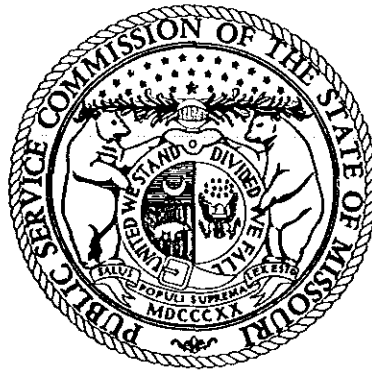


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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the matter of Southwestern Bell Telephone)
Company's Tariff Revisions Designed to Introduce) Case No. TT-98-351
a LATA-wide Extended Area Service (EAS) Called) (Tariff File #9800655)
Local Plus, and a One-Way COS Plan.)
)

REPORT AND ORDER

Issue Date: September 17, 1998

Effective Date: September 29, 1998

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Local Plus, and a One-Way COS Plan.)
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APPEARANCES

Paul G. Lane, General Attorney-Missouri, and Leo J. Bub, Senior Counsel,
Southwestern Bell Telephone Company, One Bell Center, Room 3518,
St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

W.R. England, III, Brydon, Swearingen & England, P.C., 312 East
Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102,
for: ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone
Company, Citizens Telephone Company of Higginsville, Missouri, Inc.,
Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber
Telephone Company, Goodman Telephone Company, Inc., Granby Telephone
Company, Grand River Mutual Telephone Corporation, Green Hills Telephone
Corporation, Holway Telephone Company, Iamo Telephone Company,
KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone
Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company,
McDonald County Telephone Company, Miller Telephone Company, New Florence
Telephone Company, New London Telephone Company, Orchard Farm Telephone
Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone
Company, Rock Port Telephone Company, Seneca Telephone Company,
Steelville Telephone Exchange, Inc., and Stoutland Telephone Company (the
Small Telephone Company Group).

Mark W. Comley, Newman, Comley & Ruth P.C., 205 East Capitol Avenue, Post
Office Box 537, Jefferson City, Missouri 65102-0537, for COMPTel-Mo.

Craig S. Johnson and Victor S. Scott, Andereck, Evans, Milne, Peace &
Baumhoer, 305 East McCarty Street, Post Office Box 1438, Jefferson City,
Missouri 65102, for: Alma Telephone Company, Chariton Valley Telephone
Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company,
Modern Telecommunications Company, MoKan Dial, Inc., Northeast Missouri
Rural Telephone Company, and Peace Valley Telephone Company (the
Mid-Missouri Group of Local Exchange Companies).

Carl J. Lumley and Leland B. Curtis, Curtis, Oetting, Heinz, Garrett &
Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for
MCI Telecommunications Corporation.

David Evans, Attorney, GTE Service Corporation, 225 Madison Street,
2nd Floor, Jefferson City, Missouri 65101, for GTE Midwest Incorporated.

Paul S. DeFord, Lathrop & Gage, 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Penny G. Baker, Deputy General Counsel, and Lera Shemwell, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGES: Elaine E. Bensavage and Nancy Dippell.

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REPORT AND ORDER

Procedural History

Southwestern Bell Telephone Company (SWBT) filed proposed revisions to its Local Exchange Tariff, P.S.C. Mo.-No. 24 on February 5, 1998. The proposed revision includes the offering of a local one-way Interim Community Optional Service (ICOS) plan, and the introduction of a LATA-wide Extended Area Service calling scope plan called Local Plus. The tariff sheets had an effective date of March 9. On February 13, AT&T Communications of the Southwest, Inc. (AT&T) and COMPTel-MO filed motions to intervene and to suspend the tariff. Similar motions to intervene and to suspend the tariff were filed on February 18 by the Mid-Missouri Group¹ and on February 20 by the Small Telephone Company Group.² SWBT filed its opposition to the applications to intervene and motions to suspend on February 23. On February 25 the Staff of the Commission (Staff) filed a motion to suspend the tariff.

¹ For purposes of this case, the Mid-Missouri Group consists of: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

² For purposes of this case, the Small Telephone Company Group consists of: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

The Commission issued an order on February 25 granting intervention to AT&T, COMTEL-Mo, and the Mid-Missouri Group. The Commission suspended the tariff sheets until July 7, 1998, scheduled an early prehearing conference, and directed the parties to file a procedural schedule. The parties met in prehearing conference on March 17 and filed a proposed procedural schedule on March 24.

