

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

| | | |
|---|---|--------------------------|
| In the matter of the establishment of |) | |
| appropriate permanent tariffs for the |) | |
| provision of shared tenant services (STS) |) | <u>Case No. TO-86-53</u> |
| within local telephone company exchanges. |) | |
| |) | |

APPEARANCES: Michael A. Meyer, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101,

and

Ann Mesle, Attorney, Southwestern Bell Telephone Company, 500 East Eighth Street, Kansas City, Missouri 64106, for Southwestern Bell Telephone Company.

J. Richard Smith, Vice President and General Counsel, and Joseph P. Cowin, Senior Attorney, United Telephone Company of Missouri, 6666 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri.

W.R. England, Attorney at Law, and Paul A. Boudreau, Attorney at Law, Hawkins, Brydon & Swearengen, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for: Mid-Missouri Telephone Company, Northeast Missouri Rural Telephone Company, Grand River Mutual Telephone Corporation, Steelville Telephone Exchange, Inc., Continental Telephone Company of Missouri, Contel System of Missouri, Inc., Missouri Telephone Company, Citizens Telephone Company, Kingdom Telephone Company, and McDonald County Telephone Company.

John T. Murray, Assistant General Counsel, GTE North Incorporated, 11 Eleventh Avenue, Grinnell, Iowa 50112, for GTE North Incorporated.

Mark A. Brittingham, Attorney at Law, Blumenfeld, Sandweiss, Marx, Tureen, Ponfil & Kaskowitz, P.C., 168 North Meramec, Suite 400, Clayton, Missouri 63105, for: Professional Business Centers, Inc.; Chesterfield Village Office Services, Inc.; and Suite 400, Inc.

W. Dudley McCarter, Attorney at Law, Suelthaus & Kaplan, P.C., 8000 Maryland Avenue, Ninth Floor, Clayton, Missouri 63105, for: Advantage Suites, Ltd., and Telex Computer Products, Inc.

Jean L. Kiddoo, Attorney at Law, Pepper, Hamilton & Scheetz,
1777 F Street, N.W., Washington, D.C. 20006,

and

Willard C. Reine, Attorney at Law, 314 East High Street,
Jefferson City, Missouri 65101, for Ad Hoc Coalition of
Shared Telecommunications Services Providers.

Richard S. Brownlee, III, Attorney at Law, and
Donald C. Otto, Jr., Attorney at Law, Hendren & Andrae, Post
Office Box 1069, Jefferson City, Missouri 65102, for Competi-
tive Telecommunications Association of Missouri.

C.K. Casteel, Jr., Senior Attorney, MCI Telecommunications
Corporation, Southwest Division, 100 South Fourth Street,
St. Louis, Missouri 63102,

and

Leland B. Curtis, Attorney at Law, and Carl J. Lumley,
Attorney at Law, Curtis, Bamburg, Oetting, Brackman &
Crossen, P.C., 130 South Bemiston, Suite 200, Clayton,
Missouri 63105, for MCI Telecommunications Corporation.

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

Jeremiah D. Finnegan, Attorney at Law, and
Hugh F. O'Donnell, III, Attorney at Law, Finnegan & Kopp,
4049 Pennsylvania, Suite 300, Kansas City, Missouri 64111,
for Missouri Hotel and Motel Association.

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.

Linda K. Ohlemeyer, Assistant General Counsel, Missouri
Public Service Commission, Post Office Box 360,
Jefferson City, Missouri 65102, for the staff of the Missouri
Public Service Commission.

HEARING

EXAMINERS: Holly A. Wilber, Paul S. DeFord, Cecil I. Wright.

REPORT AND ORDER

On September 23, 1985, the Commission issued a Report And Order in Case No. TC-84-233 which allowed the filing of interim tariffs which established the rates, charges and conditions for providing telecommunications services to shared tenant service (STS) locations. In its Report And Order in TC-84-233 the Commission established this docket, TO-86-53, to consider permanent STS tariffs within local

telephone company exchanges and ordered the parties to address certain issues as discussed in the Report And Order.

On May 7, 1986, the Commission issued an order establishing an intervention deadline in this docket and scheduling a prehearing conference to allow the parties an opportunity to recommend a procedural schedule. On June 24, 1986, the Commission granted intervention to: Com-Link 21/STS, Inc.; MCI Telecommunications Corporation; City of Kansas City, Missouri; State of Missouri; AT&T Information Systems Inc.; Competitive Telecommunications Association of Missouri; Missouri Hotel and Motel Association; Northeast Missouri Rural Telephone Company; Contel System of Missouri, Inc.; Steelville Telephone Exchange, Inc.; Mid-Missouri Telephone Company; Grand River Mutual Telephone Corporation; Missouri Telephone Company; Citizens Telephone Company; Continental Telephone Company of Missouri; Ad Hoc Coalition of Shared Telecommunications Services Providers; United Telephone Company of Missouri; AT&T Communications of the Southwest, Inc.; General Telephone Company of the Midwest (now GTE North Incorporated); McDonald County Telephone Company; and Kingdom Telephone Company. On June 27, 1986, the parties filed a proposed procedural schedule.

On January 22, 1987, Com-Link 21/STS, Inc., withdrew its intervention. The Commission subsequently granted intervention to Advantage Suites, Ltd.; Telex Computer Products, Inc.; Professional Business Centers, Inc.; and Chesterfield Village Office Services, Inc., and Suite 400, Inc. City of Kansas City did not participate in the hearing or file a brief in this matter.

On March 24, 1987, the Commission issued an order denying a Motion In Limine filed by Southwestern Bell Telephone Company to limit the scope of the proceedings in this docket. The Commission determined that additional issues should be addressed by the parties and adjusted the procedural schedule accordingly.

The hearing was held in this matter from July 27, 1987, through July 31, 1987. A briefing schedule was established. On November 23, 1987, several parties requested the Commission set a date for filing a Joint Recommendation settling some

of the parties' interests in this matter and requested an extension of the date for filing reply briefs. The Commission set the dates as requested and a Joint Recommendation was filed on December 9, 1987. Reply briefs were filed on January 12, 1988.

On January 22, 1988, Southwestern Bell Telephone Company (SWB) filed a Motion For Leave To File Rebuttal Suggestions and a Rebuttal Brief. As recognized by SWB in its motion, there are no provisions for a rebuttal brief in the Commission's procedures. SWB states it wishes to respond to comments concerning the Joint Recommendation, which it could not do previously.

The Commission has determined that SWB is not justified in filing a rebuttal brief. SWB could have addressed any issues in its reply brief. SWB's motion will be denied.

