BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CASE NO. TO-86-8

In the matter of the investigation into all issues concerning the provision of extended area service (EAS) in the State of Missouri under Commission Rule 4 CSR 240-30.030

REPORT AND ORDER

Date Issued: March 20, 1987

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APPEARANCES

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PROCEDURAL HISTORY

This case arises from the Commission's order issued in Case No. TO-84-149, In re request for extended area service between the General Telephone Company's Avenue City Exchange and Southwestern Bell Telephone Company's St. Joseph Exchange (July 11, 1985). In that order the Commission accepted a Stipulation and Agreement of the participating parties, Southwestern Bell Telephone Company, General Telephone Company of the Midwest, and the Commission's Staff, in settlement of the issues in that case. The Stipulation and Agreement contained the recommendation that a generic docket be established by the Commission to investigate all issues concerning the provision of extended area service (EAS) in the State of Missouri. This generic docket to investigate EAS was established subsequently and designated Case No. TO-86-8. In establishing this docket the Commission froze all cases petitioning for EAS which were filed subsequent to the inception of this case.

All local exchange companies under the Commission's jurisdiction were made parties to this case and notice of this docket was sent to them as well as to all WATS resellers, the Association of Long Distance Telephone Companies, the Office of the Public Counsel and the members of the Missouri Legislature.

On August 22, 1985, pursuant to a directive of the Commission, the parties convened at an early prehearing conference to consider the scope of this docket. As a result of said conference, the parties recommended that certain issues be heard by the Commission. Public Counsel requested that local hearings be set to allow the general public to express their views on EAS. The local exchange companies opposed this motion. The Commission denied the motion de facto.

On February 25, 1986, pursuant to a directive of the Commission, the parties simultaneously filed prepared direct testimony. Simultaneous rebuttal testimony was filed on March 28, 1986.

On April 2, 1986, a prehearing conference was convened and representatives of the Office of the Public Counsel (Public Counsel), the Staff of the Missouri

Public Service Commission (Staff), Southwestern Bell Telephone Company (SWB or Bell), Continental Telephone Company (Continental), Contel System of Missouri, Inc. (Contel), Webster County Telephone Company (Webster), Missouri Telephone Company (MoTel), General Telephone Company of the Midwest (GTMW), United Telephone Company (United), Alltel Missouri, Inc. (Alltel), MCI Telecommunications Corporation, Inc. (MCI), Competitive Telecommunications Association of Missouri (Comptel) and AT&T Communications of the Southwest, Inc. (AT&T), appeared and participated in said prehearing conference. GTE Sprint (now US Sprint) appeared and participated in this prehearing conference, but its position was not expressed in the Hearing Memorandum nor did it sign that document.

Hearings were held at the Commission's offices April 14-16, 1986, for the purpose of cross-examining the witnesses. Appearances were entered by MCI, AT&T, SWB, GTMW, United, Continental, Contel, Webster, MoTel, Alltel, Public Counsel and Staff. Comptel entered an appearance but did not participate in the hearing. An entry of appearance was made by Jeremiah D. Finnegan on behalf of the Cities of Independence and Oak Grove, both in Missouri (Independence and Oak Grove), the County of Jackson in Missouri (Jackson) and the "249 Phone Committee" (Phone Committee). On the day that the hearing commenced Mr. Finnegan filed a petition with this Commission requesting that his clients might be allowed to intervene in the case or, in the alternative, to participate without intervention. The intervention deadline in this case was August 12, 1985. Mr. Finnegan stated that he and his clients only became aware of the case a few days before the hearing date.

The Commission ruled that Mr. Finnegan's clients could participate without intervention and that their participation would be restricted to filing a brief.

Initial briefs were filed by MCI, Public Counsel, Staff, United, AT&T, GTMW, MoTel, Continental, Contel, Webster, SWB, Independence, Oak Grove, Jackson and the Phone Committee. Reply briefs were filed by SWB, Continental, Contel, Webster, Public Counsel, MCI and Staff.

The parties did not waive the reading of the transcript by the Commissioners.

FINDINGS OF FACT

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

I. THE POSITIONS OF THE PARTIES ON THE ISSUES

A. Is the Continued Provision of Extended Area Service in the Public Interest? How Should the EAS Additive be Calculated for Existing EAS?

The fundamental issue addressed in this proceeding is whether the continued provision of extended area service is in the public interest. The issue is divided into two subissues: Whether customers should continue to have the opportunity to acquire new EAS arrangements and whether existing EAS arrangements should be allowed to continue.

1. Staff

Staff is opposed to the continued offering of new EAS arrangements. Staff points to 63 EAS cases inaugurated from 1974 to 1984, and notes that these cases failed to produce a single traditional EAS arrangement. The Staff believes that EAS cases result in a futile expense for local exchange companies and that this expense is then borne by all the companies' customers whether or not they have any interest in EAS.

Staff states that EAS benefits those customers who make many calls between the exchanges in question at the expense of customers who do not. Staff views EAS as a non-basic service for which such a subsidy is inappropriate given today's competitive environment in telecommunications.

Staff recommends the retention of existing EAS arrangements as long as it continues to meet the needs of the majority of customers having EAS. Staff emphasizes that such arrangements should be priced on a usage-sensitive basis as it

becomes economically and technologically feasible. Until the usage-sensitive rates are in place, Staff believes that the historical method of costing such routes should be retained, i.e., using embedded direct costs with no allowance for toll loss since there are no toll revenues to be lost in an existing EAS route. Staff believes that the EAS additive should be "unbundled" from the local rates within the structure of a general rate case. "Unbundling" separates the price of EAS from the price of local exchange service on customers' bills. This approach will make customers aware of their cost for the service. Staff believes that the local exchange companies (LECs) should include a vote-out procedure in their tariffs. This will enable the customers to act on their evaluation of the "unbundled" EAS additive should they find that the service is not worth its cost to them. (See the section on vote-out procedure for details, page 20.)

2. United

United joins Staff in opposing the continued offering of new EAS arrangements. United states that EAS is no longer beneficial to the ratepayers at large because of technological changes. Before direct distance dialing and automatic number identification were established, short-haul toll calls were expensive to measure and it was more cost-effective to have a flat-rate EAS additive that did not require measurement. Now that these technological innovations are in place, short-haul toll can be cost-effective. United believes that toll rates should no longer be used to subsidize EAS arrangements because competition is forcing the price of toll toward its cost. United also views EAS as a means by which interexchange carriers (IXCs) avoid paying access charges to the so-called "secondary exchange." A secondary exchange is an exchange which is linked by EAS to a primary exchange wherein is located the point of presence (POP) of an IXC.

United believes that EAS is unfair in that it is not merely subsidized by the toll revenue of the company in whose exchange the EAS is located. When an EAS arrangement is established, the toll revenues stop which formerly flowed from those exchanges through the LEC to the intraLATA toll pool. Yet, the revenue from the

subscriber plant factor (SPF) continues to flow to the LEC from the pool to cover the costs of the LEC for such toll service. SPF continues at its previous level because it is frozen under the present guidelines for separation of jurisdictional costs. This condition results in the subsidization of the EAS in question by all the companies who participate in the pool.

United urges a different solution to the problem which EAS tries to address. United suggests that, where necessary public facilities such as schools, hospitals and governmental offices are located in another exchange from that in which many of their constituents live, tax money be used so that these entities can subscribe to services such as foreign exchange (FX) to allow their constituents to contact them without paying toll.

United agrees with Staff that existing EAS should be continued unless the customers of an exchange vote to discontinue it. United suggests that the Commission adopt a rule which allows customers of an existing EAS arrangement to vote to discontinue the service. The voting procedure recommended by United is identical to that suggested by Staff. United further recommends that, in the future, the EAS additive for existing arrangements be changed from flat-rate to some form of measured pricing. United believes the additive for existing EAS arrangements should be calculated in exactly the same manner as the additive they recommend for new EAS should the Commission choose to continue the provision of new EAS. (See the section on calculating the additive for new EAS beginning on page 10.)

3. SWB

SWB is opposed to the continued offering of new EAS arrangements. SWB believes that technological changes have eliminated the original reasons for EAS. Measurement costs for short-haul toll calls are low now making a flat-rate alternative unnecessary. SWB states that competition will cause toll rates to move toward their cost of provision, thus making it more difficult for toll revenue to subsidize EAS rates. SWB asserts that the EAS rule is no longer viable. As proof of its contention, SWB points to the overwhelming number of EAS cases which were

unsuccessful in implementing EAS service. Bell believes that the rule results in much expense and frustration for the companies. SWB states that the demand for EAS is fueled by the presently existing disparity between high toll rates and low local rates. Bell believes both these rates must move toward the cost of their provision.

SWB does not propose the unilateral dismantling of existing EAS arrangements. Bell supports in principle the establishment of a vote-out procedure. However, SWB asserts that there are certain practical problems which must be considered before such a procedure is adopted. (See the section on vote-out procedure for details, page 20.)

4. Continental, Contel and Webster: The Continental Group

The Continental Group believes that new EAS routes are not detrimental to the public interest if appropriately priced. These three parties assert that the rates for EAS should be cost-based and usage-sensitive. If the service is not priced according to the cost of providing it, it is subsidized by customers who have no EAS. These parties feel that this subsidy is inappropriate in today's competitive environment where prices must move toward the cost of providing the service. Without usage-sensitive pricing high-volume users of EAS are being subsidized by low-volume users.

The Continental Group believes that the continued provision of existing EAS also can be in the public interest if appropriately priced. These parties state that the additive for EAS should be "unbundled" from the local access line rate and should be based on the fully-allocated embedded cost. If competition occurs, the additive may need to be reduced but should not recover less than the incremental cost of providing the service. These parties recommend that the first step is to move existing EAS rates to full-cost pricing. After an interim period, these existing EAS rates should be converted to usage-sensitive pricing.

Finally, the Continental Group agrees with United and Staff that there should be a procedure whereby an exchange can terminate its participation in an

existing EAS arrangement. (See the section on vote-out procedure for details, page 20.)

5. GTMW

GTMW agrees with the Continental Group that the continued provision of new and existing EAS would not be detrimental to the public if appropriately priced. GTMW agrees with the Continental Group that to avoid subsidization such rates must recover the cost of providing the service and should be usage-sensitive.

GTMW believes the rate for existing EAS should be "unbundled" from the local exchange rate and should be set at a level to recover all associated direct costs including a return on the investment associated with EAS. GTMW feels the rate for existing EAS should be usage-sensitive where possible and a flat-rate if the measuring capacity is unavailable.

GTMW joins with Staff, United and the Continental group in believing that there should be a vote-out procedure. (See the section on vote-out procedure for details, Page 20.)

6. Alltel

Alltel believes that the continued provision of new and existing EAS arrangements is not detrimental to the public interest so long as the price of the service is fully compensatory and the proper criteria are used to determine whether there is a need for a new EAS arrangement. Alltel favors an increase in both the calling-volume criteria and the voting percentages required. (See the section on changes in the rule for further details, page 17.) Alltel recommends that the additive for existing EAS be based on the embedded, fully-allocated cost of providing the service. As an alternative Alltel is willing to accept Staff's costing method of using embedded direct costs. Alltel is in favor of measured rather than flat rates as an eventual goal. However, Alltel notes that many LECs presently lack the technological capability of measuring EAS.

Alltel favors establishing a vote-out procedure using the same criteria and procedures by which customers vote to implement EAS.

7. MoTel

MoTel is not opposed to eliminating the provision of new EAS arrangements or making it harder to obtain such arrangements. MoTel does not want any additional EAS arrangements in its service area especially two-company arrangements which cause additional costs as well as rate design and cost allocation problems. MoTel opposes dropping existing EAS arrangements or increasing the rates charged for existing EAS routes. MoTel asserts that EAS offered at present rates aids the growth of Bolivar, Missouri, the largest town in its southern district. With EAS, customers find it easier and cheaper to call Bolivar than Springfield, Missouri, thus contributing to Bolivar's growth. MoTel has a vested interest in the prosperity of Bolivar and its environs.

Although its EAS rate is currently "unbundled," MoTel prefers to have the EAS charge "bundled" with the local access line rate. MoTel's current EAS additive depends on the number of customers accessed by the particular EAS system. MoTel is opposed to any further "route specific" pricing of its EAS routes. Its current additive is a flat-rate and MoTel does not want to change the manner by which its additive is priced.

