BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the investigation into WATS resale by hotels/motels.	)	Case No. TO-84-222
In the matter of the investigation into WATS resale applications for certificates of public convenience and necessity.	)	Case No. TO-84-223
In the matter of the investigation into the reasonableness of permitting competition in the intraLATA telecommunications market in Missouri.	)	Case No. TC-85-126
In the matter of the Missouri interLATA access charge and intraLATA toll pool.	)	Case No. TO-85-130

REPORT AND ORDER

Date Issued: July 24, 1986

Date Effective: August 26, 1986

TABLE OF CONTENTS

APPEARANCES

Richard S. Brownlee, III, Attorney at Law, Hendren & Andrae, The Monroe House, 235 East High Street, Suite 210, Jefferson City, Missouri 65102, for Comptel, Transcall America, Inc., Econo-Call, Inc., LTS, Inc., directline Austin, Inc., Contact America, Tel-Central of Jefferson City, Inc., Communications Cable-Laying Company, Inc., d/b/a Dial U.S.A., and Hedges Communications, Inc., d/b/a Dial U.S.

William M. Barvick, Attorney at Law, 231 Madison Street, Jefferson City, Missouri 65101, and Helen M. Pohlig, Attorney at Law, 8300 Norman Center Drive, Suite 700, Bloomington, Minnesota 55437, for Republic Telcom Corporation.

Jeremiah D. Finnegan, Attorney at Law, Finnegan & Kopp, 4225 Baltimore Avenue, Suite 101, Kansas City, Missouri 64111, for Missouri Hotel and Motel Association.

Patrick K. McMonigle, Attorney at Law, Dysart Taylor Penner & Lay, P.C., 1221 Baltimore Avenue, 6th Floor Midland Building, Kansas City, Missouri 64105, for Valu-Line of St. Joseph, Inc., Inter-Comm Telephone, Inc. and W.S.C. Group, Inc.

Leland B. Curtis, Attorney at Law, Curtis, Bamburg & Crossen, 230 South Bemiston, Suite 410, St. Louis, Missouri 63105, and C. K. Casteel, Jr., Senior Attorney, MCI Telecommunications Corporation, One Centerre Plaza, Suite 1500, St. Louis, Missouri 63101, for MCI Telecommunications Corporation.

Paul G. Lane, Attorney at Law, James E. Taylor, General Solicitor-Missouri, and William R. Drexel, Attorney at Law, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Larry W. Dority, Attorney at Law, and R. Steven Davis, II, Attorney at Law, AT&T Communications of the Southwest, Inc., 1100 Main, Suite 1412, Kansas City, Missouri 64105, for AT&T Communications of the Southwest, Inc.

W. R. England, III, Attorney at Law, and Paul Boudreau, Attorney at Law, Hawkins, Brydon & Swearengen, P.C., 312 East Capitol Avenue, Jefferson City, Missouri 65101, for Missouri Independent Telephone Company Group.

J. Richard Smith, General Counsel, United Telephone Company of Missouri, 6666 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri.

William H. Keating, Associate General Counsel, and John T. Murray, Attorney at Law, General Telephone Company of the Midwest, 11 Eleventh Avenue, Grinnell, Iowa 50112, for General Telephone Company of the Midwest.

H. Edward Skinner, Attorney at Law, Prince & Ivester, P.C., 212 Center Street, Suite 900, Little Rock, Arkansas 72201, for Alltel Missouri, Inc.

Dale C. Doerhoff, Attorney at Law, John Landwehr, Attorney at Law, Cook, Vetter & Doerhoff, The Hope Building, 231 Madison Street, Jefferson City, Missouri 65101 and Thomas L. Benson, III, Attorney at Law, 1001 Craig Road, Suite 211, St. Louis, Missouri 63146, for Com-Link 21 Inc.

Ronald C. Spradley, Attorney at Law, and Robert J. Payne, Attorney at Law, Spradley & Wirken, City Center Square, Suite 1570, 1100 Main, Kansas City, Missouri 64105, for U.S. Telephone, Inc. and Isacomm, Inc.

John Cowling, Attorney at Law, and Byron Francis, Attorney at Law, Armstrong, Teasdale, Kramer & Vaughan, 611 Olive Street, Suite 1900, St. Louis, Missouri 63101, for Clayton Telecom, Nevada Telecom, Flat River Telecom, Buffalo Telecom, Cape Girardeau Telecom, Columbia Telecom, Kirksville Telecom, Independence Telecom, St. Joseph Telecom, Sedalia Telecom, and Joplin Telecom.

Bruce D. Becker, Attorney at Law, and Betsy F. Cadden, Attorney at Law, Allnet Communication Services, Inc., 100 South Wacker Drive, Chicago, Illinois 60606, for Allnet Communication Services, Inc.

Basil W. Kelsey, Attorney at Law, Spencer, Fane, Britt & Browne, 106 West 14th Street, Suite 1000, Kansas City, Missouri 64105, for GTE Sprint Communications Corporation.

Arthur L. Hudkins, Attorney at Law, Wood, Hudkins & Hoke, 1650 East Battlefield, Suite 140, Springfield, Missouri 65804, for Compute-A-Call, Inc.

Mitchell F. Brecher, Attorney at Law, 1660 L Street, N.W., Washington, D.C. 20036, for Lexitel Corporation and LDX, Inc.

James R. McHaney, Attorney at Law, 602 Themis Street, Cape Girardeau, Missouri 63701, for LDD Inc.

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

Edward J. Cadieux, Deputy General Counsel, and Thomas M. Byrne, Assistant General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission.

Procedural History

On May 4, 1984, the Commission issued an Order Granting Motion for Consolidation, Applications to Intervene and Request for Extension of Filing Deadline. Therein, the Commission established Case Nos. TO-84-222 for the purpose of resolving the issue of whether the Commission has jurisdiction over wide area telephone service (WATS) resale operations of hotels and motels and consolidated all other WATS resale applications into a second newly created docket, TO-84-223. The Commission also consolidated Case Nos. TA-84-145, TA-84-151, TA-84-152, TA-84-157, TA-84-185, and TA-84-194 with TO-84-222; consolidated Case Nos. TA-84-121, TA-84-136, TA-84-140, TA-84-141, TA-84-142, TA-84-150, TA-84-154, TA-84-155, TA-84-156, TA-84-158, TA-84-159, TA-84-162 and TA-84-197 with TO-84-223; granted Missouri Hotel/Motel Association's (MHMA) Application to Intervene in the hotel/motel resale dockets; directed the MHMA to assist all other parties in the development of factual information regarding WATS resale operations of its members and set an intervention deadline in Case Nos. TO-84-223 and TO-84-222 of June 4, 1984.

On May 21, 1984, Southwestern Bell Telephone Company (SWB) filed its Application to Intervene in Case Nos. TO-84-223 and TO-84-222. The following parties filed their Applications to Intervene on June 4, 1984 in Case Nos. TO-84-223 and TO-84-222: AT&T Communications of the Southwest, Inc. (AT&T), Association of Long Distance Telephone Companies of Missouri, Northeast Missouri Rural Telephone Company, Seneca Telephone Company, Goodman Telephone Company, Inc., Citizens Telephone Company, Eastern Missouri Telephone Company, Fidelity Telephone Company, Central Telephone Company of Missouri, Kingdom Telephone Company, General Telephone Company of the Midwest (General Telephone), Mid-Missouri Telephone Company, Missouri Telephone Company, Grand River Mutual Telephone Corporation and Continental Telephone Company of Missouri (Continental). CyberTel Cellular Telephone Company and CyberTel Missouri Corporation filed their Applications to Intervene on June 11, 1984 in Case Nos. TO-84-223 and TO-84-222.

The Commission issued an Order Initiating Proceedings on November 21, 1984 wherein Case No. TC-85-126 was established to examine whether competition in the within a local access and transport area (intraLATA) telecommunications market is in the public interest.

On November 27, 1984, a Joint Application for Extension of the Missouri InterLATA Access Charge and IntraLATA Toll Pools was filed by the members of the two pools, Staff and Public Counsel in Case No. TO-85-130. Case No. TO-85-130 was initiated by Commission Order dated December 4, 1984, for the purpose of considering the joint request for extension of the intraLATA toll pool and between a local access and transport area (interLATA) access charge pool through December 31, 1985.

On December 11, 1984, an Application to Intervene of GTE Sprint Communications Corporation (GTE Sprint) was filed in Case No. TC-85-126.

An Application to Intervene and Request for Additional Proceedings was filed by AT&T on December 13, 1984 in Case No. TO-85-130. A Motion for Partial Grant of Joint Application for Extension of the Missouri InterLATA Access Charge and IntraLATA Toll Pools by Bourbeuse Telephone Company & Oregon Farmers Mutual Telephone Company was filed on December 31, 1984 in Case No. TO-85-130. U.S. Telephone, Inc. filed an Application to Intervene on April 9, 1985 in Case Nos. TO-84-223, TO-84-222, TC-85-126 and TO-85-130. On April 12, 1985, the Commission issued its Order Granting Joint Application in Case No. TO-85-130. Therein, the Commission extended the interLATA access charge and intraLATA toll pools through December 31, 1985.

On April 23, 1985, a Motion For Order Consolidating Dockets and Establishing Schedule of Proceedings in Case Nos. TO-84-222, TO-84-223, TC-85-126 and TO-85-130, was filed by Staff. The Commission issued its Order Consolidating Dockets and Establishing Schedule of Proceedings wherein Case Nos. TC-85-126 and TO-85-130 were consolidated with TO-84-223; Applications to Intervene were granted for U.S. Telephone, AT&T and GTE Sprint in Case Nos. TC-85-126, TO-85-130, TO-84-222 and TO-84-223; and Case Nos. TA-84-243, TA-84-244, TA-84-245, TA-84-246, TA-84-247, TA-84-248, TA-84-249, TA-84-250, TA-84-251, TA-84-252, TA-85-26 and TA-85-86 were

consolidated with Case No. TO-84-223. Application for Intervention of MCI Telecommunications Corporation, Inc. (MCI) was filed on June 6, 1985 in Case Nos. TO-84-222, TO-84-223, TC-85-126 and TO-85-130 and Motion of GTE Sprint for Leave to Intervene was filed on June 17, 1985 in Case Nos. TO-84-222, TO-84-223, TC-85-126 and TO-85-130.

On June 27, 1985 in Case No. TO-84-223, CyberTel Missouri Corporation filed its Application to Withdraw its Application to Intervene stating that it is not engaged in WATS resale.

An Order Revising Schedule of Proceedings and Extending InterLATA Access Charge and IntraLATA Toll Pools was issued by the Commission on August 6, 1985 in Case Nos. TO-84-223, TO-85-130 and TC-85-126, extending interLATA access charge and intraLATA toll pools through March 31, 1986. The Commission issued an Order on September 3, 1985 in Case Nos. TO-84-223, TC-85-126 and TO-85-130 joining Case Nos. TA-85-273 and TA-86-15 with Case No. TO-84-223 for hearing purposes. On September 20, 1985, the Commission issued an Order in Case Nos. TO-84-223, TC-85-126 and TO-85-130, joining Case Nos. TA-86-47 and TA-86-50 with TO-84-223 for hearing purposes.

Counsel for LDX, Inc. filed a letter on September 24, 1986, requesting that its application be held in abeyance pending consummation of the pending Allnet-Lexitel merger since Lexitel is its parent corporation.

On October 23, 1985 in Case Nos. TO-84-223, TC-85-126 and TO-85-130, the Commission issued an Order joining Case No. TA-86-65 with Case No. TO-84-223 for purposes of hearing.

MHMA filed a Motion for Order Consolidating Dockets on October 28, 1985 in Case Nos. TO-84-222, TO-84-223, TC-85-126 and TO-85-130. The Telecom applicants filed a Motion for Establishment of a Separate Proceeding on October 29, 1985 in Case Nos. TO-84-223, TC-85-126 and TO-85-130. W.S.C. Group, Inc. filed its request for a dismissal of its application in Case Nos. TO-84-223 and TA-84-142. The Commission issued an Order on October 30, 1985 in Case Nos. TO-84-222, TO-84-223, TC-85-126 and

TO-85-130 wherein Case No. TO-84-222 was joined with TO-84-223, TC-85-126 & TO-85-130. On November 1, 1985, an Order was issued in Case Nos. TO-84-222, TO-84-223, TC-85-126 and TO-85-130 wherein Case Nos. TA-84-243, TA-84-244, TA-84-245, TA-84-246, TA-84-247, TA-84-248, TA-84-249, TA-84-250, TA-84-251, TA-84-252 & TA-85-86 were severed from Case No. TO-84-223 and consolidated into Case No. TO-86-71.

On January 13, 1986, the Hearing Examiner in these cases sent a letter to all parties of record stating that the transcript had been filed and setting the briefing schedule. On March 21, 1986 an Order was issued by the Commission extending interLATA access charges and intraLATA toll pools through July 10, 1986.

On March 21, 1986, MCI filed its initial brief. On March 24, 1986, the following parties filed initial briefs: Office of the Public Counsel (Public Counsel), joint brief of Competitive Telecommunications Association of Missouri (Comptel); Com-Link 21 Inc. (Com-Link 21); Communications Cable-Laying Company, Inc. (Communications Cable), doing business as (d/b/a) Dial U.S.A.; Eddie D. Robertson, d/b/a Contact America (Contact America); directline Austin, Inc. (directline Austin); Econo-Call, Inc. (Econo-Call); Hedges Communications, Inc. (Hedges), d/b/a Dial U.S.; LTS, Inc. (LTS); Republic Telcom Services Corporation (Republic Telcom); Tel-Central of Jefferson City, Inc. (Tel-Central) and Transcall America, Inc. (Transcall America); Missouri Independent Telephone Group (MITG); Alltel Missouri, Inc. (Alltel); AT&T Communications of the Southwest, Inc. (AT&T); United Telephone Company of Missouri (United Telephone); GTE Sprint; SWB and Staff. On March 26, 1986, the initial brief of the MHMA was filed. On March 27, 1986, the initial brief of Allnet Communication Services, Inc. (Allnet) was filed.

Reply briefs were filed on April 15, 1986 by the following parties: SWB; MHMA; GTE Sprint; Alltel; Public Counsel; MITG; AT&T and Staff. MCI's reply brief was filed on April 16, 1986. Allnet and Comptel; Com-Link 21; Communications Cable; Contact America; directline Austin; Econo-Call; Hedges; LTS; Republic Telcom; Tel-Central and Transcall America filed their reply briefs on April 17, 1986.

Findings of Fact

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

I. Whether IntraLATA Toll Competition Should be Authorized?

A. Parties Positions

The parties to this proceeding with the exception of Staff, Public Counsel, Alltel and MITG, take the position that intraLATA toll competition should be authorized for resellers and facilities-based carriers (this term does not include local exchange carriers [LECs]). Staff opposes granting facilities-based carriers the authority to compete in the intraLATA toll market and supports granting resellers authority to compete in the intraLATA toll market. Public Counsel believes that the intraLATA toll market should remain a natural monopoly that is not conducive to competition. Alltel opposes authorization of intraLATA toll transmission competition and supports authorization of intraLATA toll switching competition by resellers who use either WATS or MTS service. MITG takes no position on this issue.

MCI, GTE Sprint and Allnet believe that allowing competition in the intraLATA market is in the public interest since competition promotes efficiency which results in lower costs to the customer; creates diversity in services, products and prices; encourages development and implementation of technological innovations and eases the burden of regulation.

In addition, GTE Sprint quotes Sanford Fain, the Director-Strategic and Industry Analysis for Lexitel who testified that consumers will benefit from lower prices, new and improved services and faster response to their needs. GTE Sprint also stated that uniform competition would help eliminate customer confusion regarding the limited services available from the resellers and facilities-based carriers.

Allnet states that some of the benefits of toll competition include better quality services, innovative equipment offerings and increased reliability of communications services. Allnet points out that not only large customers but

individuals and small business customers who cannot realize cost savings from communications services available to large users will benefit from intraLATA toll competition. Allnet states that if intraLATA competition is not authorized for facilities-based carriers but is authorized for resellers then facilities-based carriers should be allowed to provide intraLATA service through resale of local exchange service.

Comptel and the MHMA believe that intraLATA competition should be granted. Comptel contends that public use of the reseller services should be persuasive evidence that the public interest is being promoted by these services.

MCI and GTE Sprint state that in United States v. Western Electric Co., Inc., 569 F.Supp. 990, 1005 (D.D.C. 1983) the U.S. District Court concluded that development of competition in the intraLATA toll market was anticipated. MCI notes in that case that Judge Greene stated that a lack of competition in the intraLATA market would be intolerable. Id. However, Alltel points out that Judge Greene recognized in that case that he had no power to override a state regulatory agency's decision not to authorize intraLATA toll competition.