Findings of Fact

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

The Commission in docket TC-84-233 issued a Report And Order which authorized shared tenant services (STS) tariffs on an interim basis and under certain conditions. Case No. TC-84-233 was presented within the context of a complaint filed by Southwestern Bell Telephone Company which contended that STS providers came within the definition of a public telephone utility and could not offer STS without a certificate from the Commission. RE: Shared Tenant Services (STS), 27 Mo. P.S.C. (N.S.) 602, 611 (1985).

STS is a service provided through a customer-owned private branch exchange (PBX) which enables small to medium sized businesses 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. In Case No. TC-84-233 the Commission found that STS was provided typically by landlords or real estate developers

who offer the telephone services as part of an overall package of services. STS at 607.

The Commission determined based upon the evidence in TC-84-233 that STS providers were not public utilities. The Commission determined that STS providers were providing telecommunications services only as part of a complex package of services and only for private use and not public use. STS at 613. Based upon this finding the Commission established conditions for the provision of STS in Missouri and ordered this docket for determination of appropriate permanent tariffs.

The Commission determined that on an interim basis STS providers should be authorized to provide service under the following conditions.

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 inter-tenant communications) are to be provided:

1. only within a single building; and,
2. through one PBX and not connected PBXs; and,
3. 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
4. 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. STS at 624.

The Commission clarified its conditions further in its Order Rejecting Tariffs (ORT) issued December 20, 1985, in Case No. TC-84-233. STS/ORT, 28 Mo. P.S.C. (N.S.) 95, 96 (1985). The Commission stated that it "intended the definition to include the situation wherein a building owner leases his entire building and that lessee then sublets portions of that building to tenants or occupants. The Commission never intended an STS customer to be simply one of the tenants in the building." STS/ORT at 96. The Commission accepted SWB's restriction of a single building to exclude buildings connected by tunnels, passageways or walkways. STS/ORT at 96.

The Commission also clarified its determination that a local exchange company (LEC) was no longer the provider of last resort at an STS location. The Commission stated that the LEC must continue service to existing customers who continue to receive service from the LEC, in existing buildings, even if the building is designated an STS location, but the LEC has no provider of last resort obligation to a "new customer, customer premises or building" which is designated an STS building. The Commission also allowed the LEC to compete on an interim basis on a detariffed basis in STS buildings where it no longer was a provider of last resort. STS/ORT at 97.

The Commission ordered the establishment of this docket for the determination of what permanent tariffs should be applied to STS. In addition, the Commission asked the parties to address several issues in this docket. Those issues 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? (The proposed definition was adopted and is set out above.) STS, 27 Mo. P.S.C. (N.S.) at 622.

The Commission set the rates for the interim STS tariffs at the PBX rates charged by the LEC. The Commission requested the parties address the appropriate rates to be charged STS providers on a permanent basis in this docket. The

Commission questioned whether the rates should be measured rates rather than flat rates, and at what level they should be set.

Because of the intervention of companies who provided an STS service as part of their executive suite package the Commission ordered that three additional issues be addressed in this docket. (Order Denying Motion issued March 24, 1987.) Those issues are: (1) should LECs retain the provider of last resort status at STS locations; (2) should STS locations be authorized to expand beyond a landlord-tenant relationship or similar property arrangement; and (3) should STS be authorized in less than a single building. Some of the questions raised by these three issues overlap the questions set out in Case No. TR-84-233.

By including these last three issues in this docket, the Commission has essentially determined it should reexamine its interim decision on all issues of STS tariffs. The Commission has also determined that it would be required to reexamine these issues because of the new statutory provisions of Chapters 386 and 392 passed as H.B. 360 (effective September 28, 1987). These provisions address STS directly and must be considered in determining the appropriate permanent tariffs for STS.

Issues

Although the evidence indicates that STS is being provided only in a few limited locations in Missouri, the issues involved in determining the conditions and rates to be applied to STS providers are very complex. As cited earlier, the Commission asked the parties to address certain questions in this docket. The Commission has combined the issues into the separate sections below. Even though the sections may not specifically address the questions raised by the Commission in its Report And Order in Case No. TC-84-233, the decision in this matter resolves all of the questions raised by the Commission.

PROVIDER OF LAST RESORT

The Commission in Case No. TC-84-233 removed the LEC's obligation to be the provider of last resort for locations which were designated as STS locations. The

Commission stated that the LEC's responsibility ended at the point of connection to the STS provider's PBX. SWB filed proposed permanent tariffs in this docket reflecting this decision, and has taken the position that once a location is designated as an STS location the LEC never reacquires its obligation to provide service to that location. SWB contends that these STS locations are forever deregulated even though the existing use changes. United Telephone Company of Missouri (United) and Missouri Telephone Company, et al. (Mo. Tel. et al.), support SWB's position. There was some question whether the service to the STS locations under the interim tariff should be termed detariffed or deregulated. SWB tariffs use the term deregulated, which the Commission will use in this order.

Commission Staff (Staff), Office of Public Counsel (PC), Ad Hoc Coalition of Shared Telecommunications Services Providers (Ad Hoc), MCI Telecommunications Corporation (MCI), Competitive Telecommunications Association of Missouri (CompTel), and Missouri Hotel and Motel Association (MHMA) take the position that the provider of last resort obligation should be retained by the LEC. Staff and MCI take the position that where there is an existing and operating STS provider the LEC is under no obligation to serve, but if the STS provider abandons the location, then the LEC's obligation should be restored.

The Commission in Case No. TC-84-233 reviewed the LEC's provider of last resort obligation because of concerns about the effect of STS locations on the ability of the LEC to make long range plans for facilities. The Commission stated that "[i]f 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." STS, 27 Mo. P.S.C. (N.S.) 602, 620 (1985). Additionally, the Commission stated that STS was being provided pursuant to private contracts or leases and those who take service from an STS provider do so willingly, so the LEC

should not be required to stand by in case the customer changed his mind concerning service from the LEC.

By removing the provider of last resort obligation from the LEC the Commission was attempting to address what it determined was a legitimate problem facing LECs if STS proliferated throughout an LEC's service area. The evidence in this case does not support the Commission's initial concerns, nor has the experience of STS in Missouri met expectations. The Commission has also determined that there are significant policy considerations which, upon review, weigh against the Commission's initial determination.

The evidence presented by SWB in this proceeding does not support the Commission's initial concern about LEC long range planning. SWB's witnesses testified that since SWB was traditionally the sole provider of telecommunications service, SWB planned and built facilities accordingly. This meant that in existing multitenant buildings, SWB sized and installed feeder and riser cable to meet standard requirements, 5-10 pairs per 1,000 square feet. The evidence was that few efficiencies could be achieved in existing multitenant buildings by removing the provider of last resort obligation, since the facilities were already in place. Thus, whether an existing building converted to STS or to a single tenant, SWB would have the same idle cable investment.