MoTel currently has a tariff allowing for the vote-out of EAS. MoTel states that there has been no customer interest in this process. MoTel does not believe it is necessary to have a vote-out rule. (See the section on vote-out procedures for further details, page 20.)

8. Public Counsel

Public Counsel believes that the continued provision of new and existing EAS is in the public interest. Public Counsel asserts that EAS is necessary to rectify the inequity caused by old local exchange boundaries which no longer reflect the community of interest of the customers who reside there. Public Counsel states that these exchange boundaries were established over fifty years ago and no longer mirror the daily calling requirements of their residents. This condition results in customers having to make many toll calls in the ordinary course of their daily lives.

Public Counsel points to the adverse social and economic impact of this misalignment and urges that its most efficient solution lies in the provision of EAS. Public Counsel believes that calling within the customer's community of interest is really local calling even though it is not within the boundaries of the exchange. Public Counsel states that it is inappropriate to price such local calling as toll.

Public Counsel believes that the method for calculating the EAS additive should be simplified and that this method should be used in both existing and new EAS arrangements. Public Counsel states that a flat-rate additive is preferable to a measured rate for EAS. (See the section on calculating the additive for new EAS arrangements for further analysis, page 10.)

Public Counsel does not oppose a vote-out procedure where the majority of customers in the smaller exchange desire to eliminate the service.

9. Independence, Oak Grove, Jackson and the Phone Committee: Phone Committee

The Phone Committee believes that the continued provision of new and existing EAS arrangements is in the public interest. The Phone Committee feels that EAS is a substitute for changing exchange boundaries to reflect present communities of interest. The Phone Committee asserts that, since EAS is a form of local calling, it would constitute undue discrimination to allow local exchange service to be priced on a flat-rate basis while EAS is priced on a measured basis. The Phone Committee cautions the Commission about changing EAS pricing from a flat rate to a measured rate. The Phone Committee believes such a change would remove the last major obstacle to eliminating flat-rate local exchange service. The Phone Committee believes a hue and cry would arise if local exchange rates became wholly measured.

In the alternative, the Phone Committee requests that the Commission offer both usage-sensitive and flat-rate EAS just as both are offered now for local exchange service. This alternative would allow the Commission to study public acceptance of measured local service.

The Phone Committee supports Public Counsel's proposal for pricing new and existing EAS which is outlined in the section on pricing of new EAS arrangements. The Phone Committee takes no position on whether there should be a vote-out procedure for termination of EAS arrangements.

10. MCI, Comptel and AT&T

MCI, Comptel and AT&T take no position on the continued provision of new and existing EAS. These three parties also do not take a position on whether the EAS additive should be measured or flat, how the additive should be calculated for existing EAS routes and whether there should be a vote-out procedure to terminate EAS arrangements.

B. The Calculation of the EAS Additive for New EAS Arrangements

One of the most basic issues in the case concerns how the EAS additive for new EAS arrangements is to be calculated if new EAS arrangements continue to be offered.

1. Staff

Staff opposes the continued offering of new EAS arrangements. Should the Commission decide to retain the offering of new arrangements, Staff recommends that they be provided only on a usage-sensitive basis. Staff believes the additive should be based upon the overall, direct cost of putting in the service plus the lost billed toll without consideration of toll pool effects. This overall, direct cost includes the additional investment for trunking and switching plus common investments, costs and expenses such as land and buildings, depreciation, taxes, maintenance, operations as well as rate of return. Staff believes this cost-based pricing is essential to send a signal to telephone customers as to the cost of providing the service. Since Staff considers EAS a nonbasic service, Staff urges that the additive be usage-sensitive so that the cost-causer is the cost-payer. Staff feels this approach recognizes today's competitive telephone environment.

Staff recommends including billed toll in the additive because Staff believes its inclusion will leave company in a revenue neutral position after

switching to EAS from toll. Staff supports the use of billed toll in the additive rather than lost revenue from the toll pool. Staff fears the latter would complicate the calculation of the additive by involving it in the separations process. Staff also points out that the toll pools have a limited future in Missouri. Staff stresses that the toll pool settlement and billed toll should not both be reflected in the additive since that could lead to the overrecovery of revenue.

Staff believes nontraffic sensitive (NTS) costs should not be included in the additive since EAS does not change the amount of NTS plant required and thus it provides no useful price signal to the user. Further, current separations procedures include EAS expenses and revenues in the local exchange category while NTS is charged to the toll category.

Finally, Staff believes that the Originating Responsibility Plan (ORP) is unnecessary for settling differences in cost between two different LECs involved in the provision of EAS. Staff states that ORP should be unnecessary if all costs are reflected in the additive. Staff worries that the use of ORP could result in overrecovery of revenue.

2. United

United opposes the continued offering of new EAS arrangements. Should the Commission continue to allow the establishment of new EAS arrangements, United believes that measured rates would provide better price signals to customers than flat rates. United recommends that the additive for new EAS be based upon the following elements:

1. The minutes of use (MOU) of the system between the exchanges should be established;

2. The switching and line-haul costs should be calculated by applying the traffic sensitive access charge to the MOU established in No. 1;

3. The cost for general overheads should be calculated by applying the adjusted carrier common line charge (CCLC) to the established MOU. The CCL charge should be the intrastate access CCLC adjusted for the anticipated increase in MOU;

4. Add the traffic-sensitive costs and the costs for general overheads together to arrive at the total additional cost of providing the EAS. This additive

can then be priced either as a flat rate by dividing by the number of customers or on a measured-service basis.

United does not believe NTS costs should be included in the EAS rates.

United asserts that this method will produce an additive which is less than short-haul toll rates. United recommends that EAS should not be expanded in exchanges where measured-service capabilities are unavailable.

3. SWB

SWB opposes the continued offering of new EAS arrangements. Should the Commission continue to allow the establishment of new EAS arrangements, SWB believes usage-sensitive pricing is preferable to flat-rate pricing. Usage-sensitive pricing sends a proper price signal to prevent customers from overusing the system. SWB admits that the equipment to measure local traffic is not universally available. However, SWB points out that over the "one-plus" toll calling system such measurement is available. Bell believes that usage-sensitive EAS is possible throughout the state by using the "one-plus" system where local measurement is unavailable.

SWB asserts that the price of new EAS should be based on the cost to provide the next unit of service at the level of anticipated increased use plus an appropriate level of contribution to overall common costs but not including NTS costs. These two elements would comprise the usage-sensitive rate. If the EAS arrangement is new and being established outside a rate case, a flat rate would be added to the usage-sensitive rate. This flat-rate additive could be removed by the Commission during the next general rate case. The flat-rate additive would consists of the residual left after subtracting from the "make-whole" revenue requirement the anticipated revenue from the usage-sensitive rate times the anticipated use. The make-whole revenue requirement would ensure that the company is no worse off financially after the new service than before.

SWB feels this revenue requirement should be composed of the cost of needed additional equipment and facilities including carrying charges and a rate of return on investment plus the toll settlement shift and billing losses for such special

services as FX and WATS. Appropriate credits should be made for reusable plant and any other cost savings. The toll settlement shift is defined by Bell as the total billed revenue lost to the pool less the decrease in toll settlement from the pool due to the shift of the route from toll to local service times the given company's percentage share of the pool. Where there is two-company EAS, the net intercompany compensation from Bell's Originating Responsibility Plan (ORP) is added and subtracted from the flat-rate additive. This is a plan whereby the company that provides most of the facilities for the two-way EAS is paid to terminate the EAS calls by the company who is providing less facilities. The net effect of ORP upon the additive should be zero since Bell views it as merely a plan to settle accounts between the two companies with one company charging its ORP costs to the additive and the other company deleting its ORP revenues from the additive making an effect on the additive of zero.

Bell stresses that for existing routes, the additive would be based on the true incremental cost of providing the service plus an appropriate contribution to common costs with no flat-rate additive necessary.

If the Commission continues to offer new flat-rate EAS, SWB proposes that the flat-rate additive at least recover the cost of the service plus some contribution to common costs. Bell recommends that the rate include the revenue requirement on additional equipment and facilities necessary to provide the service including carrying charges after credit for reusable plant plus the toll revenue loss to the intraLATA toll pool less the pool settlement decrease plus any special service billing loss less any cost savings. Where two-company EAS is involved the net effect of intercompany compensation would be included also.

4. The Continental Group

The Continental Group (Group) believes that appropriately priced EAS can be in the public interest. The Group feels that the EAS price should be cost-based and, where technologically feasible, usage-sensitive. By usage-sensitive pricing, the Group means that the price should reflect the duration of the call, the distance it

covers and the time of day in which it is made. The Continental Group recommends that the EAS additive recover, at least, the incremental costs of providing the service and where competition allows some, and possibly all, of the fully-allocated, embedded costs including NTS costs. Not only should direct costs be recovered, but the Group states that the additive should recover the toll revenue lost to the intraLATA toll pool as well as the access-charge revenue lost through interexchange carriers' use of the EAS network. The Group admits that NTS costs may not rise as a result of the onset of new EAS. But the Group asserts that the EAS additive should make a contribution to NTS costs in order to lessen the pressure which the new competitive environment will exert on the price of local service to move toward its cost. The cost-based and usage-sensitive pricing places the cost of the service on the cost-causers and stops the subsidy of high-volume users by low-volume users.

5. GTMW

GTMW shares the view of the Continental Group that, if appropriately priced, new EAS can be in the public interest. GTMW joins the Group in recommending that the additive be cost-based and, where possible, usage-sensitive. GTMW believes that all relevant costs, including lost toll, should be included in the additive. GTMW asserts that the best solution lies in charging the user the marginal cost of the service through the use of a nonoptional local measured service. Local measured service would provide for a low-priced access charge to the network plus usage charges based on a set-up charge per call with a charge per minute based on distance. Time-of-day discounts would distribute the calling volumes more evenly thereby reducing the amount of investment needed to meet peak-hour demand.

Where an exchange does not possess the technological capability to measure local service, GTMW recommends using discounted toll during off-peak hours or an optional calling plan. GTMW stresses that discounted toll is preferable to a flat-rate price since it is measured and associates cost with the user.

6. Alltel

Alltel feels that new EAS arrangements can be in the public interest if appropriately priced. Alltel believes the price should be compensatory. Alltel believes it should be based on embedded, fully allocated costs or overall direct costs as recommended by Staff. Alltel feels that since EAS is used as a toll substitute it should be considered a nonbasic service and, as such, should make a contribution to local service. Alltel stresses that whichever method of costing is used, the same method should be used for existing EAS as is used for new EAS. This conformity will avoid customer confusion. Alltel believes the cost should reflect revenue losses caused by the switch from toll and special services such as FX and WATS.

Alltel is concerned that small LECs be permitted to establish flat-rate EAS additives until it is technologically and economically feasible for them to measure EAS usage.

7. MoTel

MoTel asserts that EAS is a local service which should be residually priced with a subsidy like other local services. The price should be based on the number of access lines available to the subscriber. MoTel prefers that the EAS additive be bundled with the rate for local exchange service. MoTel does not oppose halting the provision of new EAS arrangements but strongly favors the retention of existing EAS arrangements at their present price level. MoTel points to its EAS routes to Bolivar, Missouri, as supporting the economy of that town. MoTel believes that its EAS system prevents the drain of Bolivar's economic strength to nearby Springfield. MoTel fears that a change in the costing of the additive would destroy the viability of its EAS system.

8. Public Counsel

Public Counsel believes that EAS arrangements are necessary to serve local communities of interest which no longer conform to local exchange boundaries. To

make EAS cases simpler, less costly for company and Staff and easier for customers to understand, Public Counsel recommends that the EAS additive be "tariffed." By this Public Counsel means that the additive should be linked to the companies' filed and approved local exchange tariffs. This approach would avoid the costly and time-consuming cost studies which now prevail in EAS cases. The complexity of these studies place the EAS petitioner at a disadvantage in challenging their accuracy or appropriateness.

Public Counsel recommends that the customers in the smaller exchange pay the monthly rate of the larger exchange i.e., businesses would pay the business rate and residents would pay the residential rate. In addition, businesses in the smaller exchange would pay another one-half of the rate for business in the larger exchange while residents would pay another one-fourth of the rate for residents in the larger exchange. Public Counsel asserts that this method is not only easy to use but can change with the exchange rates and is based on the additional access lines available. The customers in the larger exchange would not necessarily pay more for the service but would have the number of their access lines increased by the number in the smaller exchange. Thus, in some cases, this would advance the day when that exchange would move into the next rate grouping with its higher local exchange rate. When two companies are involved in the EAS arrangement, Public Counsel would use the rate of the LEC which serves the petitioning exchange. The rate would be a flat rate and not a usage-sensitive rate.