SWB does not oppose the recognition of intraLATA toll competition or certification of the resellers or facilities-based carriers. SWB states that the intraLATA compensation mechanism (referred to as compensation mechanism) ordered in Re: Application of MCI Telecommunications Corporation, 27 Mo. P.S.C. (N.S.) 104 and 152 (November 21, 1984), aff'd in part and rev'd in part sub. nom. State ex rel. MCI Telecommunications Corporation v. Pub. Serv. Comm'n., No. CV185-346CC (Cole County Cir. Ct. January 3, 1986) and aff'd in part and rev'd in part sub. nom. State ex rel. GTE Sprint Communications Corp. v. Pub. Serv. Comm'n. No. CV185-348CC (Cole County Cir. Ct. January 3, 1986), No. WD38097 (Mo. App. filed Feb. 11, 1986), has not worked. According to SWB no compensation has been paid and it is unlikely that any ever will. SWB contends that even if it had been paid, the compensation mechanism would provide insufficient compensation since it is based on the actual rates of the alternate carriers and it does not apply to AT&T, the resellers, or non-certificated

facilities-based carriers. SWB notes that another alternative, blocking, cannot be done to Feature Group A (FG-A) or FG-B connections.

United Telephone contends that there is competition in the intraLATA toll market and it should be recognized.

AT&T states that it can provide intraLATA toll service only if a customer served by an equal access office dials an extra four (4) digits, and therefore, AT&T does not intend to become an active competitor in the intraLATA market. AT&T also believes that competition would offer intraLATA customers new and varied services, pricing options and quality of service. AT&T does offer certain technologically advanced services which would have incidental intraLATA application and often cannot be blocked. Even if intraLATA competition is not allowed, AT&T and Staff agree that such services should be considered on their own merit on a case-by-case basis.

Staff supports intraLATA competition for the resellers but not temporarily for facilities-based carriers to allow a transition period to permit LECs to react to intraLATA competition by resellers, to put reporting requirements in place, and to protect toll contribution to local exchange services which would be eroded with facilities-based carriers' entry into the intraLATA market. Staff also contends that there is no evidence on which to base an authorization of intraLATA competition for facilities-based carriers. Staff argues that since competition is the reason given for eliminating the toll pools, that if the Commission follows Staff's recommendation to continue the toll pools then competition by facilities-based carriers should not be allowed.

MCI and SWB argue that the Commission should not grant intraLATA toll authority to the resellers while denying intraLATA toll authority to the facilities-based carriers because mergers and leasing practices make distinctions between carriers difficult to ascertain, the carriers technically provide service in a similar manner, there needs to be a sufficient number of carriers to ensure competitive prices in the market, and there would be no method by which a LEC could distinguish a reseller from a facilities-based carrier to administer different rules.

MCI contends that since facilities-based carriers have not applied for intraLATA authority in this docket, it is irrelevant whether they have filed any evidence.

Based upon the equal protection sections of the Missouri Constitution and U.S. Constitution, MCI argues that the Commission cannot prohibit competition by facilities-based carriers while authorizing such competition by resellers unless there is a rational basis for distinguishing between these providers of intraLATA toll services. MCI contends that Staff has not established a rational basis to distinguish between resellers and facilities-based carriers. MCI, GTE Sprint, SWB and Allnet point out that Staff has admitted that the distinctions between resellers and facilities-based carriers are blurring. MCI, GTE Sprint and SWB contend that Staff has stated that the service provided by the two are identical when facilities-based carriers have only one point-of-presence in a LATA.

GTE Sprint argues that Staff's proposal to treat resellers and facilities-based carriers differently is discriminatory and would give resellers an unfair advantage. AT&T states that Staff's proposal is unworkable since the distinctions between the two are blurred. If Staff's proposal is adopted, then AT&T points out that a method of enforcing these distinctions must be established. AT&T contends that there is no evidence that the public is better served by resellers than resellers and facilities-based carriers.

GTE Sprint states that there is no evidence that either LECs would suffer harm from intraLATA competition or that universal service would be endangered by such competition. Alltel argues that the burden of proof is on the facilities-based carriers and that they have failed to prove that intraLATA toll transmission competition is in the public interest.

Alltel believes that unauthorized toll switching competition could be restricted by using the compensation mechanism. Alltel states that it believes there is insufficient evidence presented for the Commission to grant toll transmission competition. According to Alltel the problem with toll transmission competition is that few of the benefits will reach customers in rural areas and allowing it will

increase the pressure to deaverage toll rates which could result in increased rates for rural routes. Deaveraging could also result in duplicate toll facilities and stranded LECs' investment which in turn may cause a loss of revenues and increase in local rates. Alltel points out that the benefits of the interLATA market may not transfer to the intraLATA market because the markets are different as discussed in Re: Investigation of Intrastate Separations, Settlements and Intrastate Toll Rate of Return, Docket No. 83-042-U (Ark. Pub. Serv. Comm'n. 1985): more intraLATA toll routes are ripe for competition, density of use and cost of providing service associated with particular intraLATA routes vary to a greater degree than interLATA toll routes and greater variances exist between rates charged for completing certain intraLATA toll calls and the cost of completing other intraLATA toll calls than for interLATA toll calls.

Alltel requests that the Commission defer action on this issue for a reasonable transition period during which the Commission can accumulate sufficient information to reach a conclusion on the probable effects of allowing intraLATA toll transmission competition. Alltel suggests that the Commission establish a task force to analyze and determine the effects of authorizing intraLATA toll switching competition on the public and LECs.

SWB responds to Alltel's arguments by contending that its distinction between switching and transmission competition is as blurred as Staff's proposal which distinguished between resellers and facilities-based carriers. SWB also contends that Alltel's proposal to block or compensate intraLATA transmission competition until it exists makes no sense because competition already exists. MCI points out that Alltel argues that the LECs may end up with stranded investment but has no evidentiary basis to support this argument. Allnet states that Alltel has no evidentiary basis for any of its arguments.

Public Counsel states that the evidence indicates that meaningful intraLATA competition does not exist and that the LECs' control of the local access bottleneck facilities results in a natural monopoly. Public Counsel contends that since the

intraLATA market is not competitive, deregulation would be totally contrary to the public interest.

MCI responds to Public Counsel's contentions by stating that while its concerns are legitimate, they do not warrant a prohibition of competition, but rather reveal the need for continued regulation of SWB after the authorization of intraLATA competition.

B. Commission Findings

The Commission is aware of the trend toward promoting competition on the federal level; however, the decision on whether to authorize intraLATA toll competition in Missouri must be based on the evidence presented in this docket. The Commission must balance the interests of the ratepayer, the resellers, the facilities-based carriers and the local exchange companies in determining what regulatory response is required by the changing conditions of the intraLATA toll market. The Commission is committed to certain public policies including the provision of universal service, the development of new technology and increased efficiency in the telecommunications industry.

The Commission notes that in Re: Southwestern Bell Telephone Company, 25 Mo. P.S.C. (N.S.) 462, 521-522, (1982) it approved the resale of WATS and that in Re: Southwestern Bell Telephone Company, 26 Mo. P.S.C. (N.S.) 344, 391 (1983) the Commission ordered its General Counsel to notify all Other Common Carriers and WATS resellers providing intrastate toll service to file an application for certification. Fifteen (15) companies filed applications requesting Commission authority as resellers to provide intrastate intraLATA and interLATA services and presented evidence in this case that the public would benefit from such authorization. No facilities-based carriers have filed applications in this docket though MCI and GTE Sprint have intervened and filed briefs in this matter.

The Commission has considered all of the positions and arguments of the parties as set out in their briefs and the evidence presented. The Commission

believes that there has been sufficient evidence presented in this case to determine whether to authorize intraLATA toll competition.

Based upon the evidence presented in this case the Commission finds that authorizing intraLATA toll competition will result in new and improved services, lower prices and faster responses to customers' needs which will benefit the public. Not only will the ratepayers be benefited, the telecommunications industry in Missouri should be stimulated by the opening of this new market and encouraged to develop new technology and efficiencies in the industry. The Commission agrees with MCI, GTE Sprint, Allnet, Comptel and MHMA that authorizing competition in the intraLATA market is in the public interest.

The resellers had approximately 52,000 customers in 1985. As of 1985, the resellers ranged in size from Allnet which had approximately 16,000 customers, Tel-Central which had 4,500 customers, to Econo-Call which had 210 customers. Indications of the amount of intraLATA business they were doing in 1985 include the following: 35% of Econo-Call's business is intraLATA; 53% of Contact America's revenues are intraLATA; 30% of LTS's calls are intraLATA; 17% of Com-Link 21's calls are intraLATA; 20% of Transcall America's calls are intraLATA; and 16% of Inter-Comm Telephone Inc.'s (Inter-Comm) traffic is intraLATA. An example of a reseller's intrastate revenues would be Inter-Comm which billed $38,650 for August, 1985. The Commission believes that this evidence shows that the resellers' services are being used by the public and agrees with Comptel that such use also shows the public interest is being promoted by their services.

The Commission has considered Staff's proposal to authorize intraLATA competition for the resellers but not for the facilities-based carriers, and Alltel's proposal to authorize toll switching competition but not toll transmission competition. SWB has had resellers in its service areas since approximately 1983, when WATS resale was approved by this Commission. MCI and GTE Sprint were authorized to provide intrastate interLATA services pursuant to a Report and Order issued on November 21, 1984. The Commission notes that reporting requirements, access charges

and the intrastate tariff will be addressed in later sections of this Report and Order. The Commission finds that resellers and facilities-based carriers are providing service technically in a similar manner where the facilities-based carrier has one point of presence in the state. For purposes of authorizing intraLATA competition, the Commission cannot find a rational basis to distinguish between resellers and facilities-based carriers.

The Commission does not intend to allow geographical deaveraging of toll rates as a response to competition in the intraLATA market. The Commission must authorize any such deaveraging of toll rates and at this time, the Commission dose not believe that deaveraging of toll rates is in the public interest. Having reviewed Alltel's arguments, the Commission is not persuaded by the evidence that there should be a distinction between toll switching and toll transmission.

The Commission believes it is in the public interest to allow the intraLATA toll market to develop into a competitive market rather than to remain a market controlled by regulated monopolies. During this transition period, the Commission will monitor the development of intraLATA competition to protect the interests of the public and ensure fair competition.

II. What Responses to Competition Should Be Authorized?

A. Whether Pricing Flexibility for LECs Should be Authorized?

1. Parties Positions

SWB proposed that LECs should be allowed some degree of regulatory freedom for pricing intraLATA service. In particular, SWB requested authority to implement a 15% range of rates (pricing flexibility) with maximum rates set at currently authorized uniform intraLATA toll rates and minimum rates set at levels 15% less than the maximum levels. Rates, according to SWB's proposal, could be changed within the authorized range upon fourteen (14) days' notice. SWB's proposal is similar to an approach approved by the Commission for interexchange carriers competing in the intrastate interLATA market. See Statement of Policy, in Re: Regulation of Providers of InterLATA Telecommunications Services, Case No. TX-85-10 (July 1, 1985).

(referred to as Statement of Policy) Under the approved pricing flexibility plan, all rate reductions or increases must be uniform and across-the-board for all mileage bands and services.

SWB in Exhibit 31, Schedule 13, has also proposed intraLATA rules which would permit banded toll tariffs, volume discounts and route-specific pricing. These proposals are opposed by all parties to this proceeding except SWB, AT&T, MITG, Alltel and United Telephone. AT&T, MITG, Alltel and United Telephone did not brief this issue but stated their positions as follows: AT&T contends that there should be cost-based intraLATA access charges. MITG states that if the Commission decides to permit intraLATA competition it must implement an industry structure which is compatible with competition. Alltel contends that if intraLATA competition is allowed, LECs should be allowed the pricing flexibility needed to compete effectively. United Telephone alleges that the Commission should make appropriate tariff and pricing changes based on a recognition of intraLATA toll competition.

SWB states that its pricing flexibility proposal should be authorized in recognition of the competition that exists in the toll market, so it can protect the intraLATA toll contribution to local exchange rates and because facilities-based carriers and resellers have a significant degree of pricing flexibility. SWB believes that pricing flexibility is consistent with Re: Cost of Service Study of Southwestern Bell Telephone Co., 21 Mo. P.S.C. (N.S.) 397 (1977) (referred to as Case No. 18,309) since services that are subject to substantial competition must be priced at a level that generates the greatest practical contribution.

SWB points out that resellers have enjoyed phenomenal growth while SWB's studies show it has experienced a negative growth in both number of messages and minutes of use from 1980-1984. SWB alleges its negative growth patterns will continue because it does not have pricing flexibility to stave off its competitors. SWB argues that it is losing intrastate message telecommunications service (MTS) revenues due to resellers and facilities-based carriers competing in the intraLATA market. According to SWB, 94% of its customers can reach a competitor toll free and

competition can only make lost revenues greater. SWB also argues that its MTS rates are among the highest in Missouri and that resellers establish their rates at a predetermined discount rate below the rates of SWB and AT&T. As a result, SWB is at a competitive disadvantage. This competitive disadvantage can only be remedied, according to SWB, by allowing it pricing flexibility.

SWB contends that the toll market is a contestable market and that "no firm can exercise market power because entry by competitors will preclude any incumbent firm from reaping monopoly profits." SWB argues that even if the market is neither workably competitive nor contestable the Commission should allow pricing flexibility since regulators have allowed pricing flexibility to some degree for services not subject to effective competition but subject to varying degrees of limited competition.

SWB states that the equal protection clause of the U.S. and Missouri Constitutions have been held to protect similarly situated parties from disparate regulatory treatment and there is no rational basis to deny SWB the same pricing flexibility that facilities-based carriers have in the interLATA toll market.

SWB points out that the range of rates it proposed would differ from the fuel adjustment clause invalidated in State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Commn., 585 S.W.2d 41 (Mo. banc 1979), since the maximum rate would be approved by the Commission and therefore the range of rates would not be illegal.

Staff believes that toll pricing flexibility should not be allowed until significant competition exists in the market. Future pricing flexibility proposals, according to Staff, should be limited and focused on more targeted approaches such as some form of volume discount pricing. Staff believes that the Commission should limit its initial response to intraLATA toll competition to repricing intraLATA FG-A access to a modified WATS rate to protect SWB's intraLATA toll contribution to local exchange rates. This subject is discussed in Section II B. Staff states that if the Commission opens the intraLATA toll market to competition or grants SWB toll pricing

flexibility, then it should create a docket to investigate and determine what regulation is required to ensure fair competition.

Public Counsel opposes deregulation of the intraLATA market and contends that such an approach would lead to a loss of revenues, create increased pressure to raise local rates and enable LECs to use their monopoly over local access facilities to underprice their competitors until they are driven out of business. Thereafter, LECs could raise rates which could result in excessive monopoly profits.

MCI opposes SWB's request for intraLATA toll pricing flexibility because deregulation of the dominant carrier of intraLATA toll and local exchange services in the absence of meaningful competition is premature.

GTE Sprint also opposes SWB's pricing flexibility proposal. In support of its position, GTE Sprint argues that SWB's pricing flexibility proposal would destroy competition, that SWB overlooks its advantages including the huge market it controls and its exclusive ability to receive all 1+ dialing of intraLATA calls. Until SWB proves pricing flexibility is necessary to maintain its viability, GTE Sprint argues that it should not be allowed by the Commission.

Comptel opposes SWB's request for pricing flexibility stating that there is not sufficient evidence that significant competition exists to allow pricing flexibility. Comptel argues that such a request should be made in tariff filings setting forth specific proposals.

Allnet argues that SWB's request for pricing flexibility should be denied because it is based on the erroneous assumption that effective competition exists in the intraLATA toll market and it is escalating.

During cross-examination SWB's witness, Kaeshoeffer, stated that he does not believe that an across-the-board rate reduction would be consistent with Case No. 18,309, which requires SWB to price services for maximum contribution. Mr. Kaeshoeffer stated that an across-the-board decrease in toll rates could result in "...leaving some revenues on the table..." that SWB shouldn't; instead of across-the-board decreases he said that SWB should target price decreases to certain

market segments where SWB is losing revenues today. Staff and GTE Sprint contend that if sufficient toll revenue is not recouped from SWB's competitors, the reduction in rates for traffic which is not in jeopardy will more than offset revenues gained. In addition, Staff points out that SWB has not submitted any studies to estimate the revenue effect of a toll rate decrease which it could implement if its proposal is approved. Staff also notes that the streamlined nature of the plan would effectively eliminate the opportunity for review at the time a rate decrease is sought. SWB differs from facilities-based carriers and resellers, according to Staff, since SWB provides local exchange service which is residually priced. Therefore, Staff states that local exchange ratepayers would pay for the loss in intraLATA toll revenues. GTE Sprint agrees that the loss of toll revenues would place pressure on other services including local rates.