SWB's evidence for new buildings was that SWB would plan facilities according to the owner's and tenants' stated intention, if SWB had sufficient notice of the proposed use. If SWB had sufficient notice that the location would be an STS building or would have a single tenant, then SWB would install facilities accordingly. If the use of the building was not known SWB would wire the building as if it would be multitenant.

The Commission finds that the evidence concerning SWB's planning process does not support the removal of the provider of last resort obligation. The evidence indicated planning is similar for existing buildings whether they become STS or

single tenant, and planning for new structures is similar whether the occupant will be an STS provider or a large single tenant. SWB's planning process accepts that there will be excess cable facilities in buildings as tenant building usage changes. The Commission thus finds the presence of an STS provider in the building will have little if any effect on SWB's planning process. Notice of the building's use is a more important factor than whether there will be an STS provider in the building.

Ad Hoc and other parties have argued that the removal of the provider of last resort obligation has stifled the development of STS in Missouri. Ad Hoc witness Blumenkamp testified that property owners were reluctant to designate a building an STS building and lose the right to regulated service from the LEC. The Commission finds this evidence indicates its interim tariff was too restrictive. This, though, is not the Commission's primary concern. Whether STS can survive under the conditions established by the Commission will depend upon whether STS providers can offer a service to customers which is attractive and cost-effective.

The Commission's concern is that by removing the provider of last resort obligation it has removed one of the cornerstones of telecommunications service in this state; that is, service from a regulated utility at a just and reasonable rate. Based upon SWB's evidence, the Commission's decision could also lead to the proliferation of small unregulated areas throughout an LEC's certificated area. SWB even testified that another LEC could provide service to an STS location located within SWB's service area under SWB's proposed permanent tariffs. This result the Commission finds unacceptable. The proliferation of deregulated areas would create confusion and consternation as individuals and businesses attempted to utilize their property as business conditions changed. The Commission has determined that the evidence in this proceeding does not justify that result. Persons residing in an LEC's service area should have access to a regulated utility at regulated rates. Removal of the provider of last resort obligation is not necessary to protect the

LECs or to prevent any negative effects from STS, and tariff conditions can limit the negative effects which might occur.

SWB and the other LECs seem to have acknowledged the ability of tariff conditions to meet their concerns of STS locations in their service areas. In its initial brief SWB indicates its major concern is being compensated for its provider of last resort obligation at STS locations. SWB proposed an alternative to its permanent tariff in which it would retain the provider of last resort obligation on a detariffed basis at fully compensatory rates, or at regulated rates which contain a higher contribution for STS access to the LEC. Mo. Tel. et al. takes the same position, as well as emphasizing the need for geographic limitations on STS locations and a reasonable time to restore service.

In addition, SWB has reached an agreement with Telex Computer Products, Inc.; Advantage Suites, Ltd.; Professional Business Centers, Inc.; Suite 400, Inc.; and Chesterfield Village Office Services, Inc., concerning the provider of last resort obligation at executive suite locations. These executive suite locations are STS arrangements in less than a single building. In the Joint Recommendation SWB has agreed to retain its provider of last resort obligation to STS providers with 30 exchange lines or less located in less than a single building. The Commission can find no reason for distinguishing between SWB's provider of last resort obligation for these STS providers and larger STS providers. All are STS providers under Section 386.020(26), R.S.Mo. (Supp. 1987), and should be treated similarly.

The Commission finds from the evidence that the planning requirements of the LEC with regard to whether an STS provider is located in a building or location can be addressed through tariff conditions, rather than removal of the provider of last resort obligation. The evidence showed that an STS provider in a building is similar to a large anchor tenant. The Commission finds that geographic restrictions on the STS location, rates and notice have more of an effect on the LEC than does the removal of the provider of last resort obligation.

Based upon the foregoing determinations the Commission has determined that an LEC should retain its provider of last resort obligation at STS locations. The Commission has determined that an LEC should stand ready to provide service to any customer within its service area who requests service. This is the foundation of universal service and is a keystone of this nation's and state's economic and social progress. As stated earlier, LEC concerns about access to former STS tenants and any potential effects STS might have on other ratepayers can be minimized through tariff conditions. The Commission has also determined that there is no reason to delay service to former STS tenants other than the time necessary to switch a customer onto the LEC's system. Proposals which would allow a delay in service to LEC customers for weeks or months are unacceptable.

GEOGRAPHIC RESTRICTIONS

In its Report And Order in Case No. TC-84-233 and the Order Rejecting Tariffs, the Commission determined that STS could only be provided in an entire single building and did not include service to structures connected by tunnels, passageways or walkways. SWB filed permanent tariffs in this case retaining the entire single building restriction. SWB subsequently signed the Joint Recommendation which allows STS in less than an entire single building. Staff and United support the entire single building restriction. United concurred in the Joint Recommendation.

The Commission in the order approving the interim tariff asked the parties to address (1) whether STS should be allowed where buildings were affiliated by use rather than affiliated only by ownership or management; (2) whether STS should be permitted within buildings separately owned but located on land of a common third party but not between such buildings; and (3) whether STS should be allowed in facilities which are physically joined under one roof but not under common ownership. The Commission questions were designed, in part, to have the parties address the provision of STS in medical complexes, shopping malls and similar facilities.

SWB filed interim tariffs which the Commission approved which defined an STS customer of the LEC as:

[T]he owner or owner's agent of an entire building who possesses complete responsibility for the administration, management, control and utilization of said building and of the resale and/or sharing of telephone service to all occupants of the building. A lessor of an entire building may be an owner's agent when authorized by the building owner. Such owner or agent must provide property interest and other services in addition to telecommunications services on a contractual basis to an STS User in order to qualify as an STS Customer.

The other parties took various positions on what geographic restrictions should be placed on STS locations. Ad Hoc proposed that STS be allowed within an area consisting of one or more buildings that are under common ownership or management and that are located on continuous property, disregarding intersection by public or private rights of way. Mo. Tel. et al. proposed that STS be allowed in more than an entire single building if the complex of buildings was under common ownership or control and located on the same or contiguous tracts of land and the buildings within the complex are affiliated by use.

PC took no position on a geographic restriction for STS in new buildings but proposed limiting STS in existing buildings to an entire single building or to certain floors of existing buildings. CompTel recommended that STS be allowed in a complex of buildings under common ownership or management or where the building or buildings are located on a single tract of land or adjoining or continuous tracts of land and used for related purposes. MHMA stated it agreed with Ad Hoc's geographic restrictions but stated that motels and hotels should be exempted from STS regulation.

SWB and the executive suite providers filed a Joint Recommendation which would permit STS in less than an entire single building but would allow no more than 30 access lines at the STS location. SWB also proposed an alternative if it was found that an entire single building restriction was not reasonable. SWB's alternative proposed to allow STS in all buildings or structures on a single, continuous

plot of ground, wholly owned or held under long term lease by the STS customer, which is not intersected by public rights of way for vehicular traffic.