Public Counsel believes that this method is the most reasonable and equitable way of calculating the EAS additive since it applies a local rate structure to calling that Public Counsel considers to be local in nature. However, should the Commission reject this method, Public Counsel urges the Commission to choose the "Ohio Bell" plan called Local Calling Plus (LCP). Under LCP, there is no increase in rates for customers who place no calls to the designated exchange. Customers who place such calls are billed for them under the LCP measured rates which are significantly lower than toll rates. Public Counsel points out the similarity in

price between LCP rates and the rates of SWB's local measured service (LMS) offered in Missouri. Public Counsel views the LMS rates as a reasonable alternative to flat-rate EAS. Public Counsel asserts that exchanges which pass the calling standards for EAS have shown that interexchange calling is local and, therefore, appropriate for an LMS tariff. Public Counsel points out that the LMS rates have already been approved by the Commission. Since the LMS tariff is sensitive to distance and time, Public Counsel states that it will make the cost-causer the cost-payer.

9. Phone Committee

The Phone Committee strongly supports Public Counsel's proposal for tariffed rates for EAS based on local exchange rates. The Phone Committee supports the approach for the same reason as does Public Counsel. In addition, the Phone Committee asserts that this approach might reduce the number of futile efforts by petitioners seeking EAS arrangements. Since the EAS additive could be easily computed prior to filing a petition, there would be less likelihood of petitions from exchanges where the additive would be considered unacceptably high.

Should the Commission adopt the Phone Committee's suggestion of making available both flat-rate and usage-sensitive EAS rates, the Phone Committee urges the Commission to use local-measured service rates for the usage-sensitive alternative.

10. MCI, Comptel and AT&T

MCI, Comptel and AT&T take no position on the method of calculating the additive for new EAS arrangements or whether the additive should be a flat or measured rate. However, MCI adamantly opposes the efforts of secondary LECs to increase access charges for EAS traffic to the POPs of IXCs.

C. What Changes, if any, Should be Made in the EAS Rule?

1. Calling and Voting Standards

Alltel believes that new EAS arrangements are in the public interest if the pricing is compensatory and the calling and voting standards are appropriate. Alltel

views EAS as a nonbasic service, the availability of which should be restricted. Alltel recommends that the Commission increase the calling-volume criteria and the voting criteria. Alltel suggests that EAS be approved on the vote of at least 51 percent of the customers in the exchange. Alltel does not specify how it would increase the calling volume criteria. At the very least, Alltel opposes any liberalization of the calling and voting standards.

Staff believes that no new EAS arrangements should be implemented. Should the Commission choose to retain the provision of new EAS arrangements, Staff recommends that the current criteria be retained as to both the calling and voting standards. Staff states that the Commission already tried a lower calling standard. The first EAS rule contained a standard of three calls per customer per month on average to the requested exchage. This criterion was later changed to an average of six calls per customer per month. Staff states that this change was made in order to make a more reasonable match between a customer's present toll charges without EAS and the flat-rate EAS additive likely if EAS were established.

United shares the viewpoint of Staff as does SWB. SWB asserts that any lowering of the criteria would increase the risk that a minority of the high-volume toll users within an exchange could impose the costs of their service on the majority. SWB states that, as it is, 20 percent of the subscribers (60 percent of one-third) can successfully impose their desires on the majority.

The Continental Group believes that appropriately priced new EAS arrangements can be in the public interest but joins the position of Staff, United and SWB that no change is necessary in the current calling standard. It can be inferred from the Group's position that they also feel there is no change necessary for the voting standard.

GTMW joins the Continental Group in their position.

MoTel does not oppose any change in the rule which makes it more difficult in the future for subscribers to obtain EAS. But MoTel does not believe that any change in the current calling standard is necessary. Motel itself does not want to

have any additional EAS routes but wishes to maintain those it already has at their present flat rates.

Public Counsel believes that the current calling and voting standards are too strict. As proof Public Counsel points to the fact that only one of 63 EAS cases filed between 1974 and 1984 has succeeded in establishing a form of EAS arrangement. Public Counsel recommends that the calling standard be reduced from an average of six calls per main per month to an average of three calls per main per month and from the standard of two-thirds (67 percent) of the customers placing at least two calls per month to a standard of one-half of the customers placing at least two calls per month. Public Counsel also recommends that only those customers in the petitioning exchange be permitted to vote on the EAS proposal since to allow otherwise is to disenfranchise the customers in the smaller exchange. Finally, Public Counsel believes that the calling standard should not be applied to the larger exchange because, in some instances, it is mathematically impossible for large exchanges to meet the calling standard on calls to the smaller exchange.

The Phone Committee joins Public Counsel in stating that the criteria of the present rule are too strict. The Phone Committee points to the lack of success in implementing EAS arrangements in the last decade as proof of the rule's harshness. The Phone Committee believes it is no solution to eliminate the rule entirely as unworkable since to do so would cause undue discrimination. As long as there is flat-rate local service, the Phone Committee believes flat-rate EAS is required. Without it the customers in some exchanges will be able to call those within there local community of interest without toll charges and other customers will not. The Phone Committee adds that the calling criteria should account for customers with FX lines to the nonpetitioning exchange. Failure to do so results in a survey which eliminates those needing EAS the most.

Comptel, MCI and AT&T take no position on this issue.

2. Vote-Out Procedure

Staff favors a procedure by which customers could vote to eliminate EAS. Staff recommends that this procedure be established by the filing of tariffs by companies with EAS routes. Staff recommends that the vote-out procedure be similar to the vote-out tariff already filed with this Commission by United. The tariff provides that the company conduct a survey of the customers upon receiving a petition for vote-out signed by at least 20 percent of the customers from one of the affected exchanges or 10 percent of the customers in each of the affected exchanges. In order for the vote-out to pass, a minimum of 50 percent of the combined total customers in the affected exchanges must vote and at least two-thirds (66 2/3%) of the combined total customers voting in the affected exchanges must vote to discontinue the service. The survey cards must be returned by the customers to the Commission's Secretary for validation and tabulation. Two years must elapse from any prior survey of the affected exchanges before a subsequent survey may be initiated. Staff believes that the availability of this procedure will enable the customers to act on their evaluation of the "unbundled" EAS additive should they find that the service is not worth its cost to them.

United agrees with Staff on this issue except that United speaks in terms of a rule rather than a tariff and specifically recommends that the survey cards be submitted to the Commission for its approval prior to being distributed.

The Continental Group believes that the present rule should be modified so that customers can vote out EAS under the same criteria by which it can be established. These criteria should be no more or no less stringent than those for initiating EAS. The Group believes that a limitation should be added to the rule restricting the filing of EAS petitions where a similar petition has been filed previously and failed. Presumably this would apply also to petitions to vote out EAS.

Alltel agrees with the position of the Continental Group in regard to terminating EAS by the same criteria used in establishing it. However, Alltel does

not mention a restriction on the filing of petitions to terminate EAS where a recent petition to terminate has already failed.

GTMW joins with Staff, United and the Continental group in believing that there should be a vote-out procedure. GTMW joins the Continental group in recommending that the vote-out procedure use the same criteria as those for voting to implement EAS. Like the Continental group, GTMW believes there should be some limitation on refiling petitions when one has recently been filed and failed. Presumably, GTMW would hold this viewpoint as to the effort to terminate EAS and not just as to the effort to implement EAS. Finally, GTMW believes that provision should be made for the company to recover stranded investment through accelerated capital recovery if EAS is voted out.

SWB supports in principle a proposal to terminate EAS arrangements by vote but Bell is concerned that this proposal be decided only after full consideration of its attendant problems.

Bell states that one problem may be stranded plant, the cost of which would be borne by the general body of ratepayers. Secondly, additional pressure might be applied to the intraLATA toll pool as the expenses for the newly created toll routes were charged to the pool. Since the abandoned EAS routes would presumably be low-volume toll routes and since the short-haul toll calls are relatively low in price, the overall rate of return for the pool might be lowered. Thirdly, a vote-out would cause some customer dissatisfaction among high-volume users of EAS. Bell does not suggest solutions to these problems.

Finally, SWB is concerned that the proponents of the vote-out process have not clearly stated the method for calculating the rate additive which would be presented to customers on the vote-out ballot. Bell worries that customer confusion might result if the vote-out price is inconsistent with the price of new EAS routes. SWB did not state how the additive used in a vote-out situation should be calculated. However, Bell did state that existing EAS routes should have usage-sensitive additives based on the cost of usage plus an appropriate level of contribution

divided by the usage. The level of contribution would be determined by the Commission after studying the recommendation of the company.

SWB does not mention a restriction on the filing of petitions to terminate EAS where a recent petition to terminate has already failed.

MoTel currently has a tariff allowing the vote-out of EAS. MoTel states that there has been no customer interest in this process. MoTel does not believe it is necessary to have a vote-out rule. MoTel recommends that, if such a rule is adopted, it be required that EAS be voted out only on a systemwide basis so that no one exchange can resign from a multi-exchange EAS network. MoTel recommends that the standards for voting out EAS be no less stringent than those for voting to implement EAS. MoTel stresses that the elimination of existing EAS systems or their conversions to toll would require additional expense. MoTel favors some restriction being placed upon the filing of an EAS petition where a similar petition has previously been filed and failed. It can be inferred that Motel would apply this stricture equally to petitions to vote out EAS as well as petitions to implement EAS.

Even though Public Counsel strongly supports the continued provision of new EAS arrangements, Public Counsel is not opposed to a procedure by which customers can vote to terminate EAS providing the majority of customers in the smaller exchange desire to eliminate that service. Public Counsel takes no position on the frequency of filing petitions regarding EAS.

The Phone Committee, MCI, Comptel and AT&T take no position on the termination of EAS by vote.

3. Should the Frequency of Filing EAS Petitions be Restricted?

Alltel believes that the right to file successive EAS petitions should be restricted unless proponents of EAS can demonstrate a significant change in circumstances in those exchanges since the dismissal or rejection of the last EAS request.

Staff is not directly sponsoring a proposal that restricts the filing of petitions to implement EAS. Should the Commission decide to continue the provision

of new EAS arrangements, Staff would support a proposal that would limit petitions for the establishment of EAS. Such proposals would not be entertained for a period of at least two years after the dismissal of an unsuccessful petition from the same exchange. Staff believes that this proposal will enable companies to avoid the costs of repeated futile attempts to implement EAS arrangements. Staff asserts that these costs are passed on to the general body of ratepayers who do not benefit from them.

Should the Commission decide to continue the provision of new EAS arrangements, United believes that requests to inaugurate EAS arrangements should not be entertained more frequently than once every three years.

Should the Commission decide to continue the provision of new EAS arrangements, SWB agrees with Staff that two years should elapsed after the dismissal of an unsuccessful petition to establish EAS before a second petition be entertained. SWB feels that this provision will conserve the resources of the Commission and parties by preventing repeated petitions from the same exchange.

The Continental Group supports the idea that some limitation should be placed on the filing of EAS petitions where a similar petition has been filed and has failed. The Group does not specify whether that limitation should apply to only petitions to implement EAS or to petitions to terminate EAS as well. MoTel and GTMW joined the Continental Group in its position including the ambiguity as to its application.

Public Counsel, the Phone Committee, MCI, Comptel and AT&T take no position on this issue.

4. Should the Rule be Changed to Make EAS "Mandatory Two-Way"?

All the parties taking positions on the matter agree that new EAS arrangements should be two-way. Those that do not support the continued provision of new EAS, support two-way EAS provided the Commission decides to continue the provision of new EAS arrangements. Those parties who give a rationale for their support of two-way EAS (SWB, Staff, Public Counsel, United and GTMW) point to the revenue loss and inefficient use of the network which one-way EAS can cause. Through

code-calling and changes in the directionality of traffic between the exchanges, customers seek to avoid toll charges. Customers in the exchange without EAS access either allow their counterparts in the exchange with EAS access to make all the calls or divise systems whereby deliberately uncompleted calls are used to signal their counterparts to call them back over the EAS network. These phenomena result in the loss of toll revenue over the toll network to the exchange with EAS as well as a disproportionate stimulation of the traffic over the EAS network requiring more investment than a two-way arrangement.

Public Counsel adds to these reasons its belief that a community of interest is necessarily two-way.