Staff and MCI state that the evidence in this proceeding regarding the current level of intraLATA competition does not support the need for SWB's pricing flexibility proposal. Staff states that Dr. Ileo, from his examination and analysis of the operation and performance of the pools, concluded that the resellers were exerting some competitive pressure but were not undermining the financial condition of the LECs. Staff also states that even with the existence of resellers in the market, the intraLATA toll pool in 1985 was forecasting continued growth in revenues through 1986. Staff states that the number of competitors in the market is not very informative regarding the existing level of competition. Public Counsel contends that the resellers and facilities-based customers account for only 5.8% of the total intraLATA toll customers and therefore, the resellers and facilities-based carriers are not a significant threat to SWB. Public Counsel points out that SWB's revenues continue to increase for intraLATA toll despite loss of customers to competitors. Staff believes that significant competition is determined by market share, market concentration and barriers to entry in the market. Staff states that if there are numerous firms with the relative same amount of market share and if there are numerous firms and the top four (4) to five (5) firms do not have a controlling share

(concentration) and if there are no significant barriers to entry, then the market is competitive. Staff witness, John Kern, testified that to the extent the market is defined in terms of total revenues or minutes of use, Dr. Ileo's conclusion that SWB's minutes of use and revenues were increasing would indicate that SWB's market share is increasing. Based on his analysis that SWB's share of market increasing regardless of the number of firms in the market, Mr. Kern concluded that the intraLATA toll market was not competitive at this time. Allnet and Public Counsel allege that the barriers to entry exist since it requires large amounts of capital to establish a reseller. In addition, both Allnet and Public Counsel point out that the resellers' operations are different from SWB's operations. Unlike resellers, SWB exerts control over local access facilities which may be used as a barrier to entry into the intraLATA market. Allnet alleges that SWB's share of the market is increasing, that only SWB has a large share and that the majority of the market is concentrated in SWB.

MCI asserts that so long as SWB dominates the intraLATA market, its potential competitors must underprice it to survive and thus, meaningful pricing flexibility is not enjoyed by its competitors. Allnet criticizes SWB's rate comparisons and its argument that its MTS rates are the highest in Missouri.

Staff states that SWB's arguments that its data on toll messages, minutes of use and revenues show that intraLATA competition is at a significant level is less than compelling. According to Staff, the numerous variables related to economic trends and demographics within SWB's service areas make it impossible to segregate the effect of intraLATA toll competition. Staff also states that in fact SWB's minutes of use show a decline from 1980-1983, but indicate an increase in 1984, when the effects of intraLATA toll competition should have been seen.

Staff and Allnet argue that the lack of intraLATA presubscription is a distinct marketing disadvantage to the resellers and facilities-based carriers. Without presubscription, all 1+ dialed intrastate intraLATA traffic is routed through the LEC. The alternative carrier customer must dial four extra digits to place an

intraLATA call using its facilities. Staff and Allnet point out that 1+ dialing is a convenience to the customer, and 18% of the lines will not be subject to equal access which will result in alternative carriers' customers dialing 16 extra digits to access them. Allnet also points out that educating the customers to place calls over the alternate carriers' facilities adds costs. Public Counsel contends that equal access will lessen the effect of toll resellers and facilities-based carriers on LECs since 1+ calls will be routed to the LECs.

Staff does not believe that the intraLATA toll market is contestable because SWB controls the local exchange access facilities and is the dominant intraLATA toll carrier.

Staff, Public Counsel, MCI, GTE Sprint and Allnet believe that anticompetitive behavior by LECs is possible. The potential anticompetitive activities cited by these parties included: delays and impediments to access or preferential pricing, ability to plan for provision of services in advance of competitors because of advance knowledge of improvements and modifications to access facilities and services, use of knowledge of monopoly customers' needs to enhance its ability to market competitive services, and cost shifting of joint and common costs and the resulting cross subsidization by monopoly services that is possible when a dominant carrier provides both monopoly and competitive services. Staff pointed out that the FCC has recognized that anticompetitive behavior is possible in this situation. In a deregulated environment, LECs can take another step and underprice their competition according to Staff, Public Counsel and GTE Sprint, and eliminate them from the marketplace.

The Staff contends that SWB's equal protection argument should be dismissed since SWB did not argue that the resellers and the facilities-based carriers should be subject to rate base regulation. Staff also contends that the following differences between SWB and other intraLATA toll competitors justify different treatment: SWB's size (number of customers and market share), entrenched firm (name recognition), carrier of all 1+ intraLATA calls (other carriers dial extra digits),

its potential ability to cross subsidize its competitive services and SWB's residual pricing of local exchange rates. MCI states that with SWB's control of the local exchange bottleneck and superior intrastate access, there is no merit to its claim that a denial of its request for pricing flexibility would violate its right to equal protection.

Staff states that SWB should submit any proposals such as the rules in Exhibit 31, Schedule 13, through tariff filings especially if it is in a unique competitive situation and is subject to greater competition than other LECs. Staff also argues that these proposed rules are not supported by any evidence. GTE Sprint, MCI and Staff contend that if SWB's rules are implemented, the Commission would only have fourteen (14) days to review the tariffs which would be an insufficient time period in which to investigate rates. Staff and MCI allege that the implementation of SWB's proposals would stifle any meaningful level of intraLATA competition.

MCI opposes SWB's proposal for a range of rates including master and supplemental rate schedules because it believes it is unlawful. MCI states that it has appealed such a case, State ex rel. GTE Sprint Communications Corporation v. Pub. Serv. Comm'n., No. CV185-1067CC (Cole County Cir. Ct. filed Oct. 11, 1985), and that by approving a system of master and supplemental rate schedules, the Commission abdicates its statutory responsibilities and creates a new method of approving rates.

2. Commission Findings

SWB has proposed a 15% range of rates (pricing flexibility) be authorized for LECs for intraLATA toll services. The Commission has considered the evidence and the briefs filed by the parties on this issue. SWB lists many arguments to justify the authorization of pricing flexibility. However, the Commission finds that SWB's own witness, Mr. Kaeshoeffer, has testified that an across-the-board decrease in MTS rates, which is the type of authority requested by SWB in its pricing flexibility proposal, could result in "...leaving some revenues on the table..." that SWB shouldn't. Mr. Kaeshoeffer stated that instead of across-the-board decreases SWB should target price decreases to the customers it is losing today. Staff pointed out

that these lost revenues would be made up by the local exchange ratepayers since SWB's local exchange rates are residually priced. Mr. Kaeshoeffer also stated that he does not believe that SWB's proposal would be consistent with Case No. 18,309 which requires SWB to price services for maximum contribution. The Commission finds that SWB's proposed pricing flexibility is too broad of a proposal to be implemented at this time and that certain services might not be priced for maximum contribution under the plan.

The Commission finds that the number of resellers and facilities-based carriers alone does not reflect whether the market is competitive. The Commission finds that SWB at this time is not subject to a sufficient level of competition to warrant the adoption of SWB's flexible pricing plan. This conclusion is supported by the finding that SWB's toll pool revenues and minutes of use have continued to increase, even though there have been some alternative carriers handling intraLATA calls. In addition, in 1985 SWB had 1.5 million customers while resellers and facilities-based carriers collectively had approximately 126,000 customers. Based upon the number of customers and the fact that SWB and LECs receive all 1+ dialed intraLATA calls, the Commission concludes that SWB has a substantial share of the intraLATA toll market.

Based upon the evidence in this record, the Commission cannot identify and quantify the effect of intraLATA toll competition on SWB's toll messages, minutes of use and revenues. There are various economic variables, trends and demographics within SWB's service areas which would be expected to affect such an attempt to quantify the effect of intraLATA competition on SWB or other LECs. No evidence was presented which attempted to segregate these extraneous economic variables, trends and demographic changes from the effects of intraLATA toll competition.

The Commission also agrees with Staff and Allnet that the lack of intraLATA presubscription is a significant disadvantage for the facilities-based carriers and resellers, since the facilities-based carriers and resellers must educate their customers to dial extra digits and motivate them to do so.

The Commission believes that there is a rational basis to deny SWB the same pricing flexibility as the facilities-based carriers in the interLATA toll market. The Commission believes that SWB and its intraLATA competitors can be distinguished on these bases: SWB is rate base regulated; SWB controls the local exchange facilities; SWB is much larger in size - number of customers and market share than the facilities-based carriers; SWB is an entrenched firm - it has name recognition; and SWB carries all 1+ traffic while other carriers' customers must dial extra digits on an intraLATA call.

The Commission is in agreement with Staff and the other parties, that rules such as those proposed in Exhibit 31, Schedule 13, should either be filed as a tariff or filed as a proposed rule. If the subject matter would apply only to SWB rather than all LECs then it should be filed as a tariff. If the subject matter applies to a group of carriers then it should be submitted as a proposed rule.

To summarize, at this time the Commission has found that:

- SWB's pricing flexibility proposal is too broad of a proposal;
- the amount of competition in the intraLATA toll market is not significant;
- it is not possible on this record to segregate the effects of intraLATA toll competition on SWB's revenues, toll minutes and toll messages;
- the lack of intraLATA presubscription for facilities-based carriers and resellers is a significant disadvantage to them;
- there is a rational basis to deny SWB the same pricing flexibility that the facilities-based carriers have in the interLATA toll market; and
- SWB's proposed rules should either be submitted through tariff filings or filed as rules at the Commission.

Based on these findings, the Commission concludes that SWB's 15% range of rates proposal should be denied.

The Commission believes that SWB and other LECs may need to be afforded more pricing flexibility as the intraLATA market becomes more competitive in the

coming months and years. For example, SWB and LECs may have a need for volume discounts, pricing differentials between classes, and other pricing flexibility or specialized calling plans. However, the Commission believes it would be more appropriate to review in detail such pricing initiatives through tariff filings, rate design proceedings or LEC rate cases. In Re Southwestern Bell Telephone Company, Case No. TR-86-84 (June 27, 1986), the Commission approved a Stipulation and Agreement which includes a two-year moratorium on local exchange increase requests for SWB. During the next three years, the Commission will consider experimenting with pricing initiatives proposed by LECs, the Commission Staff or Public Counsel.

B. Whether IntraLATA Feature Group-A (FG-A) Access Rates Should be Repriced?

1. Parties Position

SWB proposed charging WATS equivalent rates for Feature Group-A (FG-A) intraLATA access rates. Staff supports this proposal with adjustments for short hauls to place the resellers' cost of access above SWB's price to the customer. Public Counsel believes this issue would be more appropriately addressed in SWB's next rate case. The other parties oppose SWB's proposal.

SWB states that if WATS equivalent rates are implemented, the competitive loss of toll traffic would not have as significant an impact. Otherwise if it must charge access rates for handling intraLATA calls, then SWB must reduce its MTS rates to the access rates or lose its toll business. SWB's costs for handling resellers' intraLATA calls are the same or a little higher for providing FG-A access service rather than WATS or MTS service. SWB alleges that there would be no unfair hardship to the resellers by raising FG-A rates to a WATS equivalent price since they entered the business expecting to pay WATS rates. SWB believes that Staff's proposal to have SWB file a tariff regarding FG-A intraLATA access to resellers with rates based on the current WATS tariff modified for short haul traffic, should be considered in a future docket. SWB notes that Staff admitted there has been an effort to keep the short haul rates low to reduce extended area services (EAS) pressures. Staff

believes that the level of intraLATA competition is sufficient to justify the repricing of FG-A to protect the stream of toll contribution to basic local service.

Allnet points out that the resellers have costs other than access charges that must be paid to stay in business. Comptel contends that the potential harm to the reseller market must be carefully analyzed and such evidence was not presented. Comptel further contends that the evidence does not support a finding allowing SWB to reprice FG-A intraLATA access at current WATS rate levels with a modification in the short haul steps. Allnet states that the pricing may drive small resellers out of business since many of the local resellers' calls within the state are intraLATA short haul traffic. Allnet argues that SWB's argument that resellers entered the market expecting to pay WATS rates is without merit, since resellers on entering the market use WATS rates because it is financially beneficial for them since their traffic volumes are low. Allnet also argues that there is no evidence that SWB's FG-A access rates are not compensatory and that any shortfall is more appropriately addressed in SWB's rate case.

MCI agrees with AT&T that LECs should be fairly and adequately compensated for any use of their facilities in the provision of intraLATA services in the form of cost-based access charges. WATS equivalent rates for FG-A access charges would, according to MCI, overcompensate SWB. MCI argues that while SWB may collect less revenues on a call carried by a facilities-based carrier or reseller than if it carried the call itself, the evidence indicates that SWB's total revenues continue to rise as a result of competition.

MCI believes that WATS equivalent rates for FG-A is an alternative penalty provision like the compensation mechanism which MCI alleges the Commission attempted to impose upon MCI and GTE Sprint for providing intraLATA services. MCI contends that the Commission should not allow WATS equivalent rates in the mileage bands where SWB's toll rates are less than its WATS rates, and if WATS equivalent rates are approved by this Commission, they should apply to all intraLATA traffic including AT&T's traffic. MCI does not believe that the compensation mechanism should be used

after the Cole County Circuit Court's reversal of that portion of the Commission's Report and Order even though it has been appealed. MCI alleges that it is not likely that any compensation will be paid and notes that the Staff does not support the resellers paying such a charge.

Comptel states that it is undisputed that resellers use both WATS lines and FG-A access to provide service and the use of FG-A creates a margin between their cost of access and the local exchange rates which will be minimized or destroyed if WATS rate levels are mandated. Comptel admits that the WATS pricing for FG-A could be warranted if SWB or Staff could show what the pricing response should be and why it is justified, but states there is no evidence on this issue.

2. Commission Findings

SWB proposes to charge WATS equivalent rates for FG-A intraLATA access rates. Staff supports SWB's proposal with a modification in the short haul steps to protect toll contribution to basic local service in the intraLATA toll market. SWB states that if it must charge access rates for handling toll calls then it must reduce its MTS rates to the access rates or lose its toll business and alleges that in either event, the contribution from toll to residually priced services would evaporate.

The Commission has considered the evidence and briefs filed by the parties on this issue. The Commission agrees with Comptel that there has not been sufficient evidence presented to authorize the repricing of FG-A intraLATA access rates. SWB even states that Staff's proposal to have SWB file a tariff regarding FG-A should be considered in a future docket. The Commission believes that this issue should be considered in a future docket and evidence presented by all interested parties.

C. Whether a Separate Subsidiary Requirement Should be Imposed Upon SWB?

1. Parties Positions

Staff states that it is unaware of any form of corporate structure or regulation other than a separate subsidiary to protect against potential abuse of monopoly power by SWB. Staff contends that the separate subsidiary requirement

should only be imposed on SWB and not any of the other LECs because of the nature of its network and operations in major metropolitan areas where there is a greater potential for anticompetitive conduct. Staff, Public Counsel, MCI, GTE Sprint and Allnet expressed concern with possible anticompetitive behavior, since SWB is a major intraLATA toll carrier and also controls access to the local network.

Staff is willing to investigate other less-costly options. Staff notes that it is not recommending that the Commission order the creation of a separate SWB toll subsidiary in this case. Instead, the Staff is requesting a separate docket be created to investigate and determine what regulation is required to ensure fair competition. Staff states that creation of a separate subsidiary would not eliminate toll contribution to local service.

MCI and GTE Sprint support a separate subsidiary requirement. The other parties with the exception of SWB take no position on this issue. SWB opposes Staff's proposal.

Both MCI and GTE Sprint support a requirement of a separate subsidiary for SWB. MCI states that prior to allowing pricing flexibility such a subsidiary should be created to prevent cross subsidization. GTE Sprint alleges that SWB's size will allow it to use its monopolies in other services to subsidize reductions in toll rates even below cost to beat competition.

SWB states that a separate subsidiary proposal is inadvisable, since it would take away all toll business from the LEC and its contribution to the local exchange rates. SWB contends that the Commission's continued regulation of exchange carriers' local rates and toll services is sufficient to prevent cross subsidies or that accounting rules can be formulated to prevent cross subsidies.

SWB contends that there has been no failure to provide appropriate network interconnections in the two (2) years since divestiture for any competitor of toll service. SWB argues that cross subsidization does not exist as long as rates are set above incremental costs which SWB alleges they are; in fact, SWB states that according to subscribers, access rates have too large a level of contribution. SWB

believes that a separate subsidiary requirement is no longer consistent with the FCC's current approach. SWB argues that the Commission does not have legal authority to impose a separate subsidiary. SWB points out that the Staff did no engineering or network analysis or cost impact studies on implementing a separate subsidiary requirement on SWB. SWB also contends that such a requirement assumes that the intraLATA toll market is viable by itself.

2. Commission Findings

The Commission has considered the evidence and arguments of the parties on this issue. Staff has proposed the creation of a separate subsidiary to protect against potential abuse of monopoly power by SWB if pricing flexibility was authorized, but is not recommending that the Commission order the creation of a separate subsidiary in this docket. SWB is opposed to the creation of a separate subsidiary for many reasons as set out herein.

The Commission finds that there is not sufficient evidence to order the creation of a separate subsidiary at this time.