The Commission stated in its decision in TC-84-233 that rather than impede the efficient use of telecommunications facilities, it was more reasonable to place limits on STS which would promote efficient use while protecting LECs and their ratepayers. The Commission established what it considered conservative restrictions on STS on an interim basis to ensure the local network was not significantly affected while permanent tariffs were addressed. One of the restrictions was that STS would only be allowed in an entire single building.

The evidence in this case indicates that the Commission's entire single building restriction was too conservative and would eliminate the only successful STS providers in the state. The evidence indicates that STS is being successfully marketed only for executive suite type operations which offer STS in less than entire buildings. The success of these operations and the need to accommodate them has been recognized in the Joint Recommendation. SWB has agreed in the Joint Recommendation that it will provide service to executive suite operations limited to areas using 30 exchange access lines or less.

The Commission has determined that the evidence of the success of STS operations in less than an entire building demonstrates that the entire building restriction should be modified to allow STS in less than an entire building. The Commission, though, does not believe the 30 access line restriction in the Joint Recommendation is justified. As discussed in the Provider Of Last Resort section, SWB's planning in multitenant buildings would be the same whether STS or a single tenant occupies part or all of a building. Notice and conditions of service can protect the LEC more effectively than unnecessary restrictions on the size of STS locations. An executive suite type STS location will therefore not be limited by number of access lines. Based upon this determination, the Commission will allow STS in locations of less than an entire single building.

Whether STS should be allowed in an area larger than an entire single building is a more complex question. The Commission allowed the sharing of access lines by STS tenants in order to allow small and medium sized businesses to take advantage of the advanced telecommunications technology they could not afford individually. The evidence in this case is that only four buildings have been designated as STS locations under the interim tariffs. The owners of three of these buildings were not successful in marketing their services and the STS providers abandoned the buildings.

The witnesses supporting STS contend that failure of more buildings to be designated STS has been caused primarily by the removal of the provider of last resort obligation from STS locations. LEC witnesses contend the failure is due to changing technology and the unmarketability of STS arrangements. Since the Commission has determined that the LEC should retain its provider of last resort obligation under permanent STS tariffs, this should remove what STS providers argued was the primary barrier to marketing their service.

Ad Hoc proposes that STS locations should be permitted in "STS service areas" consisting of one or more buildings under common ownership or management, located on continuous property. Ad Hoc witness Blumenkamp characterized these "STS service areas" as areas where there exists a community of interest, or users engaged cooperatively in a common purpose or providing a common service or some other functional connection. This would allow STS locations in an unlimited number of buildings and areas.

The Commission has determined that it cannot accept Ad Hoc's STS community of interest standard. As SWB points out, if no clear definable geographic limits are placed on STS, then minitelephone companies could develop limited only by the developers' resources. The Commission has determined that restrictions based solely upon related interests located on continuous tracts of land or based upon related use or similar purpose are too amorphous to meet the requirements of the statute that STS

locations be discrete private premises. Section 386.020(26). Also, these restrictions would allow development of minitelephone companies in areas with diverse business customers who could be arguably related by purpose or use, or an area, such as a residential development, which could arguably be related by use. The expansion of STS to these areas would not be consistent with the Commission's determination of the purpose of STS and would have a potentially significant impact on LEC planning and rates, since the STS areas could expand continuously as related businesses join the STS system. The Commission has previously found and continues to hold that a duplicative and competitive local exchange network put together by an STS provider would not be in the public interest.

The Commission has also determined that a geographic restriction based upon rights of way for vehicular traffic is not sufficiently discernible to be a discrete boundary in all instances. In the basic city block this restriction might appear reasonable and easily discernible, but in developing areas such as industrial parks, shopping malls and campus-like developments, the size of the STS location would only be limited by the developer's ability to build without public streets. The Commission finds this uncertainty in the size of an area which could become an STS location under the right of way for vehicular traffic restriction weighs against its adoption.

The definition of STS in Section 386.020(26) states that STS is located in discrete private premises. The Commission has determined that this definition requires boundaries that are easily discernible and definite. The Commission has found that the single building restriction meets this requirement. A single building is a discrete, discernible location, especially under the interim tariff definition. As discussed above, the other proposals in this case would not be easily discernible or definite. The Commission therefore finds that the single building restriction as defined in the interim tariff should be retained as the maximum limit for an STS location (subject to applications for waivers as discussed below). An STS provider, thus, can provide STS in a single building or any portion thereof.

The Commission, by adopting the single building restriction as the maximum size of an STS location, is aware of potential and possibly beneficial configurations of STS this would preclude. It would preclude two or more smaller buildings from being an STS location. It would prevent a hotel/motel with separate buildings from treating the buildings as one STS location. It would prevent buildings joined by walkways, joint walls, and underground passageways from being one STS location. Because the single building restriction would prevent STS from being provided in these or similar locations, the Commission has determined it will allow applications for waivers from the single building restriction. The Commission has determined that it will consider granting waivers to STS locations in more than a single building if such a waiver would not be detrimental to the public interest and would otherwise be consistent with the statute and the Commission's policies regarding STS. These applications will be considered on a case by case basis and could be filed in conjunction with the STS provider's application to provide service or when an STS provider wishes to expand an STS location already certified. Applications to provide STS to a location shall be filed in conformity with the Commission's rules, 4 CSR 240-2.060(1) and (2). The Commission has determined that certain provisions of 4 CSR 240-2.060(2) are not applicable to STS providers and applicants will not be required to file the information in 4 CSR 240-2.060(2).7, .9, .11 and .13.

AFFILIATION WITH LANDLORD

The Commission's Report And Order in Case No. TC-84-233 was interpreted to prevent an STS provider which only provided shared telecommunications service and had no affiliation with the landlord or manager from offering STS at an STS location. SWB supports the restriction that the STS provider have an affiliation with the property owner and the property owner would be the only person who could designate a location as an STS location. Under SWB's proposed tariffs the affiliation would be a direct contractual relationship between the owner and STS provider. SWB did indicate this restriction may not be as important if the LEC retained the provider of last

resort requirement. United and Staff support SWB's position. Mo. Tel. et al. supports SWB but would allow owner, agent or designee.

Ad Hoc takes the position that an STS provider should not be restricted to the landlord or a landlord's agent. Ad Hoc recommends that third party STS providers be allowed. MHMA and CompTel take positions similar to Ad Hoc.

