

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Choctaw Telephone Company to file tariffs)
to provide community optional service and recover actual) CASE NO. TR-91-86
net revenue loss associated with provision of service to)
customers in the Company's Missouri service area.)

APPEARANCES: Craig S. Johnson, Attorney at Law, Stockard, Andereck, Hauck,
Sharp & Evans, 301 East McCarty Street, P. O. Box 1208,
Jefferson City, Missouri 65102-1280, for Applicant.

Randy Bakewell and Douglas E. Micheel, Assistants Public Counsel,
P. O. Box 7800, Jefferson City, Missouri 65102, for the Office
of the Public Counsel and the Public.

Robert J. Hack, Assistant General Counsel, P. O. Box 360,
Jefferson City, Missouri 65102, for the Staff of the
Missouri Public Service Commission.

Hearing
Examiner: C. Gene Fee

REPORT AND ORDER

Procedural History

On August 30, 1990, Choctaw Telephone Company (Choctaw or Company) filed tariffs proposing a surcharge on all local exchange access lines for the purpose of maintaining revenue neutrality by recovery of lost toll and access charges resulting from providing community optional service (COS). The proposed tariffs contained surcharges of \$2.94 and \$5.89 per month for residential and business access lines, respectively.

By order issued September 28, 1990, the proposed tariffs were suspended for one hundred twenty (120) days beyond the proposed effective date of September 30, 1990. By order issued October 3, 1990, the Commission stayed its previous order which had directed the provision of COS between the Company's Halltown exchange and

Southwestern Bell Telephone Company's (SWB) Springfield exchange no later than October 19, 1990.

By order issued on January 18, 1991, the Company's tariffs were further suspended to July 28, 1991, and a procedural schedule was established culminating with a hearing on June 13, 1991. The Commission had previously denied SWB's Motion To Intervene.

In response to the criticism of the Office of Public Counsel (OPC) that the projected revenue loss was distorted by being based on only a one month traffic study, the Company revised its revenue loss based on a traffic study for twelve months. As a result, the Company's revenue loss estimate has been reduced from \$16,251 on an annual basis to \$11,600. The surcharges as originally proposed have been reduced to \$2.09 and \$4.17 for residential and business customers, respectively.

Briefs and reply briefs have been filed by all parties, and have been considered in this Report and Order.

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:

COS is a form of extraexchange telephone calling to designated exchanges known as target exchanges for a fixed rate per month in lieu of the previously rendered toll charges. COS was established by the Commission's Report and Order dated December 29, 1989, in Case No. TO-87-131. That Report and Order also directed local exchange companies to implement COS between exchanges in which communities of interest have been established by previous traffic studies, and established statewide rates for the provision of COS. The Report and Order also directed the parties to propose an intercompany compensation plan to govern the division of revenues between the companies cooperating in the provision of COS.

By Report and Order issued April 18, 1990, in Case No. TO-90-232, the Commission adopted the Revenue Sharing Plan (RSP) proposed by ALLTEL Missouri, Inc., et al.

By orders issued to numerous companies the Commission directed the filing of tariffs to surcharge all local exchange customers for the recovery of lost revenues not accounted for by the fixed COS rates. The revenue recovery tariffs were to maintain the relationship of business to residential customers of approximately two to one. By an order issued in Case No. TO-90-232 on November 30, 1990, the Commission approved a Revised Revenue Sharing Plan (RRSP) which remains the current method prescribing the division of revenues between cooperating local exchange companies. The tariffs at issue herein were filed by the Company in purported compliance with the orders in the foregoing described series of related dockets.

Under those orders the prescribed COS rate between the Company's Halltown exchange and SWB's Springfield exchange is \$5.75 since that route is classified as rural. A \$.30 EAS additive for the Springfield exchange makes the total applicable COS rate to be \$6.05 per month.

Although the Company has drafted its proposed tariff in a manner designed to recover its revenue loss, its preferred method of rendering COS is through the use of a high loss fund which would be applied to the COS service rendered by Choctaw and other similar companies. As an alternative the Company in its brief seeks a waiver from the provision of COS.