D. Whether IntraLATA Presubscription Should be Required?

1. Parties Positions

SWB opposes presubscription which would involve requiring 1+ dialing for intraLATA calls to the customers' carrier of choice. SWB alleges that the cost of converting the Missouri exchanges if a nationwide conversion was implemented would be $25-$50 million. SWB alleges that it would be at a competitive disadvantage since it cannot provide interLATA toll service and customers prefer to deal with one toll provider for all long distance service.

GTE Sprint and Allnet note that the court in United States v. American Tel. & Tel. Co., 552 F.Supp. 131 (D.D.C. 1982) aff'd. sub. nom., Maryland v. United States, 460 U.S. 1001 (1983), did not require intraLATA presubscription.

GTE Sprint also points out that Staff's witness John Kern testified that the addition of intraLATA equal access to the interstate interLATA equal access cutover would add a small cost to the bill. The Staff notes that it has not argued that intraLATA presubscription should be mandated in this case.

2. Commission Findings

SWB opposes intraLATA presubscription. No party has requested intraLATA presubscription in this proceeding. Based upon the record in this case, the Commission is of the opinion that intraLATA presubscription should not be required at this time. However, the Commission is of the opinion that SWB should perform a cost benefit analysis of converting its equal access central offices to make them capable of routing presubscribed intraLATA calls to alternative carriers on a 1+ dialed-basis. The Commission also requests that SWB provide the Commission with information it may possess concerning presubscription programs being planned or implemented in other states and by other Bell Operating Companies. The Commission finds that SWB should submit the analysis and the information within six (6) months of this Report and Order.

III. Whether the Resellers Should be Certificated to Provide Intrastate InterLATA and IntraLATA Toll Telecommunications Services and Related Matters.

A. Parties Positions

None of the parties except Staff and possibly Public Counsel oppose the certification of any of the resellers; however, there are differing opinions on some of the related matters which will be set out herein.

Public Counsel states that it believes the intraLATA toll market should remain a natural monopoly that is not conducive to competition and opposes any deregulation of the intraLATA toll market. Whether Public Counsel's opposition extends to certification of the resellers to provide intraLATA toll is not evident from the record.

Staff supports certification of the following resellers: LTS, Republic Telcom, Com-Link 21, Contact America, Tel-Central, directline Austin, Transcall

America, Econo-Call, Compute-A-Call, Inter-Comm , Valu-Line of St. Joseph Inc. (Valu-Line), and LDD Inc. (LDD).

Staff states that Compute-A-Call of Springfield South Inc. (Compute-A-Call of Springfield) and W.S.C. Group Inc. have filed requests to withdraw their applications since it is not supporting their applications. Staff further states that LDX Inc. has merged into Allnet and has not presented any prefiled testimony; therefore, Staff recommends that LDX Inc.'s application be denied and Case No. TA-84-162 be dismissed.

Staff neither recommends nor opposes certification of Hedges, d/b/a Dial U.S. and Communications Cable, d/b/a Dial U.S.A. Staff is not supporting these applications for two reasons: first, because of the confusing similarity of their fictitious names which have been withdrawn from these cases but may be used, and second, because the companies though separate corporate entities operate off the same switch, use the same billing system, have common employees and Mr. Hedges is the sole shareholder of both corporations and a grant of two certificates would create an unnecessary administrative burden for the Commission.

Staff alleges these two corporations provide essentially a single reselling service which could result in a customer paying more by subscribing to the wrong reseller if rate schedules differ, in service calls and complaints being misdirected and in a customer ordering by mistake service from a financially unsound reseller and incurring the risk of service interruption if the reseller is bankrupt.

Staff opposes the certification of Allnet. Staff believes that Allnet is a facilities-based carrier which should be required to seek certification on terms similar to those imposed by the Commission on MCI, GTE Sprint and U.S. Telephone. Staff believes Allnet is a facilities-based carrier for two reasons: first, because it has a ten-year lease on fiber-optic facilities which run from St. Louis to Kansas City from Times-Mirror Corporation and other transmission facilities which reach Kansas City have been leased for ten (10) years from Western Telecommunications, Inc. and second, because of its corporate philosophy of taking

advantage of the glut of fiber-optic capacity and its connection with LDX Group Inc. Staff alleges that LDX Group owns 32% of Allnet. LDX Group, according to Staff, is the parent company of LDX Net which owns and leases fiber-optic transmission facilities in this state. Staff believes that Allnet will have access to those facilities on terms superior to those offered to other resellers. Staff points to Lexitel's witnesses who stated that Allnet plans to enter into long-term leases with LDX Group for fiber-optic facilities. Staff believes that facilities-based carriers which establish a separate reselling subsidiary corporation will be able to exempt themselves from facilities-based regulation. Therefore, Staff proposes that any reseller who leases facilities for a year or more is a facilities-based carrier. Staff believes there is no rational basis for distinguishing between telephone companies which own their own facilities and those which have long-term facilities leases. Staff contends that there is no reason to allow Allnet access to the intraLATA market as a reseller and limited regulatory control when other facilities-based carriers are denied those advantages.

The Staff has proposed eight (8) regulatory requirements for resellers. All but two of these proposed requirements, according to Staff, are obligations under the Commission's rules or Missouri statutes applicable to resellers or an exercise of the Commission's discretion under the applicable statues or Commission rules to require the reporting of information by the resellers. The two exceptions are Staff's proposed change to the intrastate access services tariff and the Staff's proposed bonding requirement.

Staff contends that the Commission has authority to amend the access services tariff in this docket since all the telephone companies are parties. The Staff is recommending that the intrastate access services tariff be modified to allow the resellers to subscribe to it. The reason for this change, according to Staff, is that the resellers have shifted their intrastate traffic to less expensive FG-A and B lines which they subscribe to under the Interstate Access Services Tariff and which deprives the intrastate jurisdiction of revenues from intrastate calls routed over

those lines. Staff proposes these revenues be divided between the intrastate and interstate jurisdictions on the basis of percentage of interstate use (PIU) reports to be submitted periodically by the resellers to the LECs. Staff further proposes that the LECs could verify these PIU reports by attaching monitoring equipment to the FG-A & B lines and when a discrepancy between the PIU reports and the monitored data is discovered, the LEC and/or Staff could audit the resellers' records as stated in SWB's Access Services Tariff PSC - Mo. No. 36, Section 2.3.15(B).

Staff believes that the Commission should demand the LECs liberally apply the two (2) month deposit tariff provisions for any customer which the LEC believes may be unable to pay its bills. Staff stated that the resale market permits resellers entry with few financial resources, that many of the resellers show current liabilities in excess of current assets in their most recent balance sheets and that one Missouri reseller exited the market leaving thousands of dollars in unpaid bills owed to LECs. Staff contends that this type of occurrence raises the bad-debt expense of the LECs and could cause rates to increase for the remaining customers. Staff also alleges that because of their large telephone bills, resellers are different from most other business customers, and those that do have a bill as large as the resellers are much less likely to default and have not caused significant problems for the LECs. Staff contends that the Commission should state that in no event will it permit a LEC to pass bad debt expenses from resellers unable to pay their bills to its ratepayers. Staff recommends that the Commission determine that a LEC may accept a security bond or other acceptable guarantee of payment as an alternative available for the resellers' convenience in the event a deposit is required.

The other regulatory requirements Staff proposed are: (1) resellers are required to comply with reasonable requests by the Staff for financial and operating data to allow the Staff to monitor the resale market pursuant to Section 386.320(3), RSMo 1978; (2) resellers are required to file tariffs containing rules and regulations applicable to customers, a description of the services provided and a

list of rates associated with the services pursuant to Section 392.220, RSMo 1978 and 4 CSR 240-30.010; (3) resellers are precluded from unjustly discriminating between and among their customers pursuant to Section 392.200, RSMo 1978; (4) if resellers file new master schedules with minimum-maximum ranges, said rates can be changed on thirty (30) days' notice; if master schedules are filed, then the resellers can file supplemental schedules changing rates in the approved range on fourteen (14) days' notice; if no master schedule is on file, rates can be changed on thirty (30) days' notice pursuant to Section 392.220, RSMo 1978; (5) resellers are required by Section 386.570, RSMo 1978, to comply with all applicable Commission rules except those which are specifically waived by the Commission pursuant to a request for variance filed by a reseller; and (6) resellers are required to file a Missouri specific annual report pursuant to Section 392.210, RSMo 1978.

The Staff also recommends that the granting of the reseller certificates should be conditioned on the filing of their tariffs, as set out in Requirement No. 2, within thirty (30) days of the effective date of the Commission's Report and Order in this case.

The Staff opposes a requirement that resellers demonstrate financial fitness because: the records provided in this case show that there are very few of the resellers that could pass even the most minimal test of financial soundness; it's unwise for the Commission to represent to the public that any certificated reseller is financially sound because of the volatility of the market; it would be a difficult and an unnecessary regulatory burden on the Commission and the Staff; and the inability to meet an arbitrary standard of financial fitness may preclude otherwise suitable resellers from operating whereas the market itself will eliminate financially unfit resellers more effectively than the Commission.

The Staff opposes separate rules for resellers stating that the rules designed for all telephone companies are sufficiently flexible to provide adequate regulation. Staff also points out that since the reseller market is just developing, this is an inappropriate time to develop rules. The Staff urges that its proposed

regulatory requirements be adopted as an interim measure if specific rules for resellers are to be promulgated.

The Staff states that the resellers should not be subject to traditional rate base regulation because they are subject to market forces.

Comptel's initial brief is in the form of a proposed Report and Order. Therein, Comptel suggests that the Commission must first determine if it has jurisdiction over the resellers. Comptel also suggests that the resellers' past and present financial and technical fitness, willingness and ability to comply with Commission rules and jurisdictional reporting requirements are the only issues for the Commission to determine in certifying the resellers.

Comptel states that Hedges, d/b/a Dial U.S. and Communications Cable, d/b/a Dial U.S.A., have agreed to discontinue the use of their fictitious names if the Commission so orders. Comptel alleges that corporate names and registration of fictitious names are regulated by Sections 351.110 and 417.200, RSMo 1978, and that since the Secretary of State has not determined that the two names are deceptively similar, and the Commission should not address this issue. Comptel argues that since the resellers have separate business locations, separate employees, separate business managers, separate service areas and business activities, and are separate corporate entities even though they have a common owner, lease the same switch, and utilize some common employees, they should still each be certificated since both are qualified. Comptel points out that Communications Cable provides services outside of Springfield and Hedges provides services in Springfield and its EAS territory.

Comptel opposes Staff's proposed regulations on the basis that adoption of the regulatory requirements would result in promulgating rules outside the prescribed statutory procedures pursuant to Section 536.021, RSMo 1978. Therefore, Comptel concludes that such rules would be void and of no effect. Comptel states that Staff presented no empirical data or studies to support the rules and that the notice requirements of Section 536.021, RSMo 1978, were not met.

Comptel also opposes Staff's proposed bonding requirement which would have required each reseller to post a bond or guarantee. However, Staff's reply brief modified its proposal to make the bonds an alternative to a deposit.

Allnet states that on December 19, 1985, Lexitel Corporation (Lexitel) and LDX Inc. were merged into and with Allnet and the former two entities have ceased to exist. Allnet states it is now a wholly-owned subsidiary of ALC Communications Corporation. Allnet alleges that any access it would have to LDX Net's fiber-optic routes would be through a third-party transaction since its only connection with LDX Group is that LDX Inc. the parent company of LDX Net, owns 32% of Lexitel's stock which has now been converted to ALC Communications Corporation stock. Allnet also states that LDX Group is only a stockholder of Allnet and does not participate in Allnet's day-to-day running of the business.

Allnet believes that the key factor to be used in determining whether a carrier is a reseller or a facilities-based carrier is whether the carrier owns or controls its facilities, not the term of the lease. Allnet asserts that its lease with Times Mirror states that Times Mirror is responsible for installing, maintaining and testing the facilities and does not give Allnet any control over its facilities. Allnet also states that why Staff asserts that a reseller with a year's lease becomes a facilities-based carrier because those facilities are dedicated to the reseller, is unclear to it and points out that under that theory any reseller subscribing to WATS facilities would be a facilities-based carrier.

Allnet points out that Staff's allegation, that facilities-based carriers will try to exempt their reselling parts of the business by establishing a separate subsidiary to lease facilities to themselves, is not supported by the evidence and that the Staff could require the reporting of any such subsidiary that has been established by a facilities-based carrier.

SWB alleges that Allnet is a facilities-based carrier because it leases its facilities on a long-term basis though SWB admits distinctions between resellers and facilities-based carriers are blurring.

SWB supports Staff's proposal that the Commission obtain periodic data from the resellers concerning their operations.

SWB is concerned regarding Staff's recommendation that since the LECs have tariffs allowing them to collect deposits that other customers of the LECs should not be required to pay costs caused by resellers which are unable to pay their bills. SWB states that if Staff intends to recommend the disallowance of SWB's uncollectible expenses in future rate cases that it objects to the Staff's prejudgment of this issue and that whether to allow bad debt expense is not a proper matter for this docket.

SWB states that in regard to jurisdictional reporting, Staff is proposing that LECs monitor resellers' compliance with reporting PIU and that if a discrepancy exists, the LEC or Staff could audit the resellers' records. SWB alleges that such a requirement assumes that the problems with jurisdictional reporting by facilities-based carriers will not be repeated with the resellers. SWB also points out that monitoring the resellers could create a financial burden for LECs because of the increasing number of resellers in the market.

MITG states that it takes no position on the individual reseller applications before the Commission. MITG does contend that certificated resellers and facilities-based carriers should be required to report intrastate toll traffic in total as well as separated between interLATA and intraLATA. MITG also agrees with Staff that certificated resellers and facilities-based carriers should be required to comply with all Commission rules and regulations unless specifically exempted from compliance.

MITG alleges that EAS facilities are being used by competitors of LECs to access end users in carrying intrastate and interstate toll calls to and from EAS calling areas. MITG further alleges that the LECs do not receive any compensation for the use of their facilities and lose compensation that would otherwise have been received if the calls had been carried over their toll facilities. MITG contends that EAS was designed to be a local service to allow end users to call other end

users in areas of such proximity that demand for completion of calls without toll charges is strong. MITG requests that the Commission reaffirm the purpose of EAS as defined above, that the Commission find that EAS facilities are being used by resellers and facilities-based carriers as exchange access facilities, that the Commission order jurisdictional and reporting requirements as a condition of certification, and that the Commission order the tariffs be modified to compensate the LEC that originates or terminates the EAS calls on an exchange basis. MITG also notes the fact that EAS facilities were being used by resellers and facilities-based carriers as exchange access facilities was not challenged by any reseller or facilities-based carrier in this docket.

MCI states that it neither supports nor opposes any reseller's application. MCI does state that it opposes MITG's attempt to raise EAS issues in these dockets and urges the Commission to reserve its consideration of EAS issues for the pending docket, Case No. TO-86-8, Re: Investigation into all issues concerning the provision of EAS.

B. Commission Findings

The Commission has considered the evidence presented and all of the positions and arguments of the parties as set out in their briefs.

The Commission notes that in its case, Re: Southwestern Bell Telephone Company, 26 Mo. P.S.C. (N.S.) 344, 377 (1983) it stated:

> Finally, since the provision of toll service from point to point within the State of Missouri is subject to the Commission's jurisdiction, the Commission finds that all toll providers operating within this State are subject to Commission regulations. ...Thus, the Commission expects all WATS resellers and OCCs (other common carriers), and ATTCOM (AT&T) at least as to intraLATA toll service, to seek certification from this Commission before engaging in intrastate telecommunications services.

The Commission then ordered its General Counsel to notify all OCCs and WATS resellers believed to be doing intrastate business in Missouri and advise them to file an application for certification with this Commission no later than January 31, 1984, and noted that an OCC or WATS reseller doing such business in Missouri without

Commission certification could face liability for statutory fines and penalties under Sections 386.570 and 386.600, RSMo 1978.

Thirty-five (35) resellers filed applications. The Commission granted the eleven (11) Telecom applicants' request that their applications be considered in a separate proceeding upon approval of the plan of reorganization by the bankruptcy court. Five (5) of the reseller applications were filed on behalf of hotels and motels and are considered in Section IV.

In considering the resellers' applications, the Commission is bound by the terms of Section 392.260, RSMo 1978. This section permits the Commission to grant a certificate of public convenience if it shall find that there is a public need for such service and that the applicant is qualified to perform the service. The Commission notes that the telephone industry has changed radically over the past fifteen (15) years since the entrance of OCCs into the long distance telecommunications market in the early 1970's. In November, 1984, this Commission authorized MCI and GTE Sprint to provide intrastate interLATA toll telecommunications services in Missouri. As discussed in Section I, the Commission has decided to authorize intraLATA toll competition. The Commission in Case No. TX-85-10, made a Statement of Policy which was published by the Secretary of State at 10 Mo. Reg. 1048 (1985). Therein, the Commission stated that the applicants requesting authority to provide interLATA services should be required to submit: (1) information sufficient to demonstrate their financial ability to provide the proposed services; (2) a brief description of where and what type of service they propose to provide; and (3) demonstrate their willingness and ability to comply with all terms and conditions the Commission may lawfully impose, and applicable Commission rules and regulations. The Commission said it would consider requests for variances from specific rules and regulations on a case-by-case basis. Applicants were expected to cooperate with Staff and Public Counsel in providing appropriate information to facilitate processing applications in an expeditious manner. The Statement of Policy provided that if an applicant was found to be fit pursuant to provisions 1-3, then the

Commission would assume that additional competition in the interLATA market is in the public interest and a certificate of public convenience and necessity would be issued. The Commission finds that it will be reasonable to apply these same standards to applicants in the intraLATA toll market.