The Continental Group believes that these problems exist in one-way EAS arrangements only when a flat-rate additive is used. The Group states that one-way EAS would be appropriate only where offered under a system of cost-based usage-sensitive prices.

No position is taken on the issue of one-way versus two-way EAS by the Phone Committee, MCI, Comptel and AT&T.

Only SWB and the Continental Group directly addressed the issue of optional versus nonoptional EAS.

The Continental Group states that optional EAS undermines proper pricing of EAS. The Group feels that the fixed investment associated with providing EAS should be included in the access line charge for all customers in the exchange while the traffic-sensitive costs are recovered through usage charges. This approach is impossible when individuals can choose whether to take EAS.

SWB opposes optional EAS because of the difficulty of establishing the proper additive. The percentage of subscribers must be estimated and if the resulting rate is too high, then lower volume customers will withdraw causing a spiral of rate hikes and diminishing numbers of subscribers. Bell is concerned that there might not be an equilibrious rate which is also compensatory.

It is not clear to what extent the rest of the parties supporting two-way EAS also support nonoptional EAS. The wording of the Hearing Memorandum and the briefs is that these other parties support "mandatory two-way EAS." This wording is ambiguous as to whether the EAS should be mandatory (nonoptional) and two-way or mandatorily two-way. The fact that many of these parties spoke to the issue of one-way EAS without speaking to the issue of optional EAS did nothing to alleviate this ambiguity.

5. Should the Rule be Changed to Restrict the Availability of EAS to Contiguous Exchanges?

Public Counsel, the Continental Group, GTMW, MoTel, the Phone Committee, MCI, Comptel and AT&T take no position on restricting the availability of EAS to contiguous exchanges.

Staff, United, Alltel and SWB all support restricting the availability of EAS to contiguous exchanges. United states that the metropolitan area should not be considered as one exchange but as individual exchanges for purposes of this alteration in the rule.

Only SWB provides a rationale for its position of restricting EAS to contiguous exchanges. Bell states that allowing EAS between noncontiguous exchanges increases the risk of high costs to provide the service because the direct connections are not available and extensive back-hauling is required. Also, dissatisfaction of customers may result in the omitted "middle" exchange where toll rates remain in effect.

D. Intercompany Compensation Where EAS Involves Two LECs

The Continental Group, GTMW, Alltel, MoTel, the Phone Committee, MCI, Comptel and AT&T take no position on this issue.

SWB recommends no changes in the compensation arrangements currently used in existing EAS routes. In future EAS arrangements, SWB recommends its Originating Responsibility Plan (ORP) for the allocation of costs to the companies involved in a two-way EAS arrangement. SWB states that ORP recognizes that the costs to the two

companies involved in a EAS arrangement may not be equal and that the flow of traffic in a two-way EAS arrangement may be heavier in one direction than in the other. Each company calculates its costs for terminating EAS traffic and bills the other, ensuring that its ratepayers only pay for the cost of the calls which they originate. SWB asserts that ORP will not increase the total cost of a two-way EAS route. SWB explains that if Company A is the net payer of intercompany compensation to Company B, Company A will add the payment to its other costs included in calculating the EAS rate. Conversely, Company B will subtract the same amount from its costs otherwise incurred for the EAS route resulting in a net effect of zero.

Public Counsel officially takes no position on this issue. However, Public Counsel's witness, Mr. Dunkel, criticizes ORP as resulting in higher revenues for the company terminating EAS than the revenues for terminating toll. Mr. Dunkel criticizes ORP as adding to the complexity of EAS cases making it difficult for Staff and intervenors to detect errors. Mr. Dunkel faults ORP as a reallocation of existing costs instead of an allocation of the incremental costs incurred to provide EAS. Finally, Mr. Dunkel condemns ORP as being based on the faulty theory that only the customers in the originating exchange receive a benefit from EAS.

Staff's position is that the need for intercompany compensation is minimized if EAS is limited to the two-way variety. Staff addresses ORP by saying that it is unnecessary if all costs are included in the computation of the EAS additive. Staff states that the company is compensated for its costs by collecting the EAS additive and the addition of an intercompany compensation could lead to an overrecovery of revenue.

United recommends that intercompany compensation be based on the traffic-sensitive access charges filed by the so-called "designated carrier." Under United's plan, a "designated carrier" would be selected for each two-way EAS arrangement. The designated carrier would be the LEC with the largest investment in the provision of the EAS and would set the rates for the two-way service, receive all the revenues and pay access charges to the LECs participating in the EAS arrangement.

In one-way EAS arrangements, should the Commission approve them, the originating company would pay the terminating company access charges for terminating the calls and the originating company would be responsible for establishing the EAS rates and billing the customers for the EAS charges.

United believes that this approach provides for a more efficient arrangement by establishing one company to pay access charges when several companies are involved in an EAS complex such as Kansas City or St. Louis. This simplifies the billing process avoiding the need for all the companies billing each other. United feels that establishing one company to set the EAS rates and file the EAS tariffs for an EAS complex would provide for more uniformity in the EAS prices within a given EAS arrangement and provide fewer tariffs for the Commission to regulate.

E. Interexchange Carriers and EAS

1. Should Intercompany Compensation as it Concerns IXCs be Considered in this Case?

The issue here is should the Commission consider in this docket whether secondary exchange providers should receive compensation as a result of traffic to an IXC situated in a primary exchange. A primary exchange is one where an IXC has a POP or equipment allowing customers to gain access to its services. A secondary exchange is one which has an EAS arrangement with the primary exchange but where there is no POP. Customers of an IXC in the secondary exchange can gain access to its POP in the primary exchange over the EAS network thereby avoiding a toll call. Under the present system only the primary exchange company charges the IXC for access to its local exchange. The secondary exchange provider does not charge the IXC. This phenomenon does not arise when the same company serves both exchanges since the LEC can adjust its access charges in the primary exchange to cover traffic stimulated in the secondary exchange by the presence of the IXC in the primary exchange.

MCI and Comptel are opposed to the consideration of this issue in this docket for four reasons. First, MCI and Comptel argue that this was not among the issues to which the parties "stipulated" in an early prehearing conference memorandum

filed in this case on August 23, 1985. Second, MCI and Comptel assert that in order to consider this issue meaningfully, detailed financial and traffic data would need to be examined. MCI and Comptel note that no such data were entered into evidence in this docket. Third, MCI and Comptel believe that the Commission should withhold its decision pending the outcome of an FCC rulemaking on the issue at the interstate level. After the resolution of this FCC docket, MCI and Comptel feel this Commission would be in a better position to analyze the intrastate aspects of this issue on a case-by-case basis.

Finally, MCI notes that there are only two LECs with a total of three Missouri exchanges that have EAS arrangements with an exchange operated by a different LEC in which an IXC has a POP. MCI points out that there is no evidence in the record that any customers of an IXC have ever placed a call to an IXC via an EAS network. MCI believes that there is no present problem for the Commission to consider since the LECs were unable to present any evidence of revenue loss from such calls.

United believes that the Commission should not decide this issue in this case. United points out that the United States Telephone Association is considering proposals to settle this issue and the Commission should allow the Missouri telephone companies to use this national approach as a basis to negotiate intercompany settlements.

AT&T takes no position on this issue.

Alltel and MoTel believe that this issue does not need to be resolved in this proceeding and can be deferred until EAS is provided predominantly on a usage-sensitive basis and until national organizations such as the United States Telephone Association and National Telephone Cooperative Association have had an opportunity to reach an agreement with the IXCs on a nationwide EAS compensation plan which could be used as a basis for an intrastate compensation plan. However, Alltel and MoTel believe that the Commission should at least recognize three principles in this proceeding: That the transport and switching of intrastate, interexchange

traffic originating or terminating in an EAS area is deemed an access service; that all LECs, not just the primary exchange providers, are entitled to compensation from IXCs via access charges; and that appropriate surrogates may be developed to determine the actual level of compensation to be paid to all LECs involved in a multi-company EAS arrangement.

SWB believes that the Commission may, but need not, consider this issue. SWB suggests that the Commission should not allow the technological problems of this issue to distract it from the basic issue of this docket concerning whether the continued provision of EAS is in the public interest. SWB notes that this issue is the subject of federal proceedings and negotiations between the affected parties at the national level. SWB observes that it is likely that there will be a resolution of the question at the federal level which will eliminate the need for extensive deliberations by this Commission.

Public Counsel states that, although relevant to the major issue of whether EAS is in the public interest, intercompany compensation is not the important issue in this case.

Staff takes no position on this issue but Staff is aware of potential action by the FCC on the question of revenue-sharing between primary and secondary LECs. Staff believes neither potential FCC action nor the lack of explicit recognition of this issue in the early prehearing memorandum preclude the Commission from considering this issue.

The Continental Group and GTMW state that this issue should be considered in this docket. The Group and GTMW argue that this docket was established to consider all issues concerning the provision of EAS. This issue affects the cost of providing EAS as well as its pricing. These are essential issues in this proceeding.

The Group and GTMW believe that regulatory prudence necessitates considering this issue even though there is no evidence of actual use of EAS networks to originate or terminate such calls in Missouri. In a generic proceeding such as

this, these parties feel it is appropriate to resolve issues of potential as well as immediate concern.

The Group and GTMW note that allowing free originating and terminating of IXC calls on an EAS network is conceptually unsound. EAS routes are established on the concept of a community of common interest among the customers of two or more exchanges. Using this network to make a toll call to an individual outside the community of interest is counter to the rationale for EAS. This inconsistency is even more true to the extent that EAS receives a subsidy from the general body of ratepayers. The Continental Group and GTMW do not believe that IXCs should be subsidized by the ratepayers. Thus, the Group and GTMW believe that the matter of intercompany compensation for IXCs is necessarily an issue in this proceeding.

In addition, GTMW views the use of the EAS network by IXCs as a form of bypass of the toll network without the payment of proper compensation. GTMW believes the Commission should act to eliminate bypass and thus should consider this issue in this docket.

2. Should the Commission Restrict EAS to End-Users or Mandate Compensation to Secondary Exchange Carriers in EAS Arrangements Where IXCs are Present?

MCI is opposed to restricting EAS to end-users or imposing additional charges on IXCs to compensate secondary exchanges. MCI notes that there is no difference in routing, use of facilities or cost to the LEC for a call between a customer and an IXC as opposed to a call between two end-users in an EAS territory. Thus, MCI sees no justification for restricting EAS to end-users or adding an additional charge. MCI points out that IXCs already pay an access charge to the primary LEC and that EAS customers already pay the EAS additive. MCI believes that such a restriction should only be ordered on the basis of compelling financial and traffic data supporting it and MCI asserts that there are no such data in evidence in this case. MCI states that, since the access charges paid by the IXCs cover the cost of providing the access, the only legitimate questions in this case concern the EAS additive and an effective method of sharing the access charges between the primary

and secondary exchanges. MCI takes no position on how this should be resolved but notes that if the secondary LEC is receiving no revenues from the calling in question, a more equitable sharing of the revenues between the primary and secondary provider is in order since it is MCI's understanding that intrastate access charges are set above costs and make a contribution to residually-priced services.

MCI cites the FCC as stating that secondary LECs can bill their charges separately so long as the primary LEC reduces its charges accordingly. MCI asserts that the current tariffs of the primary exchanges which provide for joint access represent that the access charges contained therein cover the cost of LATA-wide termination.

MCI contends that the problem is limited to calls to the IXC since the IXCs have been entitled by the FCC to LATA-wide termination of calls at the established access rates regardless of EAS boundaries. MCI also argues that when this Commission certified MCI as an intrastate, interLATA carrier it declared that intrastate access charges would be due only on messages originating on MCI's network in Missouri which the Commission defined as when the message first reaches any point of interconnection between MCI's facilities and the LEC's facilities. In re the Application of MCI Telecommunications, 26 Mo. P.S.C.(N.S.) 104, 108 (Nov. 21, 1984).

MCI stresses that the problem of calls to the IXC only arises when the IXC purchases Feature Group A (FGA) or Feature Group B (FGB) line-side connections. As equal access, Feature Group D (FGD) connections are phased in, the problem will disappear. MCI states that some of the LECs admit that they have not compared the relative cost of converting their facilities to FGD to the estimated loss from calls to IXC's by EAS customers in secondary exchanges.