Section 386.020(26) states that STS includes the provision of telecommunications services within a user group by a commercial shared services provider or by a user association. This statutory definition is more liberal than authorized by the Commission in TC-84-233 and in SWB's interim and proposed permanent tariffs. The statute does not require an affiliation between the STS provider and the property owner. Section 386.020(26) does not require STS providers provide any service other than telecommunications service to tenants of an STS location. Thus, third party STS providers are authorized by statute to provide service under conditions established by the Commission. Based upon the statutory authorization and SWB's statement that the affiliation with the landlord requirement is less important if the provider of last resort obligation is retained, the Commission has determined that affiliation with the landlord is not a reasonable restriction to be placed on STS.

SINGLE PBX

The Commission in Case No. TC-84-233 restricted STS to a single PBX. This would prevent STS providers from connecting two or more PBXs at any one STS location. SWB's proposed permanent tariffs reflect this single PBX restriction. Staff, Mo. Tel. et al. and United support the single PBX restriction.

Ad Hoc and MHMA recommend that no limit be placed upon the number of PBXs which could be connected at an STS location. MHMA recommends additionally that language in SWB's proposed tariff paragraphs 37.3.5 be modified to ensure an STS PBX can be connected to an interexchange carrier PBX. MHMA says this is a common

occurrence and may be prevented by the language in these paragraphs, which states that "in no way may a PBX utilized for STS be connected to another PBX."

The main concern of SWB that the single PBX restriction addresses is that SWB wants only one point of termination for the STS location. SWB witness Kaeshoefer testified that the single point of termination takes care of the facilities planning problems which SWB would incur if multiple PBXs with multiple points of termination were allowed.

Based upon Kaeshoefer's testimony the Commission has determined that STS providers may connect PBXs at an STS location but that LECs need provide only one point of termination for LEC facilities to connect with STS facilities. The Commission cannot foresee the need for multiple PBXs under the geographic restriction authorized in this order, but has determined that this flexibility is not unreasonable and should be allowed.

COMPENSATION TO LEC

1. Pricing of STS PBX Access

Under the interim tariffs approved by the Commission in TC-84-233, STS providers are charged at the current flat PBX trunk rate for connection to the LEC system. The Commission indicated that the parties should address the appropriate pricing of STS connection to the LEC system in the instant case.

SWB's position on the pricing of STS access was that if there were no LEC provider of last resort obligation to an STS location, then rates charged for STS access should be deregulated. SWB contended this would allow it to charge fully compensatory rates for STS access to SWB's system. If, as the Commission has ordered in this case, the LEC retained the provider of last resort obligation, an additional contribution should be added to STS access rates to compensate the LEC for its standby service.

SWB proposes rates for STS which disaggregate the flat rate trunk charge into its basic components of usage, access line and special features. SWB proposes

to charge usage on a per call basis under its Local Measured Service (LMS) rates. If LMS rates are not available in an exchange the traditional flat trunk rate would be charged. SWB proposes that special features would be priced to assure full cost recovery plus contribution. SWB proposes to charge STS providers a flat rate for access based upon the monthly one party business loop cost plus a 20 percent contribution. United supports SWB's proposed rates except United would charge a surrogate rate where LMS was not available. Mo Tel. et al. supports SWB's rate design but wants each LEC to develop the actual rate to be charged. The Joint Recommendation adopts SWB's proposed rate design.

Staff proposes that STS providers be charged a flat monthly access rate that recovers nontraffic-sensitive costs and a usage based rate that attempts to recover traffic-sensitive costs plus a contribution. Staff concurs with SWB's usage (LMS) rate and proposes that flat trunk rates be used where LMS is not available. Staff did not develop the actual proposed rates to be charged for STS access.

PC supports STS tariffed rates that are cost based and usage sensitive and which provide an adequate contribution to joint and common costs.

Ad Hoc, CompTel, MHMA and MCI propose that STS providers be charged the same rates as other PBX users. Ad Hoc states it is not opposed to measured rates if those rates are charged to all PBX users.

Under current Commission policy, service to PBX users is considered basic telecommunications service and is priced residually. PBX users are charged a flat rate which includes access, usage and special services such as voice conditioning and hunting services. The statutes do not address whether the provision of access to the utility for the STS provider is basic local telecommunications service. The statutes do provide that even if access provided to an STS provider were found to be basic telecommunications service, the Commission is authorized to price STS access to ensure network integrity of the LEC and to take into account the effect of STS on local exchange rates.

SWB maintains that separate rates are necessary for STS access to compensate SWB for its obligation to be the provider of last resort. To fulfil this obligation, SWB states, will require additional facilities and resources the cost of which should not be borne by the other ratepayers. SWB argues especially that STS access should not be treated as basic telecommunications service and priced residually. The arguments of other parties proposing a separate STS access charge generally reflect SWB's position.

Ad Hoc's position is that the costs associated with STS buildings are similar to costs associated with other PBX users and so STS should be charged the same rates. Ad Hoc contends that the provider of last resort obligation will require no greater expenditure for STS than for other multitenant buildings. SWB must provide entrance facilities to a building whether it has STS or other tenants.

The question of how to price STS access to the LEC revolves around whether STS access is similar to other PBX user access. PBX access rates are now residually priced based upon their relationship to residential rates. Whether PBX rates recover the costs of providing the service seems to be an unsettled question, even though SWB asserts a 1984 cost study shows they do not. LECs and Staff urge the Commission to find that STS access is not a basic telecommunications service and therefore STS providers should not benefit from the residually priced PBX access rate. The Commission has determined it need not reach this issue in deciding the pricing of STS access.

From the evidence the Commission finds that the most planning difficulties for an LEC are with regard to riser cable. Riser cable is the wire which connects the demarcation or point of termination to the premises of each tenant inside the building. Feeder cable connects the area where the building is located to the central office and entrance cable connects the feeder cable to the demarcation point. Feeder and entrance cable are sized to meet all potential needs of the building.

SWB witness Bullock testified on cross-examination that SWB would not install riser cable in a building where the STS provider would provide service to the entire building if SWB was not the provider of last resort. Where SWB was the provider of last resort it would cable as for a multitenant building unless it could use the STS provider's entrance cable and riser cable. Bullock also testified that SWB does not require notice of building use from non-STS developers and would cable non-STS buildings for multitenant since SWB retained the provider of last resort obligation. Bullock stated that there would be no planning differences if SWB retained its provider of last resort obligation at STS locations. Bullock supported pricing flexibility to compensate SWB where the STS provider abandoned tenants. Bullock, though, stated that SWB would not down-size riser cable if one large tenant was to be in a building unless SWB knew the tenant would remain in the building a significant length of time. Bullock testified further that SWB would not expect to be compensated if the non-STS tenant moved out and SWB had to install additional facilities.