The following nineteen (19) resellers filed applications for certificates of public convenience and necessity to authorize them to resell interLATA and intraLATA toll services in the State of Missouri and were consolidated with Case No. TO-84-223: Allnet, Com-Link 21, Communications Cable, Compute-A-Call, Compute-A-Call of Springfield, Contact America, directline Austin, Econo-Call, Hedges, Inter-Comm, LDD, LDX, LTS Inc., Republic Telcom, Tel-A-Call, Tel-Central, Transcall America, Valu-Line and W.S.C. Group. Staff stated that Compute-A-Call of Springfield and W.S.C. Group have filed applications to withdraw. The Commission finds that their applications should be dismissed. The Commission believes that LDX's application need not be considered since according to the testimony presented in this case, it has merged with Allnet and no longer exists and therefore, Case No. TO-84-162 should be dismissed. Since Tel-A-Call went out of business prior to the beginning of the hearings in this case, the Commission finds that Case No. TA-84-197, should be dismissed.

1. Allnet

Staff opposed the grant of a certificate of public convenience and necessity to provide or resell interLATA and intraLATA toll services for Allnet because it believes that Allnet is a facilities-based carrier. With the authorization of intraLATA toll competition for both resellers and facilities-based carriers and the modification of the intrastate intraLATA access services tariff to allow resellers to subscribe as discussed later in this Report and Order, the Commission finds that there is no need to distinguish between the two types of carriers.

Allnet is an Illinois corporation organized in October, 1980, with its corporate headquarters located in Chicago. It provides both interLATA and intraLATA

resale services to approximately 16,000 customers and has provided services since March, 1981. Traffic originates through dial-up service, using local lines dedicated to the customer and equal access (FG-D). It terminates through leased circuits from AT&T, MCI and GTE Sprint and AT&T's WATS service. All of Allnet's subscribers can access its network twenty-four (24) hours a day, seven (7) days a week to all points in the contiguous United States, Hawaii, Puerto Rico, Canada and the Virgin Islands. In addition to basic telecommunications services, the Company provides ALLDIALER™ special accounting, call detail on magnetic tape and speed numbers and volume discounts.

Allnet provides telecommunications services through analog switches in Kansas City and St. Louis and does most of its own billing. The Company states it will comply with the Commission's rules and regulations. Allnet filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

2. Com-Link 21

Com-Link 21 is a Missouri corporation organized June 7, 1984, with its principal business office at 555 North New Ballas Road, Suite 275, Creve Coeur, Missouri. It provides both interLATA and intraLATA resale services in the St. Louis area to approximately 5,300 business and residential customers and has provided services since September 4, 1984. Traffic originates through dial-up service, using business trunks, and equal access (FG-D). It terminates through leased lines from ISACOMM and AT&T Communications. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the United States. In addition to basic telecommunications services, the Company provides shared inward wide area telephone service (INWATS), special billing services and volume discounts for high-volume users.

Com-Link 21 provides telecommunications services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the appropriate and lawful rules, regulations and jurisdictional

reporting requirements of the Commission. Com-Link 21 filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

3. Contact America

Contact America is a sole proprietorship engaged as a WATS reseller in the northern Missouri area since January 25, 1985. The principal business address is 511 Washington Street, Chillicothe, Missouri. It provides both interLATA and intraLATA resale services to approximately 950 business and residential customers in the 816 LATA, including customers in Chillicothe, Trenton, Carrollton, Brookfield, Kirksville and Marceline. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides certain INWATS services and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company and AT&T, which consist of Feature Group A and WATS Band 0 through 6.

The Company provides telecommunications services through a state-of-the-art switch, with additional microcomputer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. Contact America filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

4. Communications Cable and 5. Hedges

Staff neither recommends nor opposes certification of Hedges or Communications Cable because of their confusingly similar fictitious names and though separate corporations, they share some of the same resources. Hedges and Communications Cable argue that their fictitious names, Dial U.S. and Dial U.S.A., are not confusingly similar but if the Commission requests they not use them, they will abide by the Commission's ruling. They also point out that each corporation is qualified to be a reseller and that they do have separate business locations, separate employees including two (2) separate business managers and separate service

areas and business activities. The Commission believes that in a competitive marketplace determining the use of a name is the kind of marketing decision that can best be made by the company.

Communications Cable is a Missouri corporation organized on March 25, 1970, with its principal place of business located at 1446 E. Sunshine, Springfield, Missouri. Since January, 1985, it has provided interLATA and intraLATA resale services to customers in Springfield and Joplin, utilizing FG-D trunks, and service to Carthage, Neosho, Lamar, Nevada, Monett, Jasper, Lockwood and others with FG-B trunks. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides certain credit card services and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company, AT&T, United Telephone and others, which consist of Feature Group B and WATS Band 0 through 6.

The Company provides telecommunications services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. Communications Cable filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

Hedges is a Missouri corporation organized August 17, 1970, with its principal place of business located at 1949 E. Sunshine, Suite 2-100, Springfield, Missouri. Since July, 1983, it has provided interLATA and intraLATA resale services to customers in Springfield and eleven (11) surrounding communities through extended area service (EAS) with FG-A trunks. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides credit card services, INWATS services and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company, which consist of Feature Group A.

The Company provides telecommunications services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. Hedges filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

6. Compute-A-Call

Compute-A-Call is a Missouri Corporation incorporated in December, 1982, with its business office at 400 South Avenue, P.O. Box 1867, Springfield, Missouri. It provides both intraLATA and interLATA resale services to approximately 7,000 customers not all of which are Missouri customers but the majority are located in and around Springfield. Compute-A-Call's long distance service is accessed by a local toll area number, 1+ or an '800' service. It terminates through leased circuits from local exchange companies and facilities-based carriers.

Compute-A-Call provides telecommunications services through a state-of-the-art switch. Compute-A-Call filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

7. Inter-Comm

Inter-Comm is a Missouri corporation, organized February 22, 1984, with its principal place of business at 324 East 11th Street, Kansas City, Missouri. It provides both interLATA and intraLATA resale services to approximately 4,000 customers and has provided service since early 1984 in the Kansas City area. Inter-Comm provides resale of long distance telephone communication outbound via local access in the Kansas City area, inbound via 800 numbers. These services cover Missouri intrastate intraLATA and interLATA via WATS bands. These services all cover the entire United States, Canada and all of the area code 809 territories. The Company provides special bill information upon request and supplies telephone, modems and trunk and line dialers at reasonable charges.

Inter-Comm uses SWB for intrastate long distance and AT&T for interstate calls. The Company provides services through a solid state system switch and with

additional printing and billing equipment. Inter-Comm filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

8. LDD

The Commission notes that the testimony of Don W. Zimmer for LDD, Inc. was not marked as an exhibit and received into evidence at the time of the hearing. In the Hearing Memorandum filed by the parties, the Staff waived the cross-examination of Mr. Zimmer. The Commission finds that Mr. Zimmer's testimony should be marked as Exhibit No. 79 and received into evidence.

LDD is a Missouri Corporation engaged as a reseller in the Cape Girardeau area since February 10, 1984. Its principal business office is located at 324 Broadway, Cape Girardeau, Missouri. It provides both interLATA and intraLATA resale services to approximately 1,500 customers and has provided service since 1984.

To access LDD's network, a customer dials a local number with a touch-tone telephone and the switch directs the call through an intercity transmission circuit to its destination. Assignment of accounting codes to allow a breakdown of telephone costs is provided by LDD. The Company leases Centrex service from SWB and leases lines through SWB and AT&T. LDD states that it is willing to comply with all rules and regulations of the Commission as they may apply to resellers. LDD filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

9. directline Austin, Inc.

directline Austin, Inc., is a Texas corporation qualified to do business in the State of Missouri since April 29, 1985, with its principal place of business at 300 South Jefferson, Suite 513, Springfield, Missouri. It is a wholly-owned subsidiary of Advanced Telecommunications Corporation, which is also the parent of Transcall America, Inc., a co-applicant in this proceeding. Through a predecessor corporation, it has provided both interLATA and intraLATA resale services to over 3,000 business and residential customers in the 417 LATA since 1983. With most customers located in Springfield, it also provides services to Joplin, Carthage,

Lamar, Monett and Nevada, to name a few. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides credit card capability and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company, AT&T and MCI which consist of Feature Groups A, B and D, and WATS Band 0 through 6.

The Company provides telecommunications services through a state-of-the-art switch. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. directline Austin filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

10. Econo-Call

Econo-Call is a Missouri corporation organized on May 29, 1985, with its principal place of business located at 204 S. 3rd Street, Branson, Missouri. Since June 15, 1985, it has provided interLATA and intraLATA resale services to customers in the 417 LATA in Branson, Forsythe, Kimberling City, Rockaway Beach, Reeds Spring and Springfield. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides certain credit card services, INWATS services and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company, AT&T and Continental Telephone Company, which consist of Feature Group A and WATS Band 0 through 5.

The Company provides telecommunications services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. Econo-Call filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

11. LTS

LTS is a Missouri corporation organized on March 18, 1983, with its principal place of business located at 312 Joplin Avenue, Joplin, Missouri. Since June, 1983, it has provided interLATA and intraLATA resale services to approximately 1,400 customers in the 417 LATA at Joplin, Springfield, Carthage, Neosho and Lamar. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides certain credit card services and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company, AT&T and MCI, which consist of Feature Groups A, B and D and WATS Band 0 through 6.

The Company provides telecommunications services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. LTS filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

12. Republic Telcom

Republic Telcom is a Minnesota corporation qualified to do business in the State of Missouri, with its principal place of business at 8300 Norman Center Drive, Suite 700, Bloomington, Minnesota. It has provided both interLATA and intraLATA resale services to over 1,200 business and residential customers in the 314, 816 and 913 LATAs since 1983. It provides services to customers in Kansas City, St. Louis, St. Joseph, Sedalia, Jefferson City and Cape Girardeau. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides credit card capability, Respondability 800 service and special billing services. It obtains interconnection through leased lines from AT&T and other common carriers.

The Company provides telecommunications services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. Republic Telcom filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

13. Tel-Central

Tel-Central is a Missouri corporation organized on May 20, 1983, with its principal place of business located at 130 E. High Street, Jefferson City, Missouri. It additionally has offices in Columbia and Springfield. Since May, 1983, it has provided interLATA and intraLATA resale services to over 4,500 customers in twenty-one (21) communities in the 314, 816 and 417 LATAs. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides certain credit card services, voice store and forward and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company, AT&T, United Telephone and GTE Sprint, which consist of Feature Group A and WATS Band 0 through 5.

The Company provides telecommunication services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. Tel-Central filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

14. Transcall America

Transcall America is a Georgia corporation qualified to do business in the State of Missouri since June 27, 1983, with its principal place of business at 324 E. 11th, Suite 110, Kansas City, Missouri. It is a wholly-owned subsidiary of Advanced Telecommunications Corporation, which is also the parent of directline Austin. It has provided both interLATA and intraLATA resale services to over 4,000 business and residential customers in the 816 and 913 LATAs since 1983. With most

customers located in Kansas City, it also provides services to St. Joseph, Chillicothe, Kirksville, and Moberly, to name a few. Customers transmit station-to-station calls on a 24-hour basis to all points in Missouri as well as throughout the contiguous United States. In addition to the basic telecommunications services, the Company provides credit card capability, limited INWATS and special billing services. It obtains interconnection through leased lines from Southwestern Bell Telephone Company, AT&T and U.S. Telephone, which consist of Feature Groups A, B and D and WATS Band 0 through 6.

The Company provides telecommunications services through a state-of-the-art switch, with additional computer and billing software services. The Company states it will comply with the applicable rules, regulations and jurisdictional reporting requirements of the Commission. Transcall America filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

15. Valu-Line

Valu-Line is a Missouri corporation organized February 23, 1983, with its principal place of business at 202 North 4th Street, St. Joseph, Missouri. It provides both interLATA and intraLATA services to approximately 700 customers in and near St. Joseph, Missouri, and has provided service since May, 1983. Valu-Line leases lines from certificated telephone corporations for the purpose of providing long distance communication service to the public. Service is available 24 hours a day, seven days a week. In addition to basic services, the Company provides trunk dialers, modems and other supplemental equipment to its customers.

Valu-Line purchased several computers and necessary programs, battery back-up for the printer, call recorder, needed redundancy and billing programs in setting up its business. Valu-Line filed a financial statement. No party to this proceeding has alleged that the applicant is not financially fit.

16. Grants of Certificates of Public Convenience and Necessity

The Commission finds that each of these applicants: Allnet, Com-Link 21, Communications Cable, Compute-A-Call, Contact America, directline Austin, Econo-Call, Hedges, Inter-Comm, LDD, LTS, Inc., Republic Telcom, Tel-Central, Transcall America, and Valu-Line are qualified to provide interLATA and intraLATA toll services. Since the interLATA toll market has several competitors within it and the intraLATA toll market has been opened for competition, the Commission does not find it necessary to determine that there is a public need for each reseller's services. With the opening of these markets to competition, the market itself will eliminate any reseller for which there is no public need. Therefore, the Commission finds that each of the above-named applicants should be granted a certificate of public convenience and necessity to provide interLATA and intraLATA toll services within the State of Missouri.

Under Section III A, six (6) of the eight (8) regulatory requirements proposed by Staff are set out by number. The Commission believes that these six (6) regulatory requirements are just restatements of statutes or Commission rules, or requests for certain information which the Commission has the discretion to order pursuant to statute and should not be the subject of a rulemaking. The Commission notes that it has authority to impose reasonable and necessary conditions on an applicant for a certificate of public convenience and necessity pursuant to Section 392.260, RSMo 1978.

The Commission finds that Staff's six (6) numbered regulatory requirements as set out in this Report and Order should be imposed upon these certificated resellers as condition of certification.

The Staff also recommends that the granting of the resellers' certificates should be conditioned on the filing of their tariffs and PIU reports within thirty (30) days of the effective date of this Report and Order. The Commission believes that condition is reasonable and should be adopted since the resellers are already operating in the state.

No party has requested that the applicants should be rate base regulated. The Commission believes that the carriers, other than LECs and AT&T, should not be subject to rate base regulation. The Commission believes that certificated resellers and facilities-based carriers (this term does not include LECs) may file master and supplemental schedules with regard to intrastate interLATA and intraLATA toll services with a range of no more than 15% below the maximum level in the master schedules. If rates now exist for the carrier, the existing rates should be established as the maximum. The resellers and facilities-based carriers will be permitted to change rates through the filing of supplemental schedules within the range set by the master schedules or new master schedules, without the filing of a formal rate case. Fourteen (14) days' notice must be given prior to any change in supplemental schedules and thirty (30) days' notice must be given prior to the effective date of a new master schedule except for good cause shown. Information supporting the need to change the rates or to file a new master schedule should be filed with the proposed tariff changes.

Staff has proposed modifying the access services tariff to allow resellers to subscribe to it. The Commission agrees with the Staff that the resellers should be paying their share of the intrastate jurisdictional charges from intrastate calls. The only opposition to this modification was from Comptel which argued that such a change should be made through a rulemaking procedure. The Commission finds, pursuant to Section 392.240, RSMo 1978, that after a hearing on any rate the Commission may determine the just and reasonable rates to be thereafter observed. The Commission notes that all of the telephone companies are parties to this case. Therefore, the Commission finds that the intrastate access services tariff should be modified to allow resellers to subscribe to it.

The Commission notes that there are presently jurisdictional reporting requirements in place for several facilities-based carriers and that Staff and MITG have proposed jurisdictional reporting requirements for the fifteen (15) applicants. The Commission believes that the resellers should submit PIU reports including the

percentage of interstate use, the percentage of intraLATA use and the percentage of intrastate interLATA use on a quarterly basis to the LECs. The Commission finds that the reporting requirements as set out in SWB's access services tariff P.S.C. Mo. No. 36, Section 2.3.13 and concurred in by the LECs should be followed on an interim basis. The Commission believes that Staff, Public Counsel, industry representatives and other interested parties should develop jurisdictional reporting requirements for the industry. The Commission believes that Staff, Public Counsel, industry representatives and other interested parties should investigate the use of monitoring using a statistical sample method instead of data bases for jurisdictional reporting.