MCI states that since the problem lies with calls placed by the EAS customers, not calls originating with the IXC, it is these customers who should pay the cost of the calls. MCI points out that the appearance of an IXC within an EAS exchange which generates customer interest in a secondary exchange is actually a strengthening of the community of interest between these exchanges and thus they are

a proper case of EAS which should not be prohibited or inhibited. MCI contends that to prohibit such calling outright or inhibit such calling by additional charges would be contrary to the public interest since without access to IXC's, customers in many areas of Missouri will never have a realistic opportunity to use alternative long-distance carriers.

Finally, MCI argues that this Commission would be beyond its jurisdiction in prohibiting such calls or imposing additional charges on such calls of an interstate nature since the FCC has stated that the use of EAS facilities to connect an end-user to an IXC switch is assigned to the interstate jurisdiction if the call is interstate in character. MCI quotes decisions of the FCC as stating that neither LECs nor state commissions may block EAS access to an IXC's POP when the calling in question is interstate. MCI believes that the access provided by the LECs to the IXCs is inferior and has technological limits, the result of which is that intrastate calling must not be blocked if interstate blocking is prohibited. MCI states that the FCC's prohibition against blocking of interstate traffic includes situations where the prohibition would result in intrastate calls going unblocked.

Comptel concurs in MCI's position to the extent that it opposes restricting the availability of EAS to end-users without compelling financial and traffic data to support such a restriction. Comptel sees no justification for such a restriction given Comptel's assertion that there is no difference in routing or cost to the LEC for a call between two end-users as opposed to a call between a customer and an IXC's POP.

United believes that with appropriate compensation agreed to between the LECs, there is no reason for EAS to be restricted to end-users. United recommends that this Commission not try to prescribe the manner and substance of such intercompany compensation. United urges the Commission to allow the Missouri telephone companies to negotiate intercompany settlements based on proposals to settle the issue which are currently before the United States Telephone Association.

AT&T takes no position on these issues except to point out that it exclusively utilizes Feature Groups C and D for access to its customers and, therefore, no EAS facilities are used to either originate or terminate its customers' calls. The LEC is compensated for AT&T's use of its local facilities through AT&T's payment of access charges for FGC and FGD.

The Phone Committee takes no position on restricting usage to end-users and intercompany compensation of secondary exchanges for the use of EAS facilities to gain access to an IXC's POP.

Staff takes no position on whether EAS should be restricted to end-users. Staff also takes no position on the compensation of a secondary provider for use of its system to gain access to an IXC's POP through an EAS route. Staff does note that there is a potential for action by the FCC on this question.

SWB joins the Staff in taking no position on restricting access to EAS to end-users. SWB also joins Staff in taking no position on the issue of compensation of a secondary provider for use of its system to access an IXC's POP through an EAS route. SWB also notes the existence of federal proceedings on the subject and adds that the matter is also the subject of negotiations among the affected parties at the national level. SWB observes that it is likely that a resolution of the problem at the national level will eliminate the need for deliberations on it by this Commission.

MoTel, GTMW, the Continental Group and Alltel agree that EAS should be restricted to end-users. Unless appropriate compensation is paid to all the LECs serving the EAS exchanges, these parties feel EAS should not be used to obtain access to an IXC's POP. The Continental Group believes that appropriate compensation can be accomplished either by pricing EAS on a usage-sensitive basis and/or requiring IXCs to accurately report the nature of their access and to pay access charges for their actual use of the EAS network.

MoTel and GTMW assert that EAS is a form of local exchange service and thus is inappropriate as a means to obtain access to IXCs. MoTel and GTMW believe that if

IXCs are allowed to use EAS systems to originate and terminate calls, then at the very least, additional access charges should be paid by them to compensate for the additional switching and transporting which is provided to the IXCs. MoTel and GTMW feel that these additional charges should include an appropriate level of NTS costs.

GTMW points out that the existing rule was established long before the advent of IXCs and that it can be assumed that the rule did not contemplate the use of EAS by IXCs. GTMW asserts that a form of bypass has been created by the introduction of long-distance competition into the EAS network. By using the EAS network, certain IXCs may avoid the use of the toll network to originate and terminate long distance calls. Therefore, GTMW urges the Commission to clarify its use and either restrict EAS to end-users or require IXCs to pay for their use of the network. GTMW believes these carriers should be billed an access charge based on either assumed or measured minutes of use (MOU). In multi-exchange EAS arrangements, GTMW feels the IXC should be billed transport charges, additional local switching charges and carrier common line charges. GTMW endorses an FCC ruling which it sees as allowing the development of surrogate MOU and allocation factors where actual use is not available in order to spread the costs among the exchanges. GTMW cites the FCC as stating that the transport and switching of interstate traffic originating and terminating in an extended area will be deemed access services.

In the alternative, GTMW and the Continental Group quote the FCC as stating the design of the local exchange network is within the discretion of the exchange carriers. The FCC cautions that this discretion is not unlimited in that the transmission quality must not be degraded. Further, it must not result in higher access charges. The Group and GTMW go on to cite a decision of the Idaho Utility Commission to support their belief that a state regulatory body may permit LECs to reroute the traffic of IXCs so that EAS facilities are not used.

GTMW and the Continental Group argue that the IXCs cannot rely on LATA-wide rights of termination as prohibiting LECs from collecting compensation for transporting calls outside of the local calling area. GTMW and the Continental Group

contend that LATA-wide termination merely grants IXCs the right to have calls routed to each exchange within a LATA regardless of the location of its POP. GTMW and the Group cite the FCC as viewing the charges of the secondary providers as being in addition to those charged by the primary provider.

The Group and GTMW point out that the IXCs cannot rely on the current definition of EAS as unlimited calling. First, these parties feel it is disingenious to rely on a definition that is being reevaluated by this docket. Second, this definition was drafted prior to the divestiture of the Bell System and the entry of competition into long-distance service. The drafters cannot have contemplated its application to include calls to a POP. Rather, GTMW contends the term applies to the number of calls placed by a customer and not the identity of the parties to the call.

GTMW and the Continental Group urge this Commission to recognize that intrastate, intraLATA traffic over EAS routes is an access service for which secondary providers are entitled to compensation as much as primary providers. GTMW and the Group recommend that this Commission should require LECs participating in multi-carrier EAS arrangements to negotiate for the equitable apportionment of access charges based on the records of the origination and termination of calls provided by the IXCs. In the alternative, the Group and GTMW advise this Commission to order the development of appropriate surrogates for the allocation of access charge revenues where actual traffic data is unavailable. GTMW and the Group assert that such a course would mirror the FCC's actions for interstate calls. Finally, the Continental Group states that if ordering companies to negotiate the apportionment of access charges is unacceptable to the Commission then the Commission should order the primary provider to share the necessary message data with the secondary provider so that the latter might bill its access charges to the IXC.

MoTel and Alltel urge this Commission to authorize the LECs to reroute calls which extend beyond the EAS area and, if these calls cannot be rerouted, to recognize that the transporting and switching of intrastate interexchange traffic originating or terminating in an EAS area is an access service for which secondary

providers are entitled to receive access charge revenue from IXCs. MoTel recommends that this Commission impose appropriate monitoring and reporting requirements so that calls involving IXCs can be identified and access charges levied. Where necessary, MoTel and Alltel recommend appropriate surrogates be developed to determine the actual level of compensation to be paid.

However, MoTel joins Alltel in stating that the issue of how to divide the EAS revenues among the LECs providing EAS in a multi-company situation does not need to be resolved in this proceeding and may be deferred until national organizations such as the United States Telephone Association and the National Telephone Cooperative Association have had an opportunity to reach agreement with the IXCs on a national EAS compensation plan which could be used as a basis for an intrastate compensation plan until EAS is provided on a usage-sensitive basis.

Public Counsel does not believe that EAS should be restricted to end-users but does believe that secondary providers should be compensated for the use of their portion of the EAS network by IXCs. Public Counsel does not provide a rationale for this position.

II. THE COMMISSION'S FINDINGS

A. Is the Continued Offering of EAS in the Public Interest?

The Commission finds that the continued offering of a service which allows extra-exchange calling within a demonstrated community of interest at less than toll rates is a sound solution to an evident problem.

There is ample evidence in the record of this case that some calling which is now categorized as toll should not be so categorized. Such calling is neither toll nor local. It is not local since local is defined as calling within the exchange and the calling in question is extra-exchange calling. To show that such traffic should not be categorized as toll, a review of the evidence is necessary.

The evidence shows that between 1974 and 1984, 65 petitions for EAS were filed with the Commission. A perusal of the Commission's files reveals that 17 more petitions have been filed since then with the Commission for a total of 82 and these

17 are still pending.[1] Thus, an average of about seven EAS petitions per year were received by this Commission between 1974 and 1986.

Of the 43 petitions which proceeded to the calling survey stage under the present rule, 18 or 42 percent passed the calling criteria showing a sufficient community of interest to qualify for further consideration.[2] In other words, between the years 1976 through 1985, 18 petitions passed the calling standard of an average of six calls per main station per month and two-thirds of the customers making at least two calls per main station per month from the initiating exchange to the requested exchange. Thus, an average of two petitions per year were from exchanges where there was a high degree of calling into the requested exchange.

Eleven of these 18 petitions resulted in calling usages of, at least, one-half again the standard of average calls per main station per month. The route of Buckner to the Kansas City Metropolitan Area shows an average of three times the standard of required calls per main station per month (19.43) as did the route of Kearney to the Kansas City Metropolitan Area (18.2). Under the previous rule the route of Jacksonville to Moberly showed an average of three times the standard required by the present rule (19.6) and the route of Huntsville to Moberly showed an average of four times the required standard of the present rule (24.9). Under the present rule the route of Avenue City to St. Joseph showed an average of about seven times the required standard of the average number of calls per main station per month (43.75).

By meeting the calling usage standard an exchange indicates whether a sufficient community of interest exists from the initiating to the requested exchange

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[1]These sums do not include complaint cases involving requests for relief from high toll bills but not denominated EAS cases.

[2]Fourteen of the grand total of 82 cases have been officially frozen by the order establishing this case and have not been allowed to proceed to the calling survey stage. Four cases listed in Exhibit 2, Schedule 1, under the present rule show no statistics for the calling survey.

to justify EAS. This community of interest is a quantifiable concept which illustrates a phenomenon for which there is ample evidence in the record of this case.

Generally the present exchange boundaries were established in the early 1900s. Since then a revolution in transportation has occurred with the replacement of the horse and buggy by the automobile. This change expanded the area in which people, including telephone customers, live, work, purchase goods and services, attend school and church, receive medical care and perform other normal daily functions. Merchants have consolidated into malls and supermarkets; physicians have consolidated into clinics and doctors' parks; the neighborhood schoolhouse has become a consolidated school district; and large factories draw employees commuting from miles away. Because of these changes there are some communities which stretch over several telephone exchanges so that customers are forced to make toll calls to talk to their place of work, their church, their children's school, their medical providers and the merchants from whom they purchase goods and services. In the course of their normal daily lives, these people are forced to make toll calls, not as a matter of discretion but as an unavoidable expense.[3] The Commission believes that this situation illustrates the unique nature of the calling in question and the unreasonableness of charging toll rates for it.

Public Counsel suggests that one solution to this problem is to change the exchange boundaries to conform to the new communities of interest. This would result in the toll calls becoming local calls once more. Many of the telephone companies who are parties to this case state that such an approach to the problem is unworkable since the cost of the necessary technological changes would be prohibitive. Thus,

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[3]The Commission, by accepting the validity of the concept of community of interest, does not mean to intimate that exchange boundaries were established initially to consciously conform to a community of interest. It is not the purpose of this case to establish a reason for the placement of exchange boundaries 80 years ago.

the underlying principle of EAS is the only solution offered in this case to the problem of non-toll calling priced at the toll level within a community of interest scattered over multiple exchanges.

The Commission makes note of the evidence herein which shows that it was the companies themselves which were initially in favor of EAS arrangements. Before direct distance dialing and automatic number identification were established, short-haul toll calls were expensive to measure and it was more cost-effective to have a flat-rate EAS rate which did not require measurement. At the same time many customers had an interest in paying a flat-rate fee for extra-exchange calling within what would come to be known as their community of interest. These coincident interests helped make the EAS program a reality. Now that technological innovations have made short-haul toll cost-effective, there is less enthusiasm among the telephone companies for the continued provision of flat-rate EAS. Rightly or wrongly, the companies see EAS as depriving them of lucrative toll routes and replacing them with flat-rate EAS routes which need to be subsidized by the profits from other services. However, the need of some of their customers for relief from toll charges for non-toll calling has remained just as great if not greater.