Ad Hoc witness Blumenkamp testified that STS providers should be allowed to take service under existing tariffs rather than a separate STS tariff, and that there would be no additional cost for riser cable to the LEC if the STS provider installed sufficient riser cable for projected demand and that cable met LEC standards. Ad Hoc offered two alternatives to allow LEC access to STS buildings. The LEC could be given access to the conduits to install its own riser cable or the LEC could utilize STS provider riser cable for a reasonable fee. SWB proposes that the LEC should not be required to install duplicate riser cable where the STS provider has already wired a multitenant building and the LEC should be given a right-of-use to the STS provider's riser cable to prevent the need for duplication.

Based upon the above testimony, the Commission has determined that access for an STS PBX is similar to access for a single entity PBX and should be priced accordingly. The LEC will cable a building for multitenant unless it has prior

notice that a large single tenant or an STS provider will occupy the building. The evidence indicates that planning for STS is similar to planning for a large anchor tenant. The Commission has determined the evidence does not support a distinction in pricing between the STS provider and other PBX users. Also, the purpose of STS is to allow small and medium sized businesses to share PBX facilities so they can receive the benefits of technology as do large businesses. Since single PBX users are charged a flat PBX rate, so should STS providers.

The Commission has determined that access for STS providers should be priced the same as other PBX users. The evidence in this case does not show that this pricing will affect the LEC's network integrity or significantly impact the cost of local exchange service for other ratepayers. If, in an LEC's general rate case, evidence were to show that STS was significantly impacting the cost of telephone service for other ratepayers or was affecting network integrity, the Commission would reconsider its pricing decision.

2. Other Conditions

As stated earlier, the Commission finds that the most planning difficulties for an LEC are with regard to riser cable. The Commission in its interim order has already required that STS riser cable and other facilities meet LEC standards and that any PBX must be registered with the Federal Communications Commission. This requirement is reasonable and should be retained in the permanent tariffs to ensure that the LEC will not have to replace riser cable if the STS provider no longer serves the tenant.

The evidence indicates that notice of proposed STS service at a newly constructed building will enable an LEC to plan its facilities to prevent duplication of riser cable. In the interim tariff and proposed permanent tariff, SWB has a 180-day notice requirement. Paragraph 37.6.2 states that if the 180 days notice is not made, the STS provider will be responsible for the incremental cost of any facilities, in excess of the facilities requested by the STS customer, which SWB

constructed in anticipation of providing service directly to the tenants of the newly constructed building. The tariff requires payment of these costs before service will be provided. The Commission considers the notice and payment provisions reasonable and necessary conditions for LEC connection to the STS provider. Where an STS provider will be placing its own riser cable in a newly constructed building, this notice will prevent duplication of those cables by the LEC. In addition to the notice, the STS provider shall provide the size and location of those areas where an STS tenant will be located.

Where STS is provided in an existing building, the 180 day notice is not required. The STS provider can either contract for the use of LEC riser cable or install its own, and since the LEC would already have cabled the existing building for multitenant there should be little additional cost to the LEC. Even though the LEC would have idle facilities, this would be no different than if a large non-STS tenant with a PBX moved into the building. The evidence indicated SWB would not change its planning for the STS provider. Notice of location of STS tenants shall be given by the STS provider to the LEC for existing buildings at the time the STS provider connects with the LEC.

The Commission has also determined that the LEC should be provided right-of-use to STS riser cable and other facilities necessary to provide service to any tenant at an STS location which wishes service from the LEC. Since the LEC will retain its provider of last resort obligation at STS locations, it must have immediate access to those areas to meet that obligation. The Commission has also determined this right-of-use should be without compensation to the STS provider. The providers of STS considered the LEC provider of last resort obligation to be essential to their existence, so it is only reasonable that the STS provider allow the LEC access to those tenants who do not wish to take STS. This condition will also meet the requirements of Section 392.520.2, which requires that tenants have alternate access to the LEC.

APPLICATION OF STS RESTRICTIONS TO NONTRANSIENT TENANTS OF HOTELS/MOTELS, MUNICIPALLY OWNED CONVENTION FACILITIES, EDUCATIONAL INSTITUTIONS, ETC.

There are several distinct situations which are addressed under this issue but the central question is whether nontransient residential or commercial tenants of a business should be exempted from regulation by the Commission. Under Section 386.020(40)(d) the legislature has exempted from regulation telecommunications service "by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests...." SWB in its current interim and proposed permanent STS tariff at paragraph 37.3.14 specifically states that "[s]ervice arrangements furnished to accredited public and private educational institutions who provide telecommunications services to students, faculty members, or employees who reside in dormitories or other residential quarters owned, leased or under control of the educational institutions are not considered to be Shared Tenant Services arrangements." Under the Commission's Report And Order in TC-84-233, service to nontransient tenants by hotels/motels and similar entities would be regulated as STS if it met the conditions of the tariffs; otherwise, it would be prohibited.

Only MHMA has proposed that the Commission allow hotels/motels and other similar entities to provide telecommunications service to nontransient residential and commercial tenants. MHMA takes the position that the portions of H.B. 360 which apply to STS are unconstitutional because STS is by definition a private, not public, utility service and thus beyond state regulation. MHMA goes on to contend that even though the legislation is unconstitutional the Commission can effectively regulate STS by LEC tariff provisions. MHMA therefore argues that there is no reasonable public purpose served by regulating telecommunications service to nontransient residential or commercial tenants of hotels/motels or other similar entities.

MHMA makes three other points in support of its position. First, MHMA states the STS requirement is the last vestige of regulation of hotel/motel telecommunications service. MHMA is not regulated for service provided transient guests nor is it regulated in the resale of long distance service. MHMA contends the STS requirement should be similarly removed since it would allow hotels/motels to utilize their facilities in a manner that was privately beneficial but not publicly detrimental.

Second, MHMA contends that the requirement that nontransient tenants be required to have a separate access line would create ridiculous results. Telephone calls by customer from the hotel bar to the customer's room would have to go through the LEC switch. Third, MHMA argues that the effect of removing the nontransient tenant from regulation would be "de minimis." MHMA states that even though it has done no surveys or studies, everyone knows there are few commercial tenants on the premises of hotels or motels. MHMA proposes the Commission exclude the provision of telecommunications service to hotel/motel tenants from STS tariffs and remove this last vestige of regulation from hotels/motels.

Although the word private is used to describe STS in Section 386.020(26), "Private shared tenant services", the Commission does not accept MHMA's argument that regulation of STS is unconstitutional. Private telecommunications systems are specifically exempted by Section 386.020(40)(d) and have traditionally been exempt from regulation. This has allowed large corporations, hospital complexes, educational institutions and other single-owner entities to develop their own telecommunications services within their facilities. What MHMA is now proposing is to expand the definition of private to include separate, distinct business entities whose sole relationship is their existence in a hotel/motel or similar structure or structures. The legislature did not include nontransient tenants in Section 386.020(40) with those persons who are exempt from regulation. In addition, the legislature specifically gave the Commission jurisdiction over STS, indicating that regulation of

STS operations is in the public interest. Based upon the evidence presented in this case, the Commission can find no justification for broadening the legislature's exemption to include nontransient tenants.