Initially, Staff proposed a bonding requirement for all resellers, such that each reseller would have a bond equivalent to two-months' charges with each LEC, as a requirement for doing business. The Commission rejects this proposal. The Commission believes that the LECs' two-month deposit tariff provisions adequately protect the LECs. In Staff's reply brief it determined that the bonding requirement should be an alternative available to the deposit requirement now present in the LECs' tariffs. Staff was quite concerned with the possibility that reseller could go out of business owing a LEC for charges which would then be passed on as bad debt expense and cause the other ratepayers' rates to increase. Based upon the evidence in this proceeding, it does not appear that bonding is a practical alternative. However, the Commission believes LECs may utilize bonding requirements, if they find them workable, practical and otherwise desirable as an alternative to deposit requirements.

MITG contends that certificated resellers and facilities-based carriers are using EAS facilities as exchange access facilities and requests that the Commission order that the tariffs be modified to compensate the LEC that originates or terminates EAS calls on an exchange basis. MCI opposes MITG's proposal and contends that the Commission should reserve its consideration of EAS issues for the pending docket, Case No. TO-86-8, Re: Investigation into all issues concerning the provision of EAS. The Commission believes that MCI's concern is well-founded since this EAS

issue will be discussed in that docket. Therefore, the Commission will not address this EAS issue in this docket.

IV. Whether Hotels or Motels Providing Intrastate InterLATA or IntraLATA Toll Telecommunications Services Should be Required to Obtain a Certificate of Public Convenience and Necessity?

A. Parties Positions

MHMA contends that hotels or motels should not be required to obtain a certificate of public convenience and necessity since the sale of such services to guests and tenants does not involve a public use. MHMA bases its contention on four (4) cases State ex rel. Danciger v. Pub. Serv. Comm'n., 275 Mo. 483, 205 S.W. 36 (1918), State ex rel. Lohman & Farmers Mutual Telephone Co. v. Brown, 323 Mo. 818, 19 S.W.2d 1048 (1929), City of St. Louis v. Mississippi River Fuel Corporation, 97 F.2d 726 (8th Cir. 1938) and State ex rel. and to the use of Cirese v. Pub. Serv. Comm'n., 178 S.W.2d 788 (Mo. App. 1944). MHMA notes that the Commission discussed these four (4) cases in Re: Investigation of the Provision of Local Exchange Telephone Service by Entities Other than Certificated Telephone Corporations, 27 Mo. P.S.C. (N.S.) 602 (1985) (referred to as the Shared Tenant Services decision or STS decision), and concluded that based on these cases, STS providers were not public utilities and were not subject to certification since STS services are not offered to the public but are offered to tenants pursuant to private contract or lease.

MHMA classified its potential customers into three classes: guests, tenants and non-guests or non-tenants pursuant to contract. MHMA alleges that in providing service to guests that hotels and motels are not holding themselves out to the public at large but rather there is a contractual relationship between the hotel or motel and its guests and that the provision of such service is merely incidental to the relationship. MHMA contends that Staff's transient customer exception is not the reason such resale is exempt from regulation as is clear from the four cases it cited. Tenants, according to MHMA, also fall into this same category since the hotels and motels are not providing telephone service for public use. MHMA alleges

that the court in Cirese held that the Commission has no jurisdiction over the provision of utility service to one's own tenants.

MHMA admits that in the area of resale to non-guests and non-tenants, a hotel or motel may subject itself to the regulation of the Commission depending upon whether its actions constitute a holding out to the public. If not, then the hotel or motel does not subject itself to Commission regulation. If a hotel or motel enters into special contracts with customers and does not hold itself out to serve all in an area, it is not a public utility. MHMA believes that this classification of customers requires a case-by-case determination to determine if the hotel or motel holds itself out to provide service to the public or whether its resale is pursuant to special contract with each customer.

Staff opposes MHMA's broad interpretation of the private use exemption and classifies hotel and motel customers into three categories: the transient guest, non-transient tenants and customers not located within a single hotel or motel building or which do not meet the requirements to be bona fide STS customers. Staff believes that a hotel or motel should not be required to become certificated to provide resale services to either the transient guest based on Williams & Calmer v. Southwestern Bell Telephone Co., 27 Mo. P.S.C. 697, 70 P.U.R. (N.S.) 35 (1947) or to the non-transient tenant which meets the requirements of the STS decision. Staff believes that hotels or motels which desire to provide intrastate interLATA and intraLATA toll resale services to customers not located within a single hotel or motel building or which do not meet the requirements to be bona fide STS customers, must obtain a certificate of public convenience and necessity.

MHMA alleges that Staff's arguments ignore the statutes and case law as to what service the Commission may or may not regulate and instead Staff adopts an argument of what service the Commission should regulate, an argument which belongs before the General Assembly.

SWB contends that MHMA's argument runs counter to the Commission's assertion of jurisdiction of all toll providers operating in this ~~Commission~~ state in

Re: Southwestern Bell Telephone, 26 Mo. P.S.C. (N.S.) 344, 377 (1983). SWB questions the validity of MHMA's claims not to offer service to the public indiscriminately and that phone calls made by guests are made upon special contract. SWB also points out that MHMA members are not in comparable positions to STS vendors who advocated that local service resale was part of a complex package of services which included high-tech offerings not subject to the Commission's regulation, and local service resale would be negotiated primarily between landlords and commercial tenants with equal bargaining power. SWB also alleges that the Commission should not rely on the Danciger case since it involved electric resale not telephone resale, and telephone service not only includes originating service for one customer but terminating calls for anyone using the system. SWB concludes by stating that the Commission can exercise its jurisdiction to approve tariff rules and regulations regarding under what terms SWB's toll services may be resold to hotels and motels.

MHMA argues in response to SWB, that telephones are incidental to hotel or motel rooms, that they are a convenience which is not required, and that such services are available to any guest or tenant who contracts for the room.

B. Commission Findings

The Commission has considered the evidence presented and the briefs filed by MHMA, Staff and SWB on this issue. The Commission notes that its assertion of jurisdiction over all toll providers in an earlier case is subject to analysis and an indepth review in this docket based upon the full legal arguments presented herein.

The Commission finds that a telephone corporation is defined in Section 386.020(25), RSMo Supp. 1984, as a corporation "...owning, operating, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telecommunication for hire." A telephone line is defined in Section 386.020(25) as "...conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices...used, operated, controlled or owned by any telephone corporation to facilitate the business of affording telephone communication." In addition, before a

telephone corporation becomes a public utility it must offer telephone service for public use. See Danciger. Public use was further defined in City of St. Louis, where the federal court relied on Danciger to state that it means the sale "...to the public generally and indiscriminately, and not to particular persons under special contract." The federal court also stated that public use means that "...all persons must have an equal right to the use, and it must be in common, upon the same terms, however few the number who avail themselves of it." City of St. Louis at 730. The Commission notes that in Cirese, the court stated that the Company's provision of utility service to its own tenants does not make it a public utility.

Based on the above analysis, the Commission finds that the hotels and motels which resell telephone service to their own tenants incidental to other terms in a lease are not holding themselves out to provide telephone service to the public generally and indiscriminately. Therefore, the Commission concludes that such hotels or motels are not subject to its jurisdiction and therefore are not required to be certificated pursuant to Section 392.260, RSMo 1978.

Staff argues that the guests of hotels and motels should be considered as transient occupants based on Williams & Calmer v. Southwestern Bell Telephone Co., 27 Mo. P.S.C. 697, 70 P.U.R. (N.S.) 35 (1947). However, the Commission is persuaded by MHMA's argument and the Missouri case law as discussed above, that these hotels and motels by providing service to guests are not holding themselves out to provide telephone services to the public generally and indiscriminately, that there is a contractual relationship between the hotel or motel and its guests, and that the provision of telephone service is only incidental to the services of the hotels or motels. Thus, the Commission finds that such hotels and motels are not subject to its jurisdiction and therefore are not required to be certificated pursuant to Section 392.260, RSMo 1978.

The final category discussed by Staff and the MHMA is the non-tenant or non-guest. The Commission finds that in the event any hotel or motel would hold

itself out to provide telephone service to the public generally and indiscriminately, it should request authority from the Commission to provide such service.

Based on these findings, the Commission is of the opinion that it does not have jurisdiction over the five (5) hotel and motel reseller applicants which filed in Case Nos. TA-84-145, TA-84-151, TA-84-152, TA-84-157 and TA-84-194, and the one hotel/motel reseller which requested an extension of time to file an application in Case No. TA-84-185. Therefore, the Commission finds that those cases should be dismissed.

V. Pooling Issues Defined

A significant amount of testimony and argument presented herein focused on proposals regarding mechanisms to be used for compensation of Missouri's local exchange carriers for the provision of toll and access revenues. The present mechanism for the division of intrastate toll revenues was established in Re: Southwestern Bell Telephone Company, 26 Mo. P.S.C. (N.S.) 344, (1983). Currently, all LECs participate in an interLATA access charge pool which was created to separate and settle access charge revenues for interLATA calls. Further, all LECs participate in the intraLATA toll revenues pool for the settlement of intraLATA toll revenues. The Commission initially provided for the pools to remain in existence for only eighteen months. It has been necessary to extend the pools on several occasions. If not further extended by the Commission, the pools will expire August 6, 1986.

A. IntraLATA Toll Pool and Proposed Non-traffic Sensitive (NTS) Cost Shifts and Related Issues

1. Staff Position

Staff proposes a continuation of the existing pooling mechanism for intraLATA toll compensation through 1988, with certain modifications being phased in. Staff's proposal calls for the removal of private line services from the intraLATA pool by January 1, 1988, and conversion of average schedule companies to a cost basis of settlements by January 1, 1987. Staff's proposal assumes continued prohibition of

intraLATA competition by facilities-based carriers, certification and regulation of resellers, an eight-year phased removal of an amount of NTS costs from the pool, and further hearings regarding all related issues sometime during 1988.

2. SWB Position

SWB believes that the intraLATA toll pool should be terminated and in its place the Commission should adopt a Terminating Compensation Arrangement (TCA) that can accommodate company-specific toll rates. Under the TCA, an LEC would bill its customers for the entire portion of all toll calls originated by that company pursuant to company-specific tariffs, and would keep all of those revenues. The originating carrier would pay all other LECs their costs associated with providing facilities for the completion of that call, if any.

The administration of the TCA would function similar to the present administration of the pools. Each LEC would execute a standard compensation contract. The contract would specify the framework for calculating compensation under all circumstances. The compensation administration would collect traffic data and calculate a net settlement amount due each company. SWB believes the compensation settlement calculations could be computerized within ten (10) months.

SWB recommends that the Commission create a State Telephone Support Fund (STSF) to provide assistance to certain companies. The fund would be financed through contributions from all telephone companies and would be targeted at telephone companies with less than 20,000 access lines that are not owned by a company serving more than 20,000 lines. To qualify for assistance, a company must show that it experienced intraLATA toll settlement reductions due to implementation of TCA. The assistance would be calculated based upon the settlement reduction less an amount of revenues corresponding to the revenue increase that the company would experience if it implemented a three-year increase in its local telephone rates to bring them closer to the prevailing state-wide average levels.

With regard to NTS costs assigned to intraLATA toll, SWB recommends a phase down from the present subscriber plant factor (SPF) level to a subscriber line usage (SLU) level allocation over the next three (3) years.

3. MITG Position

MITG suggests that if the Commission chooses to prohibit intraLATA competition, the intraLATA toll pool could be extended so long as steps were taken to increase the pool's rate of return. MITG believes the pool's present rate of return is inadequate. To improve the return, MITG proposes a shift of some NTS costs from the pool to local service. Another, but less preferable, option to increase the pool's rate of return is to increase intraLATA toll rates.

If the Commission chooses to allow intraLATA competition, the MITG proposes the Commission adopt a "primary toll carrier" plan. Under the proposed plan, each LEC would establish access charges for compensation for originating and terminating toll calls within its exchange boundaries. The access charges would be billed to and paid by the interexchange toll carrier who transports calls across exchange boundaries.

The LEC who provides the majority of transport and switching facilities to route and transport intraLATA toll calls between exchanges would be designated the "primary toll carrier" for the purposes of transporting and switching all intraLATA MTS and WATS services. SWB would be the primary carrier in the Kansas City, St. Louis and Springfield LATAs. In the Jefferson City-Columbia market area, either General Telephone or United Telephone would be the primary carrier.

The primary carrier would have similar responsibilities placed upon it as were placed upon AT&T at the interLATA level as a result of divestiture. The primary carrier would be responsible for filing and maintaining rate schedules for intraLATA toll services. LECs, other than the primary carrier, would price exchange access and file appropriate access tariffs. In pricing access, the MITG proposal allows companies to mirror interstate traffic sensitive rates while the NTS rate element would be priced residually. Alternately, LECs could develop individual access

tariffs based upon company-specific rate elements while still residually pricing the NTS rate element.

The MITG further proposes that the Commission require the primary carrier to provide toll service on the basis of state-wide average toll rates. In recognition that this proposal may cause some bypass pressures, volume rate differentials may be implemented where appropriate.

Finally, the MITG proposes a shift of some NTS costs which are currently allocated to toll service. In the first year, the MITG proposes to remove $1.00 per access line per month from each company's state toll revenue requirement. Under the proposal, frozen SPF would be used as the initial gross allocator. In the second year, $2.00 per access line per month would be removed. The third year would remove $3.00 per access line per month. NTS costs should not be shifted so as to allocate less than a SLU allocation of NTS costs to the intrastate toll jurisdiction.

In order to compensate for any inequitable revenue shortfalls resulting from the NTS allocation shifts, the MITG proposes an equivalent increase in local rates (i.e. $1.00 per access line per month the first year; $2.00 per line per month the second; and $3.00 per line per month the third). For administrative simplicity, the MITG proposes that the initial tariffs filed to implement its plan contain a schedule of access, toll and local rates for this three-year transition period.

4. Other Parties Positions

The only other parties clearly stating a position with regard to the handling of intraLATA toll compensation were the Office of the Public Counsel (Public Counsel) and Alltel Missouri, Inc. (Alltel). Public Counsel takes the position that the Commission should retain the basic structure of the toll pools while making only minor modifications to its operations.

Alltel states that it supports all aspects of the MITG's position in the proceedings and specifically concurred in the MITG "primary carrier" proposal in the event the Commission decides that intraLATA toll competition is in the public interest.

5. Argument

Staff does not believe a full, feasible alternative to the intraLATA toll pool can be ordered by the Commission from this case. Staff believes that the best approach would be to narrow the scope of alternatives and hold further proceedings in the near future to determine the precise details of the chosen replacement mechanism.

Staff opposes SWB's TCA because it appears a proliferation of intraLATA toll tariffs would result from the SWB plan. Staff believes the TCA would significantly increase administrative burdens for the industry and for the Staff and Commission as regulators.

Staff generally agrees with the concept of the MITG's primary carrier plan because it believes the plan is much more consistent with the industry structure established in the interstate jurisdiction and the Missouri interLATA jurisdiction than the TCA plan. Staff asserts that prior to implementation of any type of primary carrier plan, numerous issues need to be resolved. In particular, questions regarding control of network facilities, potential for bypass, and related matters, need to be resolved.

SWB argues that the intraLATA toll pool must be eliminated. SWB contends that the record produced herein clearly establishes that intraLATA toll competition exists. SWB further contends that pooling is inconsistent with competition because inherent in pooling is an averaging of costs and rates that impairs and distorts the operation of a competitive market. SWB alleges that a direct byproduct of that averaging process is a maze of subsidies flowing generally from low-cost to high-cost providers.

SWB believes its TCA should replace the intraLATA pool because it is most consistent with the existing industry structure and most compatible with increasing toll competition.

SWB contends that its TCA will not impose unreasonable financial burdens on LECs. SWB recognizes that the TCA will have some financial effect on some of the independents, particularly those who have been receiving pool subsidies. Even a

company with a net settlement reduction may not need rate relief because the company presently may be realizing earnings above its authorized rate of return or the company may experience significant revenue requirement reductions resulting from interstate separations changes.

SWB disagrees with Staff's assessment that the TCA will cause undue administrative and regulatory burdens. SWB believes the TCA will not cause any greater burdens upon the Commission than already are demanded by sound regulatory practice in view of structural changes that have occurred in the industry. The advent of competition, not the TCA, will place increasing pressure on companies to develop different toll rates, in Staff's view. SWB(?)

SWB criticizes Staff's proposal to extend the pools for being based on the fallacious assumption that effective competition can be prohibited. Further, due to Staff's proposal to begin an eight-year shift of NTS costs assigned to the pool from present frozen SPF levels to a gross allocator of 17%, Staff's plan eventually results in the most severe settlement shifts among companies. This is true even though Staff's proposal would have the least aggregate amount of NTS costs shifted out of the pool. The extreme settlement shift is due to the fact that SWB's frozen SPF is presently at 10.5% and if moved up to 17%, SWB would allocate substantially more NTS costs to toll while most independent telephone companies would assign less NTS costs to toll.