The purpose of the present EAS rule is to provide a "reasonable system for consideration of legitimate customer requirements for expanded toll-free calling...." Commission Rule 4 CSR 240-30.030. Under the present rule the expanded "toll-free" calling is accomplished by offering a nonoptional, unlimited flat-rate calling service between telephone exchanges. This is how EAS is presently defined. This Commission believes that extended calling need not be so defined in order to accomplish its goal of providing the capability of calling from one exchange to another at less than toll rates where a community of interest has been demonstrated. In fact, the evidence adduced in this case indicates that the present definition works to defeat the stated goal of the rule.

Since January, 1976, no traditional EAS routes have been established under the present rule out of the 40 cases filed and completed. Of these 40 cases, 15 or

about 37.5 percent passed the calling criteria required by the present rule.[4] Of these 15, five or one-third proceeded to a card survey and failed. Only one of these five came close to approving EAS. This vote showed a favorable response of 59 percent. Sixty percent is needed to approve EAS. This case was the Avenue City case (Case No. TO-84-149) where the calling statistics showed 43.75 calls on average per main station per month to the requested exchange and 95.2 percent of the customers making two or more calls per month to the requested exchange. The next closest case showed 34 percent voting for approval of EAS.

Of the remaining ten cases, at least four appear to have been dismissed prior to the card survey because the Commission deemed an insufficient number of customers would have an economic incentive to approve the rate proposed. Of the remaining six, one was withdrawn at the petitioners' request prior to the vote; three were dismissed prior to the vote without any reason listed on Exhibit 2, Schedule 1; one case ended in optional metropolitan service being established prior to the taking of a vote on traditional EAS; and one was overturned by the Cole County Circuit Court.

Thus, over one-third of the completed cases under the present rule passed the calling criteria, some with numbers which indicate a high interest in calling the requested exchange. But of these, in at least sixty percent of the cases, the customers either did not vote to implement EAS as a solution to their demonstrated need or the Commission reasoned that they would not vote to implement EAS.

The evidence indicates that there may be a number of reasons to explain this phenomenon. Some of the telephone companies take the position that low-volume users are unwilling to pay the flat-rate additive for a service they seldom need in order that high-volume users can pay less for a service they do need. Exhibit 2,

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[4]This figure does not include the four cases listed on Exhibit 2, Schedule 1, for which no calling figures are given.

Schedule 1 appears to support this interpretation. As noted therein, this Commission has dismissed EAS cases in the past prior to a vote because the statistics indicated it was not in the economic interest of 20 percent (60 percent of one-third of the customers) of the customers in question to vote for a flat-rate additive. When the amount of the actual usage was compared to the amount of the proposed rate, there were too few people who would benefit from the switch to the flat-rate additive. The toll price per call was a better deal for the vast majority of those customers.

Even where the calling levels were particularly high, as in the Avenue City case, the vote still failed. The evidence introduced by Public Counsel offers an explanation. The rate was unattractively high. In the Avenue City case, the rate was $13.40 for residential customers and $24.80 for business customers. Public Counsel makes a point that the rate was unacceptably high because too many extraneous elements were included in the rate. Not only was the cost of providing the service represented in the rate including the cost of additional plant, but also the revenues lost from the toll service no longer offered because EAS had replaced it.

Although the Commission may not agree that these elements are totally extraneous, the Commission is of the opinion that there is some merit to this conclusion. The rate developed by this costing formula may be too high to be viable. Further, EAS as presently conceived is nonoptional. If 20 percent of the customers approve EAS, all the customers in the exchange must take the service and pay the rate. Since EAS as presently defined is priced at a flat rate, it is necessarily averaged among the customers. It has to be high enough to pay for the high-volume users and thus low-volume users must pay more for it than their use would otherwise necessitate. EAS has been nonoptional in part to avoid the abandonment of the service by low-volume users. The reluctance of some to vote for such a system is understandable.

Based upon the record in this case, the Commission finds that the existing EAS rule has been largely unworkable and has not served the public interest. Therefore, it is appropriate to initiate a rulemaking proceeding to rescind the

existing EAS rule. This action in effect will extend the moratorium on new flat-rate EAS that has been in existence since this docket was established.

The Commission believes, however, that the underlying goal of EAS (i.e., providing the capability of calling from one exchange to another at less than toll rates where a demonstrable community of interest exists) can be accomplished by modifying the pricing of EAS and making the service usage-sensitive. Customers who have little or no interest in extended calling need not pay an additive for services they do not desire. Customers with a keen interest in extended calling will have the option to use it. Under a usage-sensitive system, high volume users will pay more for their service than low-volume users. To clearly distinguish between traditional flat-rate extended area service and a usage-sensitive system, the Commission will employ a new term when referring to the provision of new arrangements of extra-exchange calling at less than toll rates where a community of interest has been demonstrated. This term is Extended Measured Service (EMS).

The Commission determines that existing EAS arrangements should also be retained. The rationale for allowing new extended calling arrangements applies equally to keeping existing EAS. Like EMS, existing EAS allows calling between exchanges which is non-toll in character to be priced at less than the toll rate. However, the Commission determines that the changes described above should be prospective in effect. Where EAS already exists, there is no need to make such changes in the rule. The goal of making the rule viable does not apply where EAS has already been implemented. To change already existing EAS from flat-rate to measured would have a disruptive effect on the exchanges in question. The present revolution in telecommunications already breeds enough uncertainty among telephone customers.

In addition, with existing EAS there is not the need to reimburse the company for revenue losses as there is with new extended calling arrangements. With new arrangements the company faces the cost of implementing the service and the loss of toll and other revenues. These costs and revenue losses affect the company's ability to achieve its revenue requirement set in its last rate case. Such is not

the case with existing EAS where the costs and revenue losses have long since been distributed through the rate design process.

One of the issues addressed in this case concerns whether there should be a procedure for terminating existing EAS arrangements. Seven of the parties support such a procedure (Staff, United, the Continental Group, GTMW and SWB) either as part of the EAS rule or as a part of the companies' filed tariffs. Staff believes that such a procedure should be coupled with an "unbundling" of the EAS rate from the local exchange rate so that customers can learn the price of the service and assess its worth to them. MoTel does not believe that a termination procedure is necessary. The remaining parties either do not oppose the procedure or take no position on the matter.

The Commission notes that SWB, GTMW and United, among others, have recently filed tariffs providing for a procedure to terminate EAS. In most instances, these companies have "unbundled" their EAS rates from the local exchange rates. The vast majority of Missouri telephone customers are served by these companies. Therefore, the Commission will monitor the experience of these companies and will not now mandate the "unbundling" of EAS rates and the provision of a vote-out procedure for all companies in this state.

B. The Costing and Pricing of EMS

The Commission has found that EAS calling is not toll calling since it is made within a local community of interest. Therefore, the Commission finds that the EMS rate should be priced lower than toll rates. However, the Commission also has found that EAS is not local telephone service in that it is not confined to the local exchange as is local telephone service. Thus, the Commission finds that the EMS rate should be priced differently than local exchange service.

The parties to this case support various methodologies for costing and pricing extra-exchange calling. Staff recommends that the rate be based on the overall direct cost of putting in the service plus the lost billed toll without consideration of pool effects. SWB recommends that the rate be based on the

incremental costs plus an appropriate level of contribution to common costs except NTS costs. The Continental Group recommends that the rate be based on the incremental costs and, where competition allows, the fully-allocated embedded costs including NTS costs. MoTel recommends that the rate be residually priced like local exchange service. Other parties recommend other bases for determining the rate. No party provided the Commission with cost studies so that the actual cost of rendering extra-exchange service could be assessed. No data was offered to show whether lost toll revenues might be recouped through higher usage stimulated by lower rates.

Therefore, the Commission believes that a fresh look at the problem is essential. The Commission believes this can be accomplished best through an experimental approach from which pertinent data can be gathered. The data would be used in setting future permanent EMS rates at a just and reasonable level. Should the EMS experiment prove successful, a new rule would be promulgated establishing the EMS program. Under any permanent program, the Commission believes that the petitioning exchange should pass a calling criteria to qualify for an EMS arrangement.

The Commission believes that usage-sensitive EMS rates should meet the primary pricing concerns raised by the parties to this proceeding. The rate should be set to help the customers in question to lower their high toll bills and stimulate usage to recoup lost toll revenues. At the same time, the rate should be set to enable the company to maintain a reasonable level of revenue.

The Commission would like to experiment with a mandatory service which would significantly reduce the high telephone bills of the customers who presently have a community of interest with exchanges to which they make short-haul toll calls. At the same time, this service would be priced so as to account for the distance, duration and time-of-day of the calls in question. This approach would provide for usage-sensitive rates which make the cost-causer the cost-payer and send a pricing signal to the customers so they can evaluate whether the next call is worth its price to them. The time-of-day element would encourage off-peak use, where possible,

allowing the company to accommodate the stimulated traffic with less investment in additional network.

In addition, the Commission believes residential customers in the experimental exchange should be offered an optional service which features a monthly charge plus a flat-rate charge per call. This option would ease the customer's effort to keep track of his telephone costs while giving company a significant monthly charge to defray the costs of establishing the service as well as a significant charge per call to defray the set-up and per-minute costs per call.

In view of the foregoing, the Commission determines that EMS should consist of two alternatives. First, a mandatory, two-way Extended Community Calling service (ECC) would be established between the petitioning exchange and the requested exchange. This Extended Community Calling service would be mandatory in that it would replace the toll service. However, customers would not pay the EMS rate unless they used the service. ECC would measure distance, duration and time-of-day as does toll service and be priced at fifty (50) percent of toll as applied to all time periods and mileage bands.

Second, an optional, one-way service would be made available to residential customers whereby they could choose to pay a monthly charge plus a flat fee per call (Optional Message Rate or OMR). The monthly charge would be $5.00 and the price per call would be twenty-five (25) cents. The OMR plan would allow residential customers a choice to enable them to select the option best suited to their particular needs. Business customers, for whom telephone expenses are a cost of doing business, would not be eligible for the OMR plan which is less responsive to the cost elements of providing the service.

The Public Counsel has suggested an alternative measured plan for extra-exchange calling using the same rates as SWB's Local Measured Service (LMS) rates. Using LMS rates for Extended Community Calling would result in a very substantial discount from existing toll rates. The Commission believes that such a large discount from toll rates is not appropriate for the ECC experiment ordered

herein. The Commission has found that extra-exchange calling within a community of interest should not be classified as local telephone service. Therefore, it would be inappropriate to price ECC at the same rates as LMS, a local exchange service. However, a significant discount from toll rates should be available for extra-exchange calling within a community of interest. For purposes of the ECC experiment ordered herein, the Commission believes it would be appropriate to use a fifty (50) percent discount from intrastate toll rates. This discount rate and the underlying pricing and costing relationship inherent therein will be reevaluated, if necessary, after experimental data is available.

The Commission recognizes that not every exchange has full capacity to measure non-toll service. SWB has suggested that the "one plus" system could be used to measure EAS where local measuring capacity is unavailable. No party has disputed this assertion. Therefore, the Commission determines that a measured rate is feasible at this time whether by local measured capability or through the "one plus" system.

The Commission realizes that the loss of toll revenues and the cost for additional investment might leave the company short of meeting its revenue requirement as set in its last rate case. The extent of this revenue shortfall, if any, would vary depending on the amount of usage stimulated on a given EMS route by the decrease in rates from the toll level as well as any cost savings involved in the switch from toll to EMS. This shortfall, if it arises, will most probably be recovered through readjustment of the rate design.

Since the Commission does not have the necessary evidence on the record of this case to determine whether a shortfall will occur, the Commission feels that the experimental approach will provide the necessary data to predict the revenue outcome prior to establishing any permanent EMS routes.

In the course of the hearings held in this case, SWB voiced its willingness to participate in experimental EAS arrangements for the purpose of providing data on measured EAS. Specifically, SWB stated that it would be willing to establish, upon

order of this Commission, experimental, measured EAS routes in selected exchanges where flat-rate EAS presently exists. SWB expressed concern that it might be accused of undue discrimination should it, without an order of this Commission, inaugurate such rates in some but not all of its EAS routes.