The Company has estimated its loss of revenues on the COS route to be approximately \$11,600, due to lost intrastate intraLATA access revenues of approximately \$20,600 which will be offset by COS revenues of approximately \$9,000 and long-term support, under the RRSP, of zero dollars.

In addition to loss of revenues the Company will incur additional costs which are not at issue in this docket, but are being included for recovery in a

concurrent general rate case, assigned Docket No. TR-91-336. By that filing the Company seeks a rate increase of \$106,914.58 which would increase rates for residential customers from \$8.75 to \$20.63 per month and for business customers from \$11.25 to \$30.95.

The Commission has previously stated, and reiterates, that consideration of a High Loss Fund is beyond any possible remedy in this matter because it would affect the rates of every Missouri subscriber and every local exchange company without notice of that possible result or any opportunity to be heard.

Both the Commission Staff and the OPC oppose the suspended tariffs as being much higher than any surcharge approved to date. Both the Staff and the OPC have proposed other alternatives to the suspended surcharge tariffs. Both parties propose recovery of the lost toll and access revenues by the imposition of a COS additive on the COS subscribers only. Under both proposals the COS additives would be retained by the Company.

The Commission Staff is of the opinion that the Company should be allowed to charge, on an interim basis subject to refund, rates to recover its maximum possible loss. Under the Staff's analysis it has agreed with the Company to the correctness of the estimated revenue loss. The Staff feels that it is improper to impose surcharges on all Choctaw's subscribers, many of which would not benefit from COS, by 23 to 37 percent of the rates currently paid. These same subscribers also may face a rather substantial across-the-board increase in the current rate case.

The Staff concedes that a surcharge applied only to Choctaw's COS subscribers would essentially raise the total rate for COS service. It is the Staff's intention that its proposed higher COS rate will cause fewer customers to subscribe which in turn would create a lower estimated revenue loss. Based on the Staff's recalculations of reduced subscription to COS it has determined that the annual revenue loss of Choctaw will be \$9,424. Staff proposes to add \$5.60 to the

COS rate of \$6.05 for residential one-way service. Under the Staff's proposal the \$6.05 portion of the rate would be shared between Choctaw and SWB, however, the \$5.60 portion of the rate would be retained entirely by Choctaw. The corresponding one-way business rate would be \$24.25 with the two-way rates for residence and business being \$20.20 and \$41.95, respectively. An additional point conceded by the Staff concerning its proposal is that it is only practical if it is determined that retention of all of the additive by the Company is not in violation of the RRSP.

The OPC's proposal is based on the assumption that the actual revenue loss from providing COS on the involved route will be only one-third to one-half of the Company's projection. The OPC witness acknowledges that in order to estimate revenue losses it is necessary to make an assumption about the level of customer's subscription to COS or the "buy up". OPC claims the Company's estimate of the COS loss is faulty because it is based on the assumption that all customers whose monthly toll bill for the route exceeds the one-way COS rate will subscribe and that no customer whose toll bill is less than the COS rate will subscribe. OPC contends, however, that it is reasonable to expect that some customers whose bills do not exceed the COS price will, for whatever reasons, subscribe.

OPC also criticized the Company's estimate because it does not consider two-way subscription. It was acknowledged, however, that the Company would not have data available from the target exchange of Springfield served by SWB on which to base that estimate. It was also acknowledged that, even if available, the estimate of two-way data based strictly on past toll usage is likely to be much less reliable than the one-way estimate. Although OPC has no projections of the two-way buy up for the Company, it is contended that experience on other COS routes indicates that two-way buy up will equal or exceed the level of one-way subscription. This conclusion was based largely on the interpretation of testimony presented in Case No. TO-90-232 by Staff Witness Edson. OPC's witness states that the Staff witness in

Case No. TO-90-232 reported that actual net revenue losses for several routes studied averaged only one-third (1/3) of the projected amount. As a result of that Staff testimony, OPC, in this case, proposes to base the Company's rates on an assumed over-estimation of net COS revenue losses. Using those assumptions, OPC proposes an additive for residential and business COS users of \$4.95 and \$10.10 resulting in a total residential COS rate to Springfield in the amount of \$11.00. OPC contends that those proposed rates would allow the Company to recover approximately 90 percent of the Company's potential maximum revenue loss contrasted with the Staff's proposal of allowing the maximum possible revenue loss to be recovered on an interim basis subject to refund.

