the local exchange telephone company. Since the provision of STS is pursuant to private contract or lease and the tenants or occupants willingly enter into this type of arrangement, the Commission finds it is unnecessary for the local exchange company to be required to service anyone in the STS provider's building at the whim of a tenant. The local exchange company's responsibility is to its customers and in this instance, the customer is the STS provider. The responsibility of the local exchange company ends at the point of connection to the STS provider's PBX.

2. Quality of Service

The Commission has considered the question of quality of service problems due to STS provision. The Commission finds these problems are somewhat speculative at this time, but their existence may be mitigated somewhat by the Commission requiring all STS providers to utilize only those PBXs registered with the FCC and to provide wiring which conforms to the standards of that required of the local exchange company. Any subsequent service problems created by the STS provider's equipment or wiring would be a matter of private contract between the provider and its tenants and does not involve the Commission. The local exchange company's customer, the entity responsible for paying the charges to the company, is the STS provider.

3. Definition of Local Exchange

The Commission is rejecting SWB's proposed definition of local exchange service and is maintaining the current definition found in 4 CSR 240-32.020(26) and existing local exchange company tariffs. The Commission finds the proposed definition is overly broad. The Commission finds that the sharing of access lines and intertenant calling are not the provision of local exchange service as that term is currently defined.

4. Williams and Calmer

Several parties cite Williams and Calmer, Inc. v. Southwestern Bell Telephone Company, 27 Mo. P.S.C. 697, 70 P.U.R. (N.S.) 35 (1947) as requiring the

Commission to prohibit STS. In that case the Commission found that an arrangement similar to STS constituted the resale of local exchange service, and SWB was entitled to enforce its tariff provision enforcing that prohibition.

The Commission notes the general rule with regard to administrative bodies is that there is no stare decisis. The courts have held that there is no application of the doctrine of stare decisis to administrative tribunals. City of Columbia v. Missouri State Board of Mediation, 605 S.W.2d 192 (Mo. App. 1980); Mitchell v. City of Springfield, 410 S.W.2d 585, 589 (Mo. App. 1966). The courts have held that need for flexibility to meet changing situations prevents the rigid enforcement of this doctrine on administrative decisions.

The Williams and Calmer case is such an instance. That case was decided 38 years ago. It was decided prior to the FCC deregulation of CPE and prior to the AT&T divestiture. In any event, the Commission does not find it to be controlling. It did not consider the "public utility" question, nor did it consider the issue in light of the question of federal regulations requiring the connection of CPE.

H. Interim Provision of STS

The Commission finds that another proceeding may be necessary to develop the appropriate permanent tariffs which allow for the provision of STS service as it has been described herein. However, the Commission recognizes that waiting for another proceeding would result in STS providers not being allowed to connect with the local exchange network in the immediate future. The Commission believes the best recourse in this situation is to allow at least some STS providers to connect to the local exchange network on an interim basis under conservatively drawn limits. The Commission will authorize the interim provision of STS as follows.

1. Rate

The Commission finds that STS providers meeting the terms for interim connection should be charged at the current flat PBX trunk rate until otherwise

ordered by the Commission. In the next phase of this proceeding, parties may demonstrate the reasons, if any, why STS providers should utilize a different rate. Parties should also address, in the next phase, the question of whether STS access lines should be charged for on a measured, rather than a flat rate, basis. To help the Commission monitor the development of STS provision, the Commission is directing the local exchange companies to maintain information for this customer-specific arrangement similar to that required under 4 CSR 240-35.030.

2. Terms

As previously stated, the Commission does not wish to allow alternative local exchange networks to begin flourishing within the state. The next proceeding is necessary to develop tariffs which will alleviate that concern. In the interim, the Commission will utilize the following definition of an allowable STS application:

The local exchange telephone company shall provide access lines to a provider of shared tenant services (STS) where the shared tenant services (including sharing of access lines and intertenant communications) are to be provided:

- (a) only within a single building; and,
- (b) through one PBX and not connected PBXs; and,
- (c) all users of shared tenant services through a single PBX have a contractual relationship with the STS provider or its agent which includes property interests and services other than telecommunications services; and
- (d) the STS provider is utilizing a PBX which is registered with the FCC and inside wiring which conforms to the standards of the local exchange company.

The Commission is requesting SWB to file interim tariffs in accordance with this section. All other local exchange companies should be prepared to file interim tariffs of this nature if service is requested by an STS provider.

I. Customer-owned Coin Telephones

The Commission now turns to the issue of Commission jurisdiction over customer-owned coin telephone (COCT) providers. In its original order the Commission

found COCT providers were not telephone companies as provided by statute, and not subject to the Commission's jurisdiction. Petitions for rehearing were filed by the Office of Public Counsel and SWB. Briefs on that subject were filed by SWB, Public Counsel, Pay Phones of Mid-America, Staff and Capital Tel Systems, which, on February 20, 1985, filed a Petition For Intervention Out Of Time. SWB opposed that petition. The Commission finds the intervention will not unduly prejudice the parties and is therefore granting that intervention.