SWB also does not believe it is reasonable to extend the pool to facilitate conversion of average schedule companies to cost. SWB points out average schedule companies represent only 3% of the total industry costs. Further, Bell notes that there is no evidence to indicate how much it would cost to move the average schedule companies to cost and thus to determine whether the cost may exceed the benefits resulting from conversion. In any event, SWB does not believe it would be proper to penalize cost companies with the continuation of pooling when they lack the power to force average schedule companies to convert.

Finally, SWB vehemently objects to Staff's "Interpretation B" of the customer premises equipment (CPE) phase down which would prohibit SWB from allocating frozen 1983 CPE levels of expense and investment to intrastate toll and access because its CPE was transferred through divestiture on January 1, 1984. Staff's proposal should be rejected because it is inconsistent with the Commission's Report and Order in Re: Southwestern Bell Telephone Company, 26 Mo. P.S.C. (N.S.) 344, (1983), because it violates Separations Manual procedures; and, would provide disparate treatment of SWB in violation of the equal protection and due process clauses of the United States and Missouri constitutions, in SWB's opinion.

SWB points out that since the pools were established, all participants have been following what Staff refers to as "Interpretation A" on both the federal and state levels. A change such as Staff suggests, whether retroactively or prospectively, would be irrational and contrary to the FCC's intended treatment of CPE phase down.

With respect to the MITG proposals, SWB first reiterates that any proposal which provides for continued pooling and prohibition of competition, ignores reality. Competition currently exists and pooling is not consistent with competition. However, in the event that the Commission determines to prohibit competition and extend pooling, the MITG's proposed modification must be rejected. The MITG's proposed NTS cost shift has some very serious and undesirable effects. First, because SWB would reach a SLU level of allocation with less than a $1.00 per month, per access line shift of NTS costs out of the pool, the subsidy flowing from SWB to the independents would actually increase by approximately $3.5 million in the first year. Even if the Commission were to establish a cost fund as suggested, some subsidy would continue to flow to the independents through 1993.

Second, SWB acknowledges that the $1.00 per month, per access line increase in local charges would generate substantially more revenue for SWB than would be lost in settlement revenues. Nevertheless, SWB opposes this increase in basic local rates because it wishes to avoid unnecessary increases in such rates. SWB views increased

subsidies to independents' customers at the expense of its customers as definitely unwarranted.

Turning to the MITG's proposed primary carrier plan, SWB contends the Commission must reject the proposal for five reasons. Those reasons are as follows: The plan would (1) increase the toll subsidy flowing from SWB to independents; (2) shift all competitive toll risk from the independents to SWB; (3) deprive SWB of the ability to efficiently control the engineering of its toll network; (4) limit SWB's control over toll pricing; and (5) unlawfully impose upon SWB customer relationships and attendant toll responsibility for areas outside of its certificated territory. The details of SWB's arguments concerning the aforementioned reasons for rejecting the proposed primary carrier plan will be addressed further herein, where necessary.

The MITG contends its primary carrier plan is superior to those of Staff and SWB. The MITG claims its plan is compatible with either intraLATA monopoly, competition or anything in between. The MITG points out that its plan is administratively simple because intraLATA access charges would closely parallel the access charge structure currently existing at the interstate and intrastate interLATA levels. Additionally, only one toll tariff for each primary carrier would have to be filed. Designation of a primary carrier will maintain universal toll service while maintaining state-wide average toll rates.

The MITG believes Staff's criticisms of its plan are unfounded. First, Staff's assertion that a system of access charges cannot be presently implemented is incorrect as "meet point billing" is being implemented at the interstate and intrastate interLATA levels and can serve as the model for the intraLATA level. Second, Staff's insistence that average schedule companies must be on a cost basis prior to implementation of a system of access charges, is also misplaced. Once again, the MITG points to the interstate and interLATA levels as evidence that average schedule companies can participate in a system of access charges with no adverse consequences.

The MITG asserts Staff's proposed eight-year transition of NTS costs for each telephone company from SPF to a 17% gross allocator, should be rejected because it is counterproductive in so far as assisting the industry in preparing for competition. Staff's plan merely shifts approximately $30 million in toll revenue requirements from the MITG companies to SWB while providing no mechanism for the independent companies to compensate for the revenue reductions. It is likely that Staff's plan would cause a flood of rate cases on behalf of independent telephone companies filing to be made whole. This would result in an unnecessary administrative burden on the industry and the Commission.

Finally, with respect to Staff's proposed handling of CPE costs, the MITG asserts that the pool administrator's use of "Interpretation A" has been entirely proper. The MITG argues that Staff's "Interpretation B", which would increase the pool's rate of return, is an unsupported position.

The MITG strenuously opposes the adoption of SWB's TCA for several reasons. Those reasons can be listed as follows: SWB's TCA (1) is inconsistent with the organization of the industry; (2) requires significant, additional administrative systems and procedures; (3) is likely to lead to an explosion of intrastate toll tariffs and rates causing great customer confusion; (4) entails antitrust problems; (5) is unlawful in that it requires LECs to provide toll service outside their certificated areas and under conditions which are not acceptable to them; (6) leads to deaveraged toll rates; and (7) fails to provide for universal toll service (i.e. "carrier of last resort").

As with SWB's arguments concerning the deficiencies of the primary carrier plan, the Commission will further address the details of the MITG's aforementioned reasons for rejecting the proposed TCA only where necessary in its analysis.

Along with the TCA, the MITG requests that the Commission reject SWB's proposed three-year transition from a SPF to SLU allocation of NTS costs attributed to intraLATA toll. The MITG alleges that the SWB plan shifts too much NTS costs from toll to local and does it far too quickly. The severity of the shift will have a

serious adverse effect on local exchange rates and will clearly harm the independent telephone companies' customers. Since the SWB plan fails to provide a mechanism for the MITG companies to recover costs removed from toll, the telephone companies experiencing revenue shortfall must undertake a full-blown rate case to recover the deficiency. The resultant potential flood of rate cases would increase the administrative burden on the Commission while many independent companies may suffer serious financial distress awaiting rate relief.

The Public Counsel argues that the Commission should not open the intraLATA toll market to competition and urges the Commission to retain the basic structure of the toll pools while making only minor modifications to its operation. Public Counsel asserts that the pools have generally been both administratively and financially successful. While generally agreeing with Staff's proposed modification to the pool, Public Counsel suggests the Commission not implement Staff's plan in its entirety.

First, Public Counsel believes the independent companies' criticism of Staff's proposal to require all average schedule companies to move to a cost basis, is well founded. Public Counsel agrees that since the cost of converting the average schedule companies has not been quantified, it is impossible to determine if such transition is necessary or even desirable.

Second, Public Counsel opposes Staff's proposed NTS cost shift. In fact, Public Counsel believes that the Commission cannot make a rational decision concerning any of the NTS cost shift proposals presented in this case in light of the serious lack of evidence showing the effect on end users.

In the event the Commission determines that intraLATA competition is in the public interest, the Commission should give careful consideration to the SWB and MITG plans to replace the pool. Public Counsel believes that both plans contain significant legal and practical problems which would make their present implementation, at the very least, undesirable.

Public Counsel argues that, the TCA plan which would require independent companies to enter into a multitude of contracts with each other and SWB, could lead to disastrous disputes and costly litigation due to the unequal bargaining positions of the parties. The TCA would also require the independents to either concur in some other company's intraLATA tariffs or develop and file cost based tariffs of their own. This is unacceptable at present because it is likely that it would be too difficult or costly for some independents to develop their own tariffs while at the same time no other company's tariffs could be reasonably adopted. Public Counsel is further concerned that the TCA will have the most extreme impact on the local revenue requirements of the independent companies than any other plan.

The MITG's primary carrier proposal avoids the huge financial impact of the TCA, but only by artificially capping the amount of NTS costs shifted to local service through the use of end user charges. Public Counsel contends that the Commission has been given no reason to abandon the reasoning that led it to reject the same type of end user charges that were proposed in Re: Southwestern Bell Telephone Company, 26 Mo. P.S.C. (N.S.) 344, (1983). Further, Public Counsel states that Missouri law prohibits Commission approval of multi-year rate hikes of the nature proposed by the MITG without a full review of all relevant factors affecting a utility's need for a revenue increase.

Public Counsel concludes that both the TCA and primary carrier plans should be rejected and the Commission should extend the pools with minor modifications. Public Counsel is not convinced that competition in the intraLATA markets cannot and should not be prohibited.

6. Commission Findings

In reviewing the record made in these proceedings, the Commission has observed that while all parties have attempted to present well-reasoned solutions to the issues under consideration, no party seemed able to produce a substantial amount of evidence in support of their positions. On the other hand, the parties seemed to

have little trouble amassing evidence showing that all of the plans contain serious flaws.

At the outset, the Commission finds that SWB and the MITG are correct in their construction of the Commission's order in Re: Southwestern Bell Telephone Company, 26 Mo. P.S.C. (N.S.) 344, (1983), in that the Commission determined the pools should be extended only if some party provided sufficient justification for such extension. The Commission has recognized the need to move away from pooling as competition develops in the telecommunications industry.

The Commission has previously found herein that competition is in the public interest and determined that intraLATA toll competition should be allowed. In light of that finding, the Commission will not further address in detail those proposals with respect to pooling which are premised on the prohibition of competition.

In analyzing SWB's TCA proposal, the Commission has found several deficiencies which would make its implementation at this time difficult. First, the Commission finds that the necessity for all independent telephone companies to immediately file message toll tariffs would impose substantial costs as well as administrative burdens upon the industry and Commission alike. The Commission does not believe it is presently feasible for all or many of the independent companies to develop such cost based tariffs. Further, there is no evidence to show that a company that concurs in the toll tariffs of another company would maintain a reasonable level of return.

Another serious concern is the independent industry's reaction to SWB's proposed plan. The Commission believes that for any toll compensation arrangement to function with a relative degree of efficiency there must at least be a general willingness to attempt to work within the plan. The TCA has evoked violent reaction from all of Missouri's independent telephone companies and it does not appear that at present even a modified version of the plan would gain acceptance.

Since the aforementioned deficiencies are sufficient reason for rejection of the TCA, the Commission finds it unnecessary to address the alleged unlawfulness of the plan as well as its supposed failure to provide for universal toll service. Instead, the Commission will turn to an analysis of the MITG proposed primary carrier plan.

First, the Commission notes that the MITG proposal suffers from the same lack of industry support as does the proposed TCA. Although SWB is the only company not supporting the primary carrier plan, SWB opposition is significant because SWB is by far the largest provider of intraLATA toll service in the state. However, SWB's lack of support alone is not fatal to the MITG's proposal, although it is a serious concern.

The Commission is concerned that the primary carrier plan does not encourage the most efficient design of the Missouri toll network. By requiring SWB to utilize the existing toll facilities of the independents in the Kansas City, St. Louis and Springfield LATAs or pay access charges which would include the cost of those facilities, the Commission believes there would be an economic disincentive for SWB to improve the network design in those LATAs.

SWB has further alleged that the primary carrier plan is unlawful because it would require SWB to provide service to customers outside of its certificated area. SWB is convinced that case law and the United States and Missouri constitutions prohibit the Commission from ordering it to provide toll service to customers outside its service areas.

The record is clear that SWB owns and operates toll facilities outside of the areas in which it provides local exchange service. Thus, it appears that SWB is presently providing toll service in many areas of the state in cooperation with independent telephone companies that are not within what SWB considers to be its "certificated area".

The Commission notes that SWB has no "certificated areas" as such because SWB was providing service in Missouri prior to the implementation of PSC law. Most,

if not all, of SWB's local service areas were grandfathered rather than specifically awarded by the Commission. The Commission is of the opinion that prior to divestiture, SWB had state-wide authority to provide both interLATA and intraLATA toll service. On the date of divestiture, the Commission transferred the authority to provide interLATA toll service to AT&T Communications and SWB retained the authority to provide state-wide intraLATA toll service.

Aside from the fact that the Commission believes SWB has the authority to provide intraLATA toll service throughout the state, the Commission does not believe it is reasonable or necessary to order SWB to offer that service. Further, the Commission is not convinced that SWB or any other carrier should at this time be totally responsible for provision of toll within a LATA or the Westphalia market area.

For all of the foregoing reasons, as well as the Commission's serious concern over the proposed NTS cost shift proposal which accompanied the plan, the Commission determines the MITG primary carrier proposal must be rejected.

The Commission will next address the various proposals concerning NTS cost shifts.

First, with respect to Staff's proposal, the Commission notes that the plan assumes continued pooling at least until the Commission is able to hold further proceedings to reconsider basically all issues that have been addressed in this docket. The Commission finds Staff's apparent cautious approach to be inconsistent with its proposal to begin an eight-year shift of NTS costs assigned to the pool from present frozen SPF levels to a gross allocator of 17%. Not only would Staff's proposal have the most drastic settlement shift among companies if carried out (which Staff no longer recommends), but Staff's plan would also require SWB, the largest toll provider in the state, to move further from SLU and thus assign substantially more NTS costs to toll. The Commission finds this aspect of Staff's plan to be unrealistic and counterproductive to accomplishing the goal of making a gradual transition to a more competitive intraLATA marketplace.

The Commission has also found serious fault with the MITG proposal. Although the MITG touts its plan as being revenue neutral, the Commission is of the opinion that the "$1, $1, $1, proposal" is not reasonable. The Commission is not convinced that the threat of bypass is immediate enough to justify such an arbitrary and immediate shift to local exchange service. The Commission remains dedicated to the concept of universal service and is concerned that an immediate and arbitrary shift as proposed here may not promote this goal. However, additional evidence and study of the effects of NTS cost shifts to local exchange service would be necessary to make any definite conclusions with regard to the effect upon the penetration of telephone service throughout the state.

SWB's proposed movement from present frozen SPF levels to SLU over the next three years, suffers from the same basic deficiency as the MITG's proposal. Simply put, SWB's plan shifts too much NTS costs from toll to local and does so far too quickly. The Commission does not believe the evidence presented herein shows that competition or the threat of bypass is yet significant enough to justify such a drastic reaction.

Referring back to one of Staff's concerns about terminating the pools, the Commission will now address whether average schedule companies should still be required to move to a cost basis. This issue relates back to the Commission's order in Re: Southwestern Bell Telephone Company, 26 Mo. P.S.C. (N.S.) 344, (1983), wherein the average schedule companies were ordered to move to cost with the assistance of SWB.

The evidence presented herein shows that average schedule companies account for approximately 3% of total industry costs. The evidence further shows that there is industry-wide agreement that average schedule companies would be able to develop reasonable access charges.

Although the Commission is of the opinion that it remains desirable in principle for average schedule companies to move to a cost basis, it is no longer convinced that such a transition is necessary. No evidence was presented herein

attempting to quantify the cost of the transition and thus it is impossible for the Commission to balance the cost against the potential benefits. The Commission therefore determines that its previous directive that average schedule companies move to a cost basis, will be rescinded.

Thus far, the Commission has rejected both of the suggested mechanisms for replacing the intraLATA toll pool as well as all of the proposed plans for shifting NTS costs from intraLATA toll. The Commission is nevertheless convinced that pooling must end so as to position the industry to better deal with developing competition.

In its initial brief, Staff indicated that its preference was to work with the industry to develop a modified version of the primary carrier plan. The Commission concludes that Staff, Public Counsel, industry representatives, as well as other interested parties, should attempt to develop a modified version of the primary carrier plan whereby toll carriers would be designated based upon toll center ownership rather than on a LATA-wide basis.

The MITG states in its reply brief that even under its original proposal, the primary carrier would not be required to lease all existing toll facilities. The proposal does require that the primary carrier and the potential lessor (LEC) negotiate in good faith. The proposal further provides that either party may petition the Commission if that party is of the opinion that the other company is being unreasonable in the course of negotiations.

The Commission believes that the incorporation of these principles into a modified plan will help to alleviate concerns regarding control of network facilities and related matters.

While the parties are working to develop a replacement mechanism for the intraLATA pool, the Commission would like to examine data concerning NTS cost shifts from SPF to SLU. More specifically, the Commission would like to examine the effects of plans shifting those costs over five (5) years, seven (7) years, and ten (10) years. The Commission requests that the parties work to develop this information as

diligently as possible and submit their projections to the Commission along with the plan to replace the pool.

A final issue that should be mentioned with respect to the intraLATA toll pool is Staff's proposed treatment of CPE phase down, or what has previously been referred to herein as "Interpretation B".

Since the Commission has determined that pooling should end in what it believes to be the reasonably near future, the Commission does not believe it is necessary to consider modifying the pools as Staff suggests doing here.

B. InterLATA Access Pool and Related Issues

1. Staff Position

Staff's proposal with respect to continuation of the interLATA access charge pool is essentially identical to its position with respect to the intraLATA toll pool. Since that position was set forth in Section A(1) of this Report and Order, it will not be repeated here.