The Commission applauds the cooperative attitude of Bell and trusts that the other LECs would be equally cooperative in the effort to produce the necessary data in this area. Pursuant to Sections 392.230 and 392.240, RSMo 1986, the Commission has the authority to order experimental rates for the purpose of acquiring the data necessary to fix just and reasonable rates. State ex rel. Watts Engineering Company v. Missouri Public Service Commission, 269 Mo. 525, 191 S.W. 412 (En Banc 1917); State ex rel. Washington University v. Missouri Public Service Commission, 308 Mo. 328, 272 S.W. 971 (En Banc 1925); State ex rel. City of St. Louis v. Missouri Public Service Commission, 317 Mo. 815, 296 S.W. 790 (En Banc 1927); State ex rel. Campbell Iron Company v. Missouri Public Service Commission, 317 Mo. 724, 296 S.W. 998 (En Banc 1927); State ex rel. McKittrick v. Missouri Public Service Commission, 352 Mo. 29, 175 S.W.2d 857 (En Banc 1943); and State ex rel. Laclede Gas Company v. Missouri Public Service Commission, 535 S.W.2d 561, 567 (Mo. App., K.C.D. 1976).

The Commission desires to see experimental EMS routes established among the following exchange groupings: Williamsville and Poplar Bluff; Cabool and Houston; Ozark and Springfield; Walnut Grove/Ash Grove and Springfield; Oak Grove and Kansas City Metropolitan Area; Buckner and Kansas City Metropolitan Area; Lone Jack and Kansas City Metropolitan; Nebo and Lebanon; Cedar Hill and the St. Louis Metropolitan Area; O'Fallon and St. Charles; Frankford and Bowling Green; Huntsville/Jacksonville and Moberly; Chula and Chillicothe; Avenue City and St. Joseph. Should the imminent vote on EAS under the present rule fail in the Tebbetts exchange, the Commission would like to see the Tebbetts and Jefferson City exchange grouping included in the experiment. The Commission feels that these exchanges represent diverse situations which will yield a broad spectrum of data on the demand for EMS arrangements.

The 15 listed groupings are geographically far-flung and include both suburban and rural patterns of customer density.[5] The five largest telephone companies in Missouri are represented within these groupings as well as four of the state's smaller telephone companies. There are both two-company and single-company arrangements represented. Six of the groupings are represented in current EAS cases pending before the Commission. Of these, three have passed the present calling criteria during the course of the pending case (Tebbetts/Jefferson City, Nebo/Lebanon and O'Fallon/St. Charles). The other three have been frozen by the order establishing this case and so could not proceed to the calling criteria stage (Cabool/Houston, Frankford/Bowling Green and Cedar Hill/St. Louis Metropolitan). The latter partially passed the calling study within the last three years with an average of 8.6 calls per main per month from Cedar Hill to the St. Louis Metropolitan Area and 61.1 percent of the mains making two or more calls per month.

Of the remaining nine arrangements, three (Avenue City/St. Joseph, Chula/Chillicothe and Williamsville/Poplar Bluff) passed the calling criteria under the present rule. Avenue City failed to establish EAS by the closest of margins. Two (Huntsville/Jacksonville/Moberly and Ozark/Springfield) passed the calling criteria of the previous rule by high margins. Three are involved in a complaint case (Buckner, Lone Jack and Oak Grove) where the complainants seek to acquire an alternative to the present toll charges they pay for calling between their respective exchanges and the Kansas City Metropolitan Area. About six years ago, Buckner passed the calling criteria of the present rule by a substantial margin.

These experimental routes will involve SWB in nine shared and three solo arrangements; United in four shared and no solo arrangements; Continental in three

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[5]The statistics in this paragraph assume that there are fifteen experimental groupings which include the Tebbetts and Jefferson City arrangement. If the vote being taken in April, 1987 on one-way nonoptional EAS should pass in the Tebbetts exchange, then that exchange would not be among the experimental exchanges.

shared and one solo arrangement and Alltel, GTE, Chariton Valley Telephone Company, Grand River Mutual Telephone Company and Kingdom Telephone Company in one shared arrangement each. Contel System of Missouri, Inc. (formerly Central Telephone Company), will have one solo arrangement. All told, there will be four solo and eleven shared arrangements.

The Commission is open to suggestions from the parties to this case and affected LECs if there are legitimate reasons why one or more of these exchanges should not be included in the experimental group (for technological or other reasons) or why one or more additional exchanges should be included in the experimental group.

The experiment should last a reasonable time of not less than one year and not more than two years unless otherwise ordered by the Commission. No experimental rate should be terminated during the experimental period without an order of the Commission. No nonexperimental EMS arrangements should be established until after the initial experimental period of one year has run unless otherwise ordered by the Commission. The Commission will consider whether to initiate a rulemaking to establish an EMS program on a permanent basis at the conclusion of the experiment.

The Commission notes that these experimental rates will be for the purpose of acquiring necessary data on the demand for EMS and the proper pricing of EMS rates. The experimental rates will be in force for a limited time in a few exchanges selected to produce a diverse source of data. The Commission feels that the number of experimental EMS arrangements should be kept small to minimize the amount of potential revenue loss for the companies involved should it be found that EMS does not leave them revenue neutral.

There are eleven frozen EAS cases pending under the old rule which are not included in the experiment ordered herein. A calling usage study will be performed in these cases to determine if a community of interest exists between the exchanges. If the exchanges in these frozen cases meet the community of interest criterion in the existing rule, the Commission will consider including those exchanges in the experimental group.

During the experimental period, additional petitions for EMS will be received by this Commission. Should the experiment prove successful, these petitioners will be free to proceed under the new rule to an EMS arrangement if they pass the calling criteria established by the new rule. Whether this occurs on a case-by-case basis or is completed during the course of the company's next rate case will be determined by the outcome of the data. Should the data show that the company will experience no revenue loss from EMS, then the exchanges may proceed to measured service upon passing the calling standard. If the data show that the company will experience revenue loss even with EMS, then the exchange must wait until the company's next rate case for their service to be implemented.

If more than one company is involved in an experimental arrangement and one of these companies files a rate case while the other company does not, then the remaining company may desire to intervene in the rate case to protect its interests. If necessary, the intervenor's rates can be redesigned to maintain its revenue neutrality in regard to that EMS arrangement.

The Commission would prefer having the EMS routes established when the exchanges show they can meet the calling standard. The Commission is open to suggestions from the parties as to alternate ways of recouping revenue losses should the companies experience such losses in switching from toll to EMS. The parties could address, among other things, whether a complaint case would be a better forum than a rate case or whether this situation might be analogous to management audits, the costs of which are recovered in future rate cases.

The Commission notes that there is not a great difference between experimental rates and permanent rates in one sense. The company can never be totally assured of earning the revenue requirement set by the Commission since many factors affect the earning of revenue and the revenue requirement is the product of informed estimation. It is a frequent occurrence that companies earn more or less than the revenue requirement established in their last rate case.

One factor remains to be addressed in regard to the pricing of EMS. This factor concerns the effect on the intraLATA toll pool of switching a toll route to EMS. United has argued herein that all companies who participate in the intraLATA toll pool are forced to subsidize any company which offers a new EAS route. United explains that when an EAS arrangement is established, the toll revenues stop which formerly flowed from those exchanges through the LEC to the pool. Yet, the revenue from frozen SPF continues to flow to the LEC from the pool to cover the costs of the LEC for such toll service. The Commission believes that this problem will disappear with the forthcoming termination of the intraLATA toll pool authorized in Case No. TO-84-222 et al. (July 24, 1986). With the disappearance of the pool, a new approach will be inaugurated wherein a so-called "primary carrier" will be appointed to carry long-distance traffic and the LECs will pay the primary carrier for access to its long-distance lines and the primary carrier will pay the LECs for access to their local network.

C. Commission Determinations on a Possible New EMS Rule

1. Calling and Voting Standards

The Commission has found that the present flat-rate EAS rule should be withdrawn and that an experimental EMS program should be inaugurated. Should the experimental program prove successful, the Commission will promulgate a new EMS rule on a permanent basis. The Commission currently is of the opinion that any permanent EMS rule should have the following characteristics.

The Commission believes that voting will be unnecessary for EMS arrangements because no additional charge will be assessed against customers that do not use the EMS system. The exchanges in question would be eligible for EMS if they pass the calling standards. Customers vote for or against ECC by choosing whether to call the requested exchange and for or against the OMR by choosing whether to sign up for that option.

The Commission believes that the general level of the calling criteria used in the flat-rate EAS rule is reasonable. Under that criteria 42 percent of the EAS

petitions proceeding to the calling survey resulted in at least one of the initiating exchanges passing that standard. The Commission believes that the calling standard should be strict enough to ensure that the interexchange calling in question is truly within a demonstrable community of interest.

The Commission believes the calling criteria should be applied to the traffic from the initiating exchange to the requested exchange, not to the traffic between both exchanges. The Commission agrees with the position of Public Counsel that in many instances the standard becomes mathematically impossible to achieve when the high number of customers in the larger exchange are added to the equation.

Since EMS will be usage-sensitive, customers in the larger exchange will not be unduly harmed by having no input into the data which are compared to the calling standard since these customers will not be compelled to take the service and pay the rate. Their position will be no different from that of any other customers of the LEC in question except that they will have the opportunity to use the EMS arrangement.

2. Vote-Out Procedure

The Commission observes that it has chosen not to mandate a vote-out procedure at this time and will monitor the experience of those telephone companies who have filed vote-out tariffs applicable to established, flat-rate EAS arrangements. (See page 43 for details.)

It appears unnecessary to establish a vote-out procedure for EMS since customers are not forced to use the service and would be unlikely to vote against its use by others. However, the Commission is open to suggestions of the parties as to ways to terminate EMS in situations where the service becomes uneconomical.

3. Restriction in Frequency of Filing Petitions

The Commission has considered the suggestion of some of the parties that a restriction be placed on the frequency with which EAS petitions may be filed. The Commission believes there is merit to this suggestion since such cases result in the expenditure of resources by the Commission and the companies. This expenditure is

eventually charged to all the ratepayers whether they would benefit from the service or not. The Commission determines that an EMS petition should not be entertained by this Commission for two years after the dismissal of an unsuccessful petition from the same exchange unless the petitioners can show a significant change in circumstances since the dismissal of the last petition. This approach prevents the futile inauguration of successive requests while allowing the petitioners to seek relief should a rapid change in the demographics of an area alter the character of the interexchange calling.

The Commission urges those companies who have filed a vote-out tariff for existing EAS and have not included in it a restriction in frequency of petitions, to incorporate a restriction of two years on the frequency with which vote-out petitions can be filed following the failure of a previous petition from the same exchange.

4. EMS/ECC Arrangements Should be Two-Way and Mandatory; EMS/OMR Arrangements Should be One-Way and Optional

The Commission believes that EMS/ECC arrangements should be two-way. The Commission agrees with those parties who state that one-way EAS results in changes in the directionality of traffic between the exchanges as well as the phenomenon known as code-calling. Customers in the exchange without EAS access either allow their counterparts in the exchange with EAS access to make all the calls or devise systems whereby deliberately uncompleted calls are used to signal their counterparts to call them back over the EAS network. The evidence indicates that these phenomena result in a loss of toll revenue over the toll network to the exchange with EAS as well as a disproportionate stimulation of the traffic over the EAS network requiring more investment than a two-way arrangement. The Commission determines that this was an inefficient and uneconomical way to offer EAS which should be avoided in EMS/ECC arrangements.

As noted in Section B, the Commission has found that EMS/ECC arrangements should be mandatory. The EMS/ECC system would replace the toll system for calling between the exchanges in question.

On the other hand, the EMS/OMR plan would be optional and one-way. Customers could decide whether to sign up for this plan. Since it is nonmandatory it would be difficult to require that it also be two-way. The company would be unable to track when customers in the large exchange were calling those customers in the smaller exchange who had opted for the OMR plan.

5. EMS and Contiguous Exchanges

Most of the parties take no position on this issue. SWB is the only party which gave a reason for its support of restricting EAS to contiguous exchanges. Bell feels that EAS offered to noncontiguous exchanges results in high costs to provide the service and risks dissatisfied customers in the "middle exchange".

The Commission believes that the strict calling standard of the rule will preclude the establishment of EMS arrangements where no community of interest exists.

The Commission notes that the present rule does not restrict EAS to contiguous exchanges but under the present rule costing studies are performed to arrive at the rate. Customers are presented with their actual rate and during the voting process, can assess whether this service is worth its cost to them. With EMS, a set rate has been established. Situations of unusually high cost could result in revenue losses which are unacceptably high and require an undue modification of the rate design.