The Commission has reviewed the parties' briefs and reevaluated its initial findings and conclusions. After further consideration, the Commission has concluded that a legal distinction exists between COCT providers serving various types of locations. As previously discussed, *supra* at 14-16, Missouri case law suggests that telephone instruments must be offered "for public use" before the providers are considered "public utilities". To constitute a public use, all persons must have an equal right to such use, and the service must be available to the public generally and indiscriminately. See State ex rel. Danciger and Co. v. Public Service Commission, 205 S.W. 36 (1918); City of St. Louis v. Mississippi River Fuel Corporation, 97 F.2d 726 (8th Cir. 1938). The Commission concludes that COCT providers who provide customer-owned coin telephone instruments on private premises (e.g., restaurants, bars, service stations, barbershops, etc.) where the coin telephones are accessible primarily to customers of the business, and not to the public generally, are not "public utilities" and therefore not subject to the jurisdiction of this Commission.

The Commission finds that COCT providers who provide customer-owned coin telephone instruments in large public areas (e.g., airports, stadiums, convention centers, government buildings, etc.) could arguably be considered telephone companies "affording telephone communications for hire" to the public generally. However, the Commission agrees with Staff's position and finds that the provision of telephone service in these instances greatly resembles the "transient customer" exception which

has been utilized by the Commission in the past for entities which purchase and then resell access to transient customers. These entities include hotels, motels and hospitals. The Commission has not exercised its jurisdiction over these entities in the past. No party to this proceeding has provided any compelling legal or policy rationale which would justify a departure from the practice of permitting unregulated entities to provide access to the telephone network to transient customers. The Commission therefore has concluded it should not exercise jurisdiction over COCT providers who provide telephone instruments in large public areas. For these reasons, the Commission is denying the petitions for rehearing filed by Public Counsel and SWB.

However, the Commission determines that Staff and Public Counsel's recommendation that the Commission establish a 25-cent maximum charge to be imposed by customer-owned coin service providers to customers for all local calls made from a COCT is reasonable and should be a prerequisite to connecting with the local exchange company.

J. MIS Request

The Commission notes that in Case Nos. TR-85-167 and TR-85-168 with regard to ESSX 400 service, MIS requested all STS providers be allowed to become customers of SWB's ESSX 400 service if STS provision is allowed. The Commission is not prepared at this time to grant that request.

The Commission finds that any objections not ruled upon are hereby overruled. Exhibits 12 and 41 are hereby received into evidence.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

Southwestern Bell Telephone Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, R.S.Mo. 1978. The Commission concludes that STS providers are not public utilities providing local

exchange service. The Commission concludes that STS providers are simply another customer classification and should be allowed the same benefits as large customers with regard to the use and connection of customer-owned PBXs to the local exchange network, within the bounds established hereinabove.

The Commission further concludes that it is not necessary to exercise jurisdiction over COCT providers at this time for the reasons herein stated. Therefore, the petitions for rehearing in that matter are denied.

It is, therefore,

ORDERED: 1. That the Commission hereby establishes docket No. TO-86-53 for the development of tariffs as discussed herein. That case shall be styled: "In the matter of the establishment of appropriate permanent tariffs for the provision of Shared Tenant Services (STS) within local telephone company exchanges".

ORDERED: 2. That Southwestern Bell Telephone Company be, and is, hereby directed to address in docket No. TO-86-53 the tariff provisions and questions presented in the body of this order.

ORDERED: 3. That Southwestern Bell Telephone Company be, and is, hereby directed to file interim tariffs, as specified herein, within ten (10) days after the effective date of this order.

ORDERED: 4. That all other local exchange companies in the State of Missouri be, and are, hereby directed to file interim tariffs in accordance with this order within thirty (30) days of written notification by a shared tenant service provider that service is needed.

ORDERED: 5. That all local exchange companies be, and are, hereby directed to maintain information on the provision of Shared Tenant Services similar to that required under 4 CSR 240-35.030.


ORDERED: 6. That the petitions for rehearing filed by Public Counsel and Southwestern Bell Telephone Company on the issue of customer-owned coin telephone providers are hereby denied.

ORDERED: 7. That local exchange companies are hereby directed to include in their tariffs provisions which require customer-owned coin telephone providers to charge no more than twenty-five cents (25¢) per local telephone call as a condition for connecting to the local exchange telephone company network.

ORDERED: 8. That the late-filed intervention of Capital Tel Systems is hereby allowed.

ORDERED: 9. That this report and order shall become effective on the 23rd day of October, 1985.

BY THE COMMISSION


Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave, Mueller,
Hendren and Fischer, CC., Concur and
certify compliance with the provisions
of Section 536.080, R.S.Mo. 1978.

Dated at Jefferson City, Missouri,
on this 23rd day of September, 1985.