By rebuttal testimony the Staff is critical of the OPC's interpretation of the testimony of Witness Edson in Case No. TO-90-232. First, it is pointed out that Edson's study was based on only four (4) month's data, which is hardly a suitable basis for attempting to set permanent rates. In the second place, while it is acknowledged that the average revenue loss turned out to be less than projected, some of the companies covered in the study projected their revenue losses very accurately. As such, it is improper to strike an average and apply it to Choctaw. The Company joined in the Staff's criticism of OPC's proposal largely for the same reasons. The Commission finds that the OPC's analysis is based too much on speculation to be the basis of a permanent rate. It is contended by OPC that the possibility of recovering 90 percent of its maximum possible toll loss is the reasonable opportunity to achieve a fair return on its investment because it is very unlikely that the maximum possible loss will be incurred. In the Commission's opinion the flaw of that argument is that if that event does occur, the Company will be harmed by being unable to recover its full revenue loss by virtue of the prohibition against retroactive ratemaking. The same rationale supports the OPC's alternate proposal of a much lower surcharge tariff. Based on the assumption that the revenue loss will only be one-third (1/3)

to one-half (1/2) of that projected, the OPC has proposed an across-the-board surcharge on all Choctaw customers of \$1.05 and \$2.10 for residential and business service, respectively. The proposal is also too speculative to be the basis of permanent rates, however attractive it may appear to be.

In addition to the perceived flaws in the OPC's revenue loss estimate, the Company attacks the proposals of both OPC and the Staff on the basis of being contrary to several established principles and prior Commission orders. Choctaw attacks the proposed COS additives regardless of amount, as being inconsistent with the concept of a statewide rate for a statewide service. It has been previously acknowledged by both Staff and Public Counsel that their proposals result in a charge for COS to the customers of Choctaw different from the charges so far rendered to COS subscribers of other companies.

In the Commission's opinion the criticism by Choctaw is correct and, although the Commission certainly has the power to order higher COS rates for its customers, it should only vary from the prescribed statewide rates in a proceeding with that possibility in mind and the subject of notice and opportunity to be heard by any other potentially interested parties.

The Company also objects to the Staff and OPC's proposal wherein the COS additive would be retained in its entirety by the originating carrier. The Company contends that its retention of the COS additive would be contrary to the terms of the RRSP and would be challenged by the connecting carriers classifying the additive as revenue to be shared under the RRSP. Staff and OPC are of the opinion that their proposed treatment of the COS additive is consistent with the intent of the RRSP. Both sides of the controversy rely for their opinion on paragraph 2 of the RRSP which states in its entirety as follows:

All COS revenues including the basic COS rates for one-way, two-way, or usage sensitive service, any Extended Area Service (EAS) additives (including any rate differentials for expanded calling scopes) and non-contiguous exchange/tier charges, but excluding any non-recurring

charges, will be divided among the local exchange companies (LECs) providing facilities between the petitioning and target exchange on an equal basis (i.e. 50% to each if there are two companies on the route, 33 1/3% each if there are three companies on the route, etc.). This division will only be based on the route between the specific petitioning and target exchange and will not take into account any additional exchanges which may be within the expanded calling scope of the target exchange.

In the Commission's opinion, the Staff and OPC's proposal violates the quoted portion of the RRSP. Although the Staff draws a number of comparisons of its proposed COS additive to the surcharges presently retained by COS providing companies, the Commission perceives one significant difference. Both the prescribed uniform statewide COS rate and the proposed COS additive could be avoided by any customer of a local exchange company by declining or terminating COS. In contrast, the surcharge could only be eliminated by the drastic measure of terminating all telephone service, and is not in any way dependent on subscribing to COS. Since the COS additive appears to be a COS revenue, the Commission agrees with the company that the proposed treatment would present great potential for successful challenge by connecting companies. The Commission is also of the opinion that the proposal would present an opportunity for claims of discrimination. It has already been contended by Choctaw that its customers are entitled to COS at the same statewide rate that has previously been offered to other subscribers. For all of these reasons, the Commission is of the opinion and finds that the proposed COS additive, regardless of which amount is selected, is not a satisfactory solution to the dilemma presented in this docket.