The Commission feels that it has insufficient evidence to resolve this issue. Therefore, the Commission feels it should refrain from making a decision at this time. Four of the EAS arrangements which the Commission has designated as experimental involve noncontiguous exchanges. These arrangements might generate data which would enable the Commission to make a more empirically sound decision on this issue at a later time should the need arise.

D. Intercompany Compensation Where EMS Involves Multiple LECs

Only two parties advocate that the Commission mandate a system whereby the LECs allocate the costs for the EAS arrangement between the two companies so that no company is paying for costs incurred by the customers of another company. For

example, one company may have made a greater investment in the EAS network than the other or may be terminating a greater amount of the EAS traffic than the other.

Bell proposes that each company bill the other for its costs for terminating the EAS traffic to ensure that each company only pays the costs of calls its customers originate. Bell believes that this approach, called ORP, will result in the netting of their relative contribution.

United proposes that the company with the most investment in the EAS network, "the designated carrier," should set the rates for the service, collect the EAS revenues and pay access charges to the other LECs. United believes that this approach will be more efficient than having each company bill each other company.

The Commission believes that it is unnecessary for it to mandate a plan for intercompany compensation. The Commission sees this as an unnecessary complication of the EMS rule. If cost differentials occur, the companies can come to agreements among themselves as to how their costs should be shared. Bell and United offered evidence on how their plans would work but no compelling evidence was given as to why the plans are necessary. Bell stated that ORP recognizes that the costs for the two companies involved in a two-way EAS arrangement may not be equal. Bell did not state that without a Commission mandate the companies involved would refuse to settle any cost differentials which might arise. United stated that its plan would simplify the billing process among the companies, provide for uniformity in the EAS prices within an EAS arrangement and provide fewer tariffs for the Commission to regulate. These suggestions are too conclusory for the Commission to judge their validity.

There are eleven, two-company EMS arrangements which have been designated as experimental. The parties to this case can ascertain during the course of these experiments whether there is a need for this Commission to order a system of intercompany compensation or whether the LECs can cooperate among themselves to equalize any cost differentials that might arise.

E. Interexchange Carriers and EAS/EMS Arrangements

This issue concerns whether secondary exchange providers should receive compensation as a result of traffic over an EAS/EMS route to an IXC situated in a primary exchange.

It is argued herein by MCI and Comptel that the Commission should not consider this issue because it was not among the issues "stipulated" to by the parties in the early prehearing conference memorandum.

The Commission is unpersuaded by this argument. Said memorandum contains a set of issues which the parties merely recommend that the Commission consider.

Seven parties either take no position on whether this issue should be considered or state that the Commission should not or need not address it. The parties taking a position point to the pending proceedings and negotiations at the national level and state that these efforts to solve the problem at the interLATA level could lead to a negotiated settlement among the LECs at the intraLATA level. Therefore, these parties recommend that the Commission should or could refrain from a decision pending the outcome of these national efforts.

Comptel and MCI state that the Commission should not consider the issue without a great deal more evidence than was offered in this docket.

Four parties, GTMW and the three parties making up the Continental Group, recommend that this issue be considered. These parties state that consideration of this issue is essential since this issue is related to the costing and pricing of EAS. These four parties recommend that EAS be restricted to end-users unless appropriate compensation is paid to all the LECs serving the EAS exchanges. These parties argue that to do otherwise is to allow a form of bypass and allow toll callers to benefit from a service established to accommodate interexchange calling which is local in character.

MoTel and Alltel join the Continental Group and GTMW in this recommendation even though they state that a decision on this issue can be deferred until national organizations reach an agreement at the interLATA level.

The evidence adduced in this case shows that the use of the EAS system by customers of IXCs to access the IXC's POP is more of a potential than an actual problem in Missouri. The FCC recently has resolved many of the matters associated with this issue in its Memorandum Opinion and Order, Case No. RM 5056 (January 9, 1987). The Commission desires to allow carriers an opportunity to implement this decision thereby laying a foundation for a possible negotiated settlement among the LECs at the intraLATA level. Therefore, the Commission determines it should defer judgment for the time being. Should the potential for this problem develop into an actuality over the course of the experiments ordered herein, the Commission will be able to consider the matter again at a later date.

CONCLUSIONS OF LAW

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

This Commission has jurisdiction of telephone corporations pursuant to Chapters 386 and 392, RSMo 1986, as amended.

Pursuant to Section 386.330(1), RSMo 1986:

> The commission may, of its own motion, investigate...any act or thing done or omitted to be done by any...telephone corporation, subject to its supervision, and the commission shall make such inquiry in regard to any act or thing done or omitted to be done by any such...corporation in violation of any provision of law or in violation of any order or decision of the commission.

Pursuant to Section 392.200(1), RSMo 1986:

> ...Every telephone corporation shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any...telephone corporation for any service rendered...shall be just and reasonable and not more than allowed by law or by order or decision of the commission.

Pursuant to Section 392.200(6), RSMo 1986:

> The commission shall have power to provide the limits within which...telephone messages shall be delivered without extra charge.

Pursuant to Section 392.240(1), RSMo 1986:

> Whenever the commission shall be of the opinion, after a hearing had upon its own motion...that the rates...charged...by any...telephone corporation for the transmission of messages...by...telephone...are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of law, or that the maximum rates...chargeable by any such...telephone corporation are insufficient to yield reasonable compensation for the service rendered, the commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates...to be thereafter observed...for the performance...of the service specified and shall fix the same by order....

Pursuant to Section 392.240(2), RSMo 1986:

> Whenever the commission shall be of the opinion, after a hearing had upon its own motion...that the rules, regulations or practices of any...telephone corporation are unjust or unreasonable or that the equipment or service of any...telephone corporation is inadequate, insufficient, improper or inefficient, the commission shall determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service thereafter to be installed, to be observed and used and to fix and prescribe the same by order...and thereafter it shall be the duty of every...telephone corporation to which such order is directed to obey each and every such order....

Pursuant to Section 392.250, RSMo 1986:

> Whenever the commission shall be of the opinion, after a hearing had upon its own motion...that repairs or improvements to or changes in any...telephone line ought reasonably to be made, or that any additions should reasonably be made thereto, in order to promote the convenience of the public...or in order to secure adequate service or facilities for...telephonic communications, the commission shall make and serve an order directing that such repairs, improvements, changes or additions be made within a reasonable time and in a manner to be specified therein, and every...telephone corporation is hereby required and directed to make all repairs, improvements, changes and additions required of it by any order of the commission served upon it.

Pursuant to its authority as enumerated herein, the Commission has found that EAS calling is neither toll nor local calling. Therefore, the Commission concludes that the methodologies used in pricing such extra-exchange calling may be different from the methodologies used in pricing either local or toll calling. The Commission has found that without a change in the pricing methodology for such

extra-exchange calling, there would be no ongoing viable program to meet the needs of those telephone customers who are forced to make numerous extra-exchange calls in the course of their normal daily lives. Therefore, the Commission concludes that the pricing methodology for extra-exchange calling should be different from that used to price local and toll calling to the extent necessary to effectuate such an ongoing viable program.

The Commission concludes that measured extra-exchange calling should be offered prospectively by local exchange companies where a community of interest extending beyond the boundary of a single telephone exchange has been demonstrated to exist. The Commission has found that this community of interest can be demonstrated by meeting time-tested criteria showing unusual levels of calling from the petitioning exchange to the requested exchange. This new service will be known as Extended Measured Service (EMS).

The Commission has found that flat-rate EAS, although no longer viable in its present form as a solution to current problems, has been and remains a solution to problems of extra-exchange calling in the exchanges where it is already in place.

The Commission has found that there is insufficient evidence on the record to set permanent rates for its EMS plan. Considering what evidence the record contains on pricing of extra-exchange calling and the concerns of the parties, the Commission concludes that it has authority pursuant to Sections 392.230 and 392.240, RSMo 1986, to establish experimental rates for its EMS plan for the purpose of acquiring the data necessary to fix just and reasonable rates and to reserve jurisdiction to make further orders in this case and require reports of the telephone companies over the experimental period. State ex rel. Watts Engineering Company v. Missouri Public Service Commission, 269 Mo. 525, 191 S.W. 412 (En Banc 1917); State ex rel. Washington University v. Missouri Public Service Commission, 308 Mo. 328, 272 S.W. 971 (En Banc 1925); State ex rel. City of St. Louis v. Missouri Public Service Commission, 317 Mo. 815, 296 S.W. 790 (En Banc 1927); State ex rel. Campbell Iron Company v. Missouri Public Service Commission, 317 Mo. 724, 296 S.W. 998

(En Banc 1927); State ex rel. McKittrick v. Missouri Public Service Commission, 352 Mo. 29, 175 S.W.2d 857 (En Banc 1943); and State ex rel. Laclede Gas Company v. Missouri Public Service Commission, 535 S.W.2d 561, 567 (Mo. App., K.C.D. 1976).

Pursuant to Sections 386.250, 386.410, 392.220 and 393.140(11), RSMo 1986, the Commission has authority to establish rules through the rulemaking process. Chapter 536, RSMo 1986. The Commission concludes that it should promulgate a new rule and/or amend its present rules, as necessary, to effectuate its decisions made herein. The Commission further concludes that it should immediately initiate a rulemaking proceeding to withdraw the present flat-rate EAS rule.

It is, therefore,

ORDERED: 1. That a rulemaking shall be initiated according to the operating procedures of the Commission to withdraw the present, flat-rate EAS rule.

ORDERED: 2. That the local exchange companies associated with those exchanges involved in the frozen nonexperimental EAS petitions filed as of this date are directed hereby to perform a calling usage study to determine whether said exchanges meet the community of interest standard under the flat-rate EAS rule.

ORDERED: 3. That the local exchange companies, the exchanges of which are enumerated as experimental herein, as well as any company the lines of which are required to connect such experimental exchanges, are directed hereby to establish experimental EMS arrangements as outlined in this Report and Order on or before June 18, 1987, unless otherwise ordered by the Commission.

ORDERED: 4. That the local exchange companies to be involved in offering the experimental EMS arrangements shall meet at a mutually agreeable time and place with the Commission's Staff and the Office of the Public Counsel to plan the specific elements of the experimental EMS offerings including, but not limited to, their design for the collection of data revealing the costs and revenues associated with the EMS arrangements, and all other data necessary to evaluate the viability of permanent EMS arrangements and to produce the information to be included in the reports to be filed with the Commission pursuant to Ordered: 5, infra.

ORDERED: 5. That the local exchange companies to be involved in offering the experimental EMS arrangements shall file with this Commission for its approval the specific elements of the experimental EMS offerings, as outlined in Ordered: 3 herein, on or before May 19, 1987.

ORDERED: 6. That the local exchange companies to be involved in offering the experimental EMS arrangements shall file with this Commission reports on the outcome of said arrangements no later than sixty (60) days following each six-month period of said experimental offerings unless otherwise ordered by this Commission. These reports should include, but not necessarily be limited to, the data as to all costs associated with the service, the stimulation of usage observed, the revenue earned, and the problems, if any, that arise in this experimental service offering.

ORDERED: 7. That the motion made by the Office of the Public Counsel requesting that this Commission receive an exhibit out of time is denied hereby.

ORDERED: 8. That all other motions previously not ruled upon are denied hereby and all objections previously not ruled upon are overruled hereby.

ORDERED: 9. That late-filed Exhibits 33, 36, 37 and 38 are received hereby into evidence.

ORDERED: 10. That this Report And Order shall become effective on the 21st day of April, 1987.

BY THE COMMISSION

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave, Mueller, Hendren and Fischer, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri, on the 20th day of March, 1987.

GLOSSARY

CCLC	Carrier Common Line Charge
EAS	Extended Area Service
ECC	Extended Community Calling
EMS	Extended Measured Service
FGA	Feature Group A
FGB	Feature Group B
FGD	Feature Group D
interLATA	Between LATAs
intraLATA	Within LATAs
IXCs	Interexchange Carriers
LATA	Local Access and Transport Area
LCP	Local Calling Plus
LECs	Local Exchange Carriers
LMS	Local Measured Service
MOU	Minutes of Use
NTS	Non-traffic Sensitive
OMR	Optional Message Rate
ORP	Originating Responsibility Plan
POP	Point of Presence
SLU	Subscriber Line Usage
SPF	Subscriber Plant Factor
WATS	Wide Area Telephone Service