2. SWB Position

SWB takes the position that the interLATA access pool should be eliminated and replaced by a bill and keep system with meet point billing. SWB believes that because the LECs concur in a method to divide access charges, the Commission may not as a matter of law, impose or continue the interLATA access charge pool.

3. MITG Position

The MITG also recommends that the interLATA access charge pool be discontinued. In the event that intraLATA exchange access charges are not adopted by the Commission, interLATA access charges should be developed based on each company's interLATA revenue requirement. It would be necessary to allocate NTS cost reductions between intraLATA and interLATA jurisdictions in order for it to be reflected in interLATA carrier common line charge (CCLC) rate element. The MITG recommends that commensurate with the NTS cost reductions the Commission should order a phase-in of a local exchange surcharge.

4. AT&T Position

AT&T takes the position that the Commission should not eliminate the interLATA access pool without first considering the effect on both the LECs and interexchange carriers (IXCs). AT&T asserts that for average toll rates to be practicable, NTS costs included in access charge rates must be reduced immediately and the CCLC rate element of access charges must continue to be pooled even if the rest of the pools are eliminated.

AT&T further recommends a phase down to SLU, over the next three (3) to five (5) years, of the amount of NTS costs assigned to toll.

Finally, AT&T takes the position that NTS costs should be allocated equitably between interLATA toll and intraLATA toll. AT&T suggests that NTS costs should be divided between interLATA and intraLATA services in such a manner that a one-minute interLATA call would be assessed the same amount of NTS costs as a one-minute intraLATA call. AT&T requests that the Commission order LECs to eliminate the "interLATA SPF" which is currently being applied. AT&T refers to the interLATA SPF as the "Double SPF" because it is applied in addition to each company's historical SPF.

5. Argument

SWB argues that because the LECs concur in a method to divide access charges, the Commission may not pursuant to Section 392.240, RSMo 1978, impose or continue the interLATA access charge pool. SWB asserts that although the Commission does have the authority to order the reasonable interconnection of two utilities for the provision of joint toll service and to set joint rates for such service, the statutes clearly do not give the Commission authority over the division of the costs or revenues associated with such joint traffic unless the utilities do not agree to such division.

There is no need for joint access rates or a process for dividing joint access revenues because each LEC can directly bill the IXCs for access service. Further, there is unanimity among LECs that there is no reason to continue the

interLATA pool as the "division-of-revenues" mechanism for access service. Accordingly, there is no legal or factual basis for the Commission ordering continued access pooling.

In addition to its argument that the Commission is without authority to order the extension of the interLATA pool, SWB makes essentially the same argument it has made with respect to the intraLATA pool. First, SWB asserts that pooling is inconsistent with competition because inherent in pooling is an averaging of costs and rates that impairs and distorts the operation of a competitive market. SWB alleges that as a direct result of the averaging process, subsidies flow from some companies to others.

SWB strongly opposes the proposal of AT&T and Staff to continue pooling the CCLC even if the traffic sensitive portion of costs are no longer pooled. SWB alleges that continued pooling of the CCLC would perpetuate most of the subsidy flow. Thus, continuing to pool the CCLC would perpetuate virtually all of the vices of the present system. SWB asserts that the Commission should not be misled by AT&T's representation that toll deaveraging necessarily will occur if pooling ends. SWB points out that many other states have eliminated access charge pooling and there is no evidence to indicate that AT&T has deaveraged toll rates in those jurisdictions.

Finally, SWB alleges that because of the threat of bypass, interLATA access charges must be market-based rather than priced according to Part 67 of the Separations Manual as suggested by the MITG. SWB claims that the Separations Manual procedure can result in overloading of costs on toll charges and irrational pricing which cannot be sustained in this competitive market.

Staff first argues that SWB is incorrect in its interpretation of Section 392.240, and that a proper reading of the Public Service Commission Act reveals that the Commission retains jurisdiction to determine the appropriate division of interLATA revenues, regardless of the positions of the LECs on this issue.

Staff points out that Section 392.230, grants the Commission the authority to determine the propriety of any schedule filed by a telephone company "...stating a new individual, joint rate, rental or charge, or any new individual or joint regulation or practice affecting any rate, rental or charge...". Staff concludes that the express language of this statute unavoidably conflicts with SWB's interpretation of Section 392.240.

Staff supports AT&T's position concerning the continued pooling of the CCLC. Staff agrees with AT&T that total elimination of the interLATA pool will produce significant pressure for interLATA carriers to geographically deaverage toll. Staff notes that the CCLC portion of the interstate access charge continues to be pooled on a mandatory basis. Staff does not believe sufficient evidence has been adduced to justify the complete and immediate elimination of the interLATA pool.

If the Commission does determine that the pool should be eliminated in its entirety, sufficient time should be allowed to provide for the filing of individual access tariffs by the independent companies. Staff is of the opinion that SWB's estimate that the pool could be replaced in a matter of two to four weeks, constitutes a grossly optimistic exaggeration. Staff further believes that if the pool is eliminated, independent companies' access charges should initially be set to maintain current interLATA revenues for each company thus maintaining a revenue neutral position.

The MITG believes that the interLATA access pool must be eliminated for many of the same reasons enumerated by SWB. The MITG does, however, believe that independent companies will need sufficient time to develop and file individual access charge tariffs.

AT&T argues that prior to the elimination of the interLATA pool, the Commission should give careful consideration to the potential effect on interexchange carriers.

The manner in which access charges are recovered is of great importance to AT&T. In Missouri, such charges constitute more than two-thirds of AT&T's total

costs of providing service. Because of the magnitude of those charges and because they are uniform throughout Missouri, it is relatively easy for AT&T to charge the same rates for its services in West Plains as it charges for similar services in St. Louis. However, if access charge rate levels in West Plains suddenly become significantly greater than those in St. Louis, the same order of magnitude that made it relatively easy for AT&T to average long distance rates in the past would make it very difficult for it to do so in the future. When two-thirds of a firm's costs vary significantly between two locations, it is very difficult to charge the same rates in those locations. This is especially true in a market where one's competitors may choose not to serve the high-cost areas.

Thus, according to AT&T, the termination of the access charge pool would place pressures on the IXCs to geographically deaverage rates in Missouri. However, this pressure could be eased through two measures: the continued pooling of the CCLC access charge rate element; and, the prompt phase down of the CCLC rate element to a level more closely related to cost.

In addition to making it difficult for IXCs to continue averaging toll rates, the termination of the interLATA access charge pool could have a negative impact upon the spread of competition in Missouri. Today, if a long distance carrier wishes to expand its network to provide originating service in additional areas, that carrier's access costs per minute will not increase. However, if all LECs impose company-specific and widely divergent access charge rates, a tremendous incentive would be created for long distance carriers to offer service only in the low cost areas. This would be particularly true if long distance carriers were denied the authority to geographically deaverage rates in order to reflect differences in access charge rate levels.

AT&T further notes its concern over the proposals in this docket to set access charge rates. AT&T asserts that access charge rate levels should be set in LEC rate cases or in a consolidated access pricing docket in which all interested

parties have had a full opportunity to investigate the costs of providing access services and a full opportunity to be heard.

6. Commission Findings

Upon review of the record presented herein, the Commission finds that a greater degree of competition exists in Missouri's interLATA toll market than exists in the intraLATA toll market. This is partially due to the fact that competition in the interLATA toll market has been officially sanctioned for some eighteen months. The number of providers of interLATA toll has increased steadily since MCI and GTE Sprint were first authorized to compete with AT&T in Missouri's interLATA toll market.

The Commission has previously found herein in its section analyzing the proposed intraLATA toll pool replacement mechanisms, that pooling must end so as to position the industry to better deal with developing competition. The Commission finds, based upon the testimony of SWB and MITG witnesses, that a bill and keep system with meet point billing is currently feasible and could be utilized in Missouri. The Commission is of the opinion that since pooling is not desirable in a competitive market and the local exchange companies are presently capable of implementing a bill and keep system, the interLATA access pool should be eliminated as soon as practicable.

The Commission has considered the arguments of AT&T and Staff concerning the potential effect on IXCs of elimination of the pool and in particular the CCLC portion of the pool. While the Commission would expect access charges to vary from company to company, the Commission cannot find from this record that geographic deaveraging of toll rates must necessarily follow. The Commission is of the opinion that for the present, geographic deaveraging of toll rates should be prohibited and the effect of the system of access charges should be documented and examined.

The Commission further finds that with regard to the initial filing of access tariffs, the LECs should submit tariffs designed to maintain current interLATA revenues for each company thus maintaining a revenue neutral position. The

Commission believes that tariffs of this sort could be developed relatively quickly and would provide the smoothest transition from a pooling to a nonpooling environment.

AT&T has raised what it has referred to as the "Double SPF" issue. It appears LECs in Missouri are in fact assigning a greater level of NTS costs per minute to the interLATA access charge pool than they are assigning to the intraLATA tool pool. LECs are apparently adding an interLATA SPF to each company's historical intrastate SPF. The effect of this seems to allow recovery of more than 100% of assignable NTS costs. The Commission finds this practice to be unreasonable and is of the opinion that when meet point billing is implemented, NTS costs should be allocated such that one minute of interLATA access recovers the same amount as one minute of intraLATA access.

Since the Commission has previously addressed issues concerning NTS cost shifts and the CPE phase down, no further discussion of those matters will be included here.

The Commission is of the opinion that within the next six months, each LEC shall file for Commission approval its interLATA access tariffs. Upon completion of the filing of the aforementioned tariffs, the interLATA access pool will be eliminated. The Commission is also of the opinion that if any further disputes arise or any further direction is needed, the Commission should be notified immediately so that the matters can be resolved and the plan to eliminate the pool can move forward.

Conclusions

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

IntraLATA toll competition should be authorized for resellers and facilities-based carriers. The Commission has found fifteen (15) resellers qualified and able to provide intraLATA and intrastate interLATA toll services. No facilities-based carriers have submitted applications for intraLATA toll authority in this docket. The Commission rejected SWB's 15% range of rates pricing flexibility

plan but has stated that volume discounts and other pricing flexibility or specialized calling plans may be available to LECs in the future. The Commission also determined that hotels or motels that provide intrastate interLATA and intraLATA toll services to guests or tenants are not subject to the Commission's jurisdiction.

The Commission has further determined that the interLATA access pool should be eliminated and replaced by a bill and keep system as soon as practicable.

Since no intervention deadline was scheduled in Case No. TC-85-126, the Commission finds that all parties who participated in that docket shall be considered to be intervenors.

It is, therefore,

ORDERED: 1. That Case Nos. TA-84-142, TA-84-162, TA-84-197, TA-84-145, TA-84-151, TA-84-152, TA-84-157, TA-84-194 and TA-84-185 shall be dismissed.

ORDERED: 2. That Allnet Communications Services, Inc., 100 South Wacker Drive, Seventh Floor, Chicago, Illinois 60606 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 3. That Com-Link 21, Inc., 900 Walnut, 4th Floor, St. Louis, Missouri 63102 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 4. That Eddie D. Robertson, d/b/a Contact America, 511 Washington Street, Chillicothe, Missouri 64601 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 5. That Communications Cable-Laying Company, Inc., d/b/a Dial U.S.A., 1446 E. Sunshine, Springfield, Missouri 65804 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 6. That Hedges & Associates, Inc., d/b/a Hedges Communications Co. and Dial U.S., 1045 East Trafficway, Springfield, Missouri 65802-3696 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 7. That Compute-A-Call, Inc., 1736 East Sunshine, Suite 308, Springfield, Missouri 65804 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 8. That Inter-Comm Telephone, Inc., 324 East 11th Street, Kansas City, Missouri 64106 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 9. That LDD, Inc., 324 Broadway, P.O. Box 1608, Cape Girardeau, Missouri 63701 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 10. That directline Austin, Inc., 300 South Jefferson, Suite 513, Springfield, Missouri 65806 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 11. That Econo-Call, Inc., 204 South Third Street, Branson, Missouri 65616 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 12. That LTS, Inc., 312 Joplin Street, Joplin, Missouri 64801 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 13. That Republic Telcom Corporation, 8300 Norman Center Drive, Suite 700, Bloomington, Minnesota 55437 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 14. That Tel-Central of Jefferson City, Inc., 130 East High Street, Jefferson City, Missouri 65101 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 15. That Transcall America, Inc., 324 East 11th Street, Kansas City, Missouri 64106 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 16. That Valu-Line of St. Joseph, Inc., 202 North 4th Street, St. Joseph, Missouri 64501 be, and hereby is, granted a certificate of public convenience and necessity to provide intrastate interLATA and intraLATA toll telecommunications services in Missouri.

ORDERED: 17. That nothing contained herein shall be construed as a finding by the Commission of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the values placed upon said properties by the certificated resellers.

ORDERED: 18. That the Applications to Intervene filed on behalf of the following entities in Case Nos. TO-84-222 and TO-84-223 be, and hereby are, granted: Southwestern Bell Telephone Company, Association of Long Distance Telephone Companies of Missouri, Northeast Missouri Rural Telephone Company, Seneca Telephone Company, Goodman Telephone Company, Inc., Citizens Telephone Company, Eastern Missouri Telephone Company, Fidelity Telephone Company, Central Telephone Company of Missouri, Kingdom Telephone Company, General Telephone Company of the Midwest, Mid-Missouri Telephone Company, Missouri Telephone Company, Grand River Mutual Telephone

Corporation, Continental Telephone Company of Missouri, Cybertel Cellular Telephone Company and MCI Telecommunications Corporations.

ORDERED: 19. That the Applications to Intervene filed on behalf of the following entities in Case No. TC-85-126 be, and hereby are, granted: GTE Sprint Communications Corporation, U.S. Telephone, Inc. and MCI Telecommunications Corporation.

ORDERED: 20. That the Applications to Intervene filed on behalf of the following entities in Case No. TO-85-130 be, and hereby are, granted: AT&T Communications of the Southwest, Inc., U.S. Telephone, Inc., GTE Sprint Communications Corporation, and MCI Telecommunications Corporation.

ORDERED: 21. That all certificated resellers shall abide by the conditions of their certification which the Commission has approved herein.

ORDERED: 22. That the Commission's Court Reporter shall mark a copy of the testimony of Don Zimmer of LDD, Inc. as Exhibit 79.

ORDERED: 23. That Exhibit 79 shall be received into evidence.

ORDERED: 24. That the requests for official notice to be taken by the Commission by Com-Link 21, Inc. at page 144 of the transcript in these dockets and MCI Telecommunications Services, Inc. at page 5 of their initial brief be, and hereby are, denied.

ORDERED: 25. That the local exchange companies' shall within thirty (30) days of the effective date of this Report and Order, file modified intrastate access services tariffs to allow resellers to subscribe thereto.

ORDERED: 26. That a reseller shall file a request for a variance from any Commission rule it believes should not apply to it within thirty (30) days of the effective date of this Report and Order.

ORDERED: 27. That Staff, Public Counsel, telephone industry representatives and other interested parties shall file their proposed jurisdictional reporting requirements for the industry on or before October 31, 1986.

ORDERED: 28. That Southwestern Bell Telephone Company shall file its intraLATA presubscription cost benefit analysis and other information, within six (6) months of the effective date of this Report and Order.

ORDERED: 29. That the intraLATA toll pool is hereby extended until such time as a replacement mechanism is approved and implemented by the Commission.

ORDERED: 30. That the interLATA access charge pool is hereby extended until the interLATA access tariffs filed by each LEC have become effective.

ORDERED: 31. That Staff, Public Counsel, industry representatives and other interested parties shall meet at a mutually agreeable time and place to develop a modified version of the primary carrier plan and proposed jurisdictional reporting requirements as discussed herein.

ORDERED: 32. That each LEC shall file for Commission approval its interLATA access tariffs on or before January 23, 1987.

ORDERED: 33. That a plan for a replacement mechanism for the intraLATA pool shall be submitted for Commission approval or disputes for resolution by October 31, 1986.

ORDERED: 34. That this Report and Order shall become effective on the 26th day of August, 1986.

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, 1978.

Dated at Jefferson City, Missouri on this 24th day of July, 1986.

GLOSSARY

(CCLC)	Carrier common line charge
(CPE)	Customer premises equipment
(EAS)	Extended area services
(FG-A)	Feature Group A
(FG-B)	Feature Group B
(FG-D)	Feature Group D
(interLATA)	Between LATAs
(intraLATA)	Within LATAs
(INWATS)	Inward wide area telephone service
(IXC)	Interexchange carriers
(LATA)	Local access and transport area
(LECs)	Local exchange carriers
(MTS)	Message telecommunications service
(NTS)	Non-traffic sensitive
(OCCs)	Other common carriers
(PIU)	Percentage of interstate use
(SLU)	Subscriber line usage
(SPF)	Subscriber plant factor
(STS)	Shared tenant services
(STSF)	State Telephone Support Fund
(TCA)	Terminating Compensation Agreement
(WATS)	Wide area telephone service