In the Commission's opinion the suspended tariff should be approved. The evidence establishes that the Company has estimated its revenue loss properly and the tariffs are designed to recover those losses. The Staff's evidence establishes that the tariffs have been formulated in the same manner as other surcharge tariffs which have been approved.

The Company has consented to seek other COS related costs in its current rate case. Under the proposed tariffs in this case and the additional cost being sought in the rate case the Company should be made whole economically for the provision of COS which has been desired by the Company's customers for an extended time.

For the procedural reasons previously recited, the Commission does not have available to it the Company's preferred option of employing a high loss fund. The instant record is inadequate for the creation or implementation of such a fund which should only be undertaken after extensive notice to persons who could be affected, including present and future subscribers to COS.

As pointed out by the Company, the Commission also notes that it has a task force at work for the purpose of investigating more comprehensive alternatives to addressing extraexchange calling. Pending any results of that task force the Commission has under suspension numerous COS routes that have qualified for implementation by demonstrating a community of interest. The Commission recognizes that, based on developments by the task force, institution of COS in its present form in the Halltown exchange may be temporary in nature. Even though institution may be temporary, the customers are entitled to COS under surcharge tariffs that the Commission finds to be within the realm of reasonableness.

Conclusions

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

The Company is a Telecommunications company pursuant to Section 386.020, RSMo Supp. 1989 and is subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo.

The tariffs at issue in this matter were suspended pursuant to Section 392.230, RSMo Supp. 1989.

In the instant case, the Staff and OPC proposals would result in the provision of COS for the involved routes under substantially different conditions and rates than service over COS routes implemented to date. The rates and conditions of service connected with what has been considered a statewide service at uniform rates with substantial variation should only be approved in a proceeding with notice to potentially interested parties of that possibility.

For the reasons recited in this Report and Order, the tariffs at issue in this case should be allowed to go into effect.

IT IS THEREFORE ORDERED:

1. That all tariff sheets filed herein by Choctaw Telephone Company for the purpose of establishing rates, charges or surcharges associated with providing COS between its Halltown exchange and the Springfield exchange of Southwestern Bell Telephone Company be allowed to go into effect on the 28th day of July, 1991.

2. That the provision of COS by Choctaw Telephone Company shall commence on the 28th day of August, 1991.

3. That this Report and Order shall become effective on the 28th day of July, 1991.

(S E A L)

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

Rauch, McClure and Perkins, CC., Concur.
Steinmeier, Chm., and Mueller, C.,
Dissents in separate opinion.
Certify compliance with the provisions
of Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri,
on this 17th day of July, 1991.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of Choctaw Telephone Co., to file)
tariffs to provide community optional service)
and recover actual net revenue loss associated)
with provision of service to customers in the)
Company's Missouri service area.


CASE NO. TR-91-86

DISSENTING OPINION OF CHAIRMAN WILLIAM D. STEINMEIER
AND COMMISSIONER ALLAN G. MUELLER

We respectfully dissent from the Report & Order adopted by the majority in this case. The Report & Order immediately imposes a substantial surcharge on all of Choctaw's customers to subsidize a service that the vast majority will not utilize. However, Choctaw has a general rate case currently pending before this Commission (Case No. TR-91-336) in which the recovery of its revenue losses from COS implementation could be reviewed, and either the amounts or the method of recovery could be modified. In addition, the COS program could be changed significantly in the near future as a result of the work of the task force investigating more comprehensive alternatives to extra-exchange calling referred to in the Report and Order.

We would stay the implementation of COS in this case, at least until the current general rate case is concluded; and ideally until the report of the task force has been received and acted upon by the Commission.

For that reason, we dissent.


William D. Steinmeier, Chairman


Allan G. Mueller, Commissioner

Dated: July 17, 1991