As MHMA points out, there is no evidence to support its "de minimis" argument and even if there were, the Commission has determined that service to barber shops, restaurants, gift shops or other commercial establishments at a hotel/motel location is not de minimis. The exemption sought by MHMA would allow hotels/motels to create shopping centers within their buildings and provide unregulated telecommunications service to those businesses without any oversight by the Commission. The Commission has determined that hotels/motels and their nontransient tenants are no different from other building owners and tenants and should be treated the same. The Commission has determined that the exemption requested by MHMA would be discriminatory and would not be in the public interest.

MHMA's argument that regulation under STS would create ridiculous results is also not convincing. It is not ridiculous for a call from one business establishment to another to go through the LEC's system. In addition, hotels/motels already have PBXs in place to serve transient tenants so becoming an STS provider should require only accessing the LEC system. In addition, the Commission's decision in this case will allow hotels/motels to become STS providers since it allows STS in less than an entire single building. This should eliminate many of hotels/motels' concerns.

STS is a service developed to allow small or medium sized businesses access to the new telecommunications technology through sharing of facilities. The Commission has determined that this sharing must be accomplished under certain conditions so that STS providers do not become small local exchange companies and the ratepayers of LECs do not subsidize STS providers. Deregulation of hotels/motels is not consistent with this purpose nor consistent with the Commission's provider of last resort findings. Service provided to nontransient tenants is the same type of

service provided to tenants of other STS providers and should be subject to the same restrictions.

The Commission has determined, further, that the tariff provisions regarding educational institutions in paragraph 37.3.14 are reasonable and should be retained. Students, faculty and employees of educational institutions have similar characteristics to transient tenants exempted in 386.020(40)(d). The Commission has determined that transient tenants of municipal convention centers also have similar characteristics and service to those transient tenants should be exempted from the STS tariff provisions.

USE OF STS TRUNK TO PROVIDE CUSTOMER OWNED COIN TELEPHONE SERVICE (COCT)

Section 392.520.1 granted the Commission jurisdiction over COCT services but stated that such service would be subjected to the minimum regulation permitted for competitive telecommunications services. By statute, a COCT service provider is exempted from filing tariffs of all rates and charges, the prohibition against charging more for shorter distance calls and a hearing on proposed rates, the requirement of a cost study, and can establish rates as do companies for competitive services. The statute also states the Commission may exempt COCT service from minimum reporting requirements and assessment. 392.520.2 states the Commission shall establish the rates or charges and terms of connection for access for COCT service to the LEC network.

SWB, United, Mo. Tel. et al., Staff and PC oppose the use of the STS trunk to provide COCT service. MHMA and Ad Hoc support this use.

Current tariffs require that each COCT must be connected to the LEC through a separate access line under specific tariffs. These tariff restrictions prevent those businesses with PBXs from connecting COCTs behind the PBX switch. MHMA takes the position that this restriction on the use of COCTs violates public policy favoring the efficient use of the telecommunications network and the policy promoting use of telephone equipment that is privately beneficial without being publicly

detrimental. MHMA states that Section 386.020(40) exempts the COCT service since only transient guests of the hotels/motels would be using the COCTs.

Staff and SWB oppose the connection of the COCT to a PBX since COCT rates have a usage component and without connection to separate access lines there would be no effective way to measure COCT usage. For hotels/motels this may only involve two or three COCTs but in airports or shopping centers there could be substantially more. Connection behind a PBX would effectively eliminate the Commission or LEC's ability to identify the number of calls made through the COCTs and thus the ability to set rates.

The Commission has considered this issue and has determined that COCTs should not be authorized to connect to a PBX at a hotel/motel or any other entity. COCT service is a distinct and separate service which is now regulated by the Commission by statute. The Commission has determined that it is not in the public interest to allow COCT service in such a manner that the Commission cannot fulfil its regulatory obligations. The Commission by statute must set the rates for COCT access to the LEC system. To do this the Commission must be able to obtain information concerning the number of COCTs and the usage of COCT service. In addition the Commission must be in a position to respond to complaints concerning COCT service. If COCTs are allowed to connect behind a PBX, the Commission could not adequately fulfil these responsibilities. Based upon these findings, the Commission has determined that COCTs should not be allowed to connect behind STS PBXs.

STS AT CONDOMINIUMS AND COOPERATIVES

The Commission in its Report And Order in Case No. TC-84-233 requested the parties to address the issue of whether a condominium or cooperative could be allowed to take service through an STS provider. The parties addressed this issue separately but their positions are an adjunct to the geographical location and affiliation with landlord issues.

In condominiums and cooperative structures the property is usually owned by several or many individuals who belong to an association that manages the property. The objections to allowing STS at these locations are that there is no common ownership and no relationship between owner and STS provider except the telecommunications service provided. The Commission has addressed these concerns in earlier sections.

The Commission can find no justification, based upon its earlier findings, to distinguish STS at condominiums and cooperative locations. The LEC will retain its provider of last resort obligation at these locations, which will resolve most of SWB's objections. The condominiums or cooperatives would have to meet the restrictions established herein by the Commission. If the owners in a condominium or cooperative wish to form a user group to take STS from a commercial STS provider or to form a user association to provide the service, the Commission has determined it should be allowed to do so.

JOINT RECOMMENDATION

On December 9, 1987, SWB; Telex Computer Products, Inc., and Advantage Suites, Ltd.; Professional Business Centers, Inc., Suite 400, Inc., and Chesterfield Village Office Services, Inc., filed a Joint Recommendation in this matter which recommended the Commission take the appropriate action to find that executive suite operators are a distinct class of STS providers. United concurred in the Joint Recommendation.

The Joint Recommendation defined executive suite operators; adopted SWB's rate design proposal in this docket for local exchange access lines terminating at the executive suite premises; retained SWB's provider of last resort obligation at executive suite locations; limited executive suite operations to 30 exchange access lines; prohibited entities outside an executive suite operation from connecting with the executive suite system; and limited executive suite locations to the premises of a single building.

Based upon the findings and decision reached in the previous sections of this order, the Commission has determined it should reject the Joint Recommendation. The conditions for providing STS in this order will allow executive suite operators to provide STS in their current locations and will allow executive suite operations in other areas which meet the conditions of this order.

STAFF'S LIST OF REPORTING REQUIREMENTS

Staff has proposed that STS providers and LECs be required to provide information to the Commission to enable Staff to determine whether STS restrictions should be eased. Staff based this proposal on its position that there was insufficient data in Missouri regarding STS to support a removal of the restrictions of the interim tariff. Although the Commission has not accepted Staff's position regarding modification of the interim tariff, the Commission does consider the collection of data important to ensure that the STS authorized in this order will not significantly affect LEC service.

The Commission, in reviewing the list of information presented by Staff, must bear in mind the legislative mandate that STS should be subject to minimum regulation. Section 392.520, though, leaves it to the Commission's discretion whether to require STS providers to comply with Section 392.390.1 and .3. Those two subsections require companies to file annual reports in the form established by the Commission and to comply with reasonable requirements for reporting the jurisdictional nature of the telecommunications service.

The Commission has determined that STS providers should be subject to certain reporting requirements under Section 392.390.1 and .3. These requirements will enable the Commission to ensure that the STS conditions authorized in this case fulfil the goals contemplated by the Commission.

STS providers shall file an annual report which includes the following information:

1. Address of the STS location(s).

2. Name, address and telephone number of the STS provider.
3. Name of the building owner or owners or management.
4. Date when the LEC began furnishing service to the STS provider at the location(s).
5. Description of the STS technology used (i.e., type of switch, partitioned, digital or analog, etc.).
6. Number of tenants served at location(s).
7. What types of services the STS provider is making available to its tenants (i.e., security, data, voice-grade telephone service, etc.).
8. Whether there have been any STS-related complaints from the tenants. If so, specify nature of complaint, etc.
9. Whether the STS provider interconnects with a discount long distance carrier. If so, describe the nature of the interconnection facility (e.g., direct trunks to the long distance carrier, etc.), and identify the long distance carrier(s).

If an STS provider considers any of the information to be proprietary, it may file that information under seal.

LISTING OF STS LOCATIONS IN LEC TARIFFS

SWB in its proposed permanent tariffs at paragraph 37.9 lists those STS locations which were designated STS locations under the interim tariffs. Paragraph 37.9.1 states that these locations, under the proposed permanent tariffs, would be considered deregulated service locations. SWB under its proposed permanent tariffs would require that all STS locations be listed separately under 37.9.1. Ad Hoc opposes this tariff provision.

The Commission has determined that LECs will retain their provider of last resort obligation at STS locations. This includes those designated as STS locations under the interim tariffs and these areas will be subject to tariffed rates. The Commission has also determined that STS providers must file applications with the Commission to provide service to each STS location or if an STS location is to be expanded to another building. These determinations by the Commission remove any

necessity for the tariff provisions in paragraph 37.9 and those provisions are specifically rejected by the Commission.

CONDITIONS FOR STS

The Commission has determined that permanent tariffs for STS access shall be filed by LECs which reflect the findings set out in the above sections. The permanent tariffs will be filed reflecting the following conditions.

1. The LEC will retain its provider of last resort obligation for all STS locations.
2. STS may only be provided to tenant premises which are located in an entire single building or less, unless a waiver of this condition is granted by the Commission. The definition of an entire single building is as approved in the interim tariffs in Case No. TC-84-233.
3. An LEC shall only provide one point of demarcation to an STS location regardless of the number of PBXs connected at the STS location.
4. The STS location shall consist of all tenant premises where STS is provided by the STS provider which meet the conditions of paragraph 2.
5. STS providers shall pay the flat trunk PBX access rate for access to the LEC system.
6. The STS conditions in this order shall apply to service to all nontransient tenants as described in this order.
7. Customer owned coin telephones shall access the local exchange telephone network through a separate access line under separate tariffs.
8. STS providers will comply with the filing requirements listed in this order and those which may additionally be ordered by the Commission.
9. The STS provider shall utilize a PBX which is registered with the Federal Communications Commission and riser cable and other facilities must conform to the specifications of the LEC.
10. STS providers shall provide the LEC 180 days notice that the STS provider will be providing service in a newly constructed building. If the 180 day notice is not provided, the STS provider shall be responsible for the incremental cost of any facilities in excess of the facilities requested by the STS provider which the LEC constructed in anticipation of providing service directly to the tenants of the new

building. The STS provider will also provide the LEC the size and location of the STS tenants.

11. The STS provider shall contract with the LEC to allow the LEC the right-of-use to STS riser cable and other facilities necessary to provide service to any tenant at an STS location which requests service from the LEC.
12. STS providers who establish an STS arrangement in an existing building shall give notice to the LEC of the location of STS tenants at the time of connection to the LEC network.

Conclusions of Law

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

In 1987 the Missouri legislature passed H.B. 360, which revised certain aspects of the Commission's regulation of telecommunications companies. In H.B. 360 the legislature authorized the provision of STS and gave the Commission authority to regulate STS. Pursuant to Section 386.020(26), STS is now defined as

"Private shared tenant services", includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises as authorized by the commission by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of local exchange telecommunications companies and to interexchange telecommunications companies.

Since STS providers provide telecommunications services for hire, they are telecommunications companies subject to the Commission's jurisdiction, Section 386.020(38), R.S.Mo. (Supp. 1987). The Commission has specific statutory authority to determine the rates to be charged STS providers but may only subject STS providers to minimum regulation, Section 392.520, R.S.Mo. (Supp. 1987).

The statutory sections cited above clearly contemplate that STS providers are a distinct form of telecommunications service which is subject to Commission jurisdiction, although subject to minimal regulation. The Commission believes the legislative intent in placing STS within Commission jurisdiction precludes any argument that STS should not exist and provides a sound basis, in addition to the

Commission's general jurisdiction, for the Commission's reexamining the conditions under which LECs should provide service to STS locations.

Based upon the findings made above the Commission has concluded that shared tenant services which meet the conditions set out in this order shall be authorized. The Commission has concluded that LECs shall file permanent tariffs for STS access based upon these findings.

It is, therefore,

ORDERED: 1. That the interim tariffs approved in Case No. TC-84-233 are hereby rescinded.

ORDERED: 2. That the proposed permanent tariffs filed by Southwestern Bell Telephone Company for shared tenant services are hereby rejected.

ORDERED: 3. That local exchange companies shall file permanent shared tenant services tariffs which comply with the findings in this Report And Order.

ORDERED: 4. That the Joint Recommendation filed in this proceeding is not adopted.

ORDERED: 5. That the Motion For Leave To File Rebuttal Suggestions filed by Southwestern Bell Telephone Company is hereby denied.

ORDERED: 6. That shared tenant services providers wishing to provide shared tenant services in Missouri must file applications for service authority in accordance with the provisions of Commission rule 4 CSR 240-2.060, as discussed in this order.

ORDERED: 7. That this Report and Order shall become effective on the 11th day of May, 1988.

BY THE COMMISSION

Harvey G. Hubbs
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. 1986.

Dated at Jefferson City, Missouri,
on this 19th day of April, 1988.