The Commission granted intervention to the Small Telephone Company Group (STCG), GTE Midwest Incorporated (GTE), and MCI Telecommunications Corporation (MCI) on March 27. On April 3 the Commission issued an order establishing the procedural schedule. The parties prefiled testimony and a hearing was held on May 4-7.

The Commission filed Notice of Ex Parte Contact memorandum in this case on May 14. The notice states that comments relating to this case were made at a public hearing in Case No. TW-98-356. The Commission issued a correction to that Notice on May 18. On May 21, the Commission established a briefing schedule and further suspended the tariff until August 6, 1998.

Pending Motions and Late-Filed Exhibits

At the hearing, Exhibit No. 26 was reserved for late-filing of an exhibit showing the total dollar amount for switching and trunking used by witness Moore in the volume-sensitive recurring cost analysis. Exhibit No. 27 was reserved for the estimated cost to develop detailed end-user billing. On May 26 SWBT filed Exhibit No. 26 and Exhibit No. 27^{HC3} along with a cover letter which explained why the latter exhibit did not contain all the information requested by the Commission. No

³ "HC" designates highly confidential material.

objections to late-filed Exhibits No. 26 and 27 were received. On June 19 the Commission issued an order which excused SWBT from filing any additional information related to Exhibit No. 27. In that same order, the Commission further suspended the tariff until October 5, 1998. The parties submitted initial briefs on June 5 and reply briefs on June 15.

SWBT filed Motions for Leave to File Brief in Excess of Page Limit for both its initial and reply briefs. MCI filed a Motion to Exceed Page Limitations and to Include HC Information in Its Initial Brief. SWBT filed a response to MCI's motion stating that it did not object to MCI including the highly confidential material in its brief, but it did object to MCI's alternative suggestion to declassify the information.

On July 8 SWBT requested leave to file a late-filed exhibit consisting of the Oklahoma Corporation Commission's (Oklahoma Commission) June 26, 1998 Final Order approving SWBT's Local Plus offering for Oklahoma. MCI filed a response to SWBT's motion but did not object to the exhibit being included in the record.

Discussion

SWBT provides telecommunications services in various exchanges throughout the state of Missouri. SWBT proposed changes to its Local Exchange Tariff. P.S.C. Mo.-No. 24, to introduce a LATA-wide Extended Area Service called Local Plus which allows customers of SWBT to call anywhere in the Local Access and Transportation Area (LATA) for a flat monthly fee. SWBT also proposes an interim one-way COS plan in the existing SWBT COS petitioning exchanges until Local Plus is available.

I. SHOULD INTERIM COMMUNITY OPTIONAL SERVICE (ICOS) BE APPROVED?

A. WOULD ICOS PROVIDE BENEFITS TO CUSTOMERS?

SWBT's witness, Sherry A. Myers, testified that ICOS is an interim measure that will benefit customers in petitioning exchanges where COS is being eliminated until a permanent plan can be implemented. OPC witness, Barbara A. Meisenheimer, testified that the service would provide a "significant benefit" to SWBT customers where the plan is available. Staff witness, Ben Childers, testified that this service would be a "worthy addition" to plans presently offered by SWBT.

STCG acknowledged in its brief that customers have a need for expanded, toll-free calling within their community of interest and that COS currently meets that need. STCG argued that since COS is scheduled for elimination and SWBT's Interim COS is limited to approximately 2,000 customers, it may be appropriate to allow an interim plan until a permanent expanded calling plan can be implemented. None of the other parties denied that ICOS would provide a benefit to customers in the SWBT exchanges where it was available, although the parties stated other objections to the tariff as filed.

1. Do all SWBT exchanges qualify for this service?

Ms. Myers testified for SWBT that Interim COS is a one-way optional calling plan that "will be offered only to customers in the existing SWBT petitioning exchanges." The specific exchanges are set out in the proposed tariff at Sheet 54.

2. Is it appropriate for this plan to be implemented before COS is actually eliminated?

Ms. Myers testified that SWBT intends to make Interim COS available immediately because this service is proposed as a temporary

solution until the permanent expanded calling plan, Local Plus, can be implemented. In a cover letter filed along with the tariff, and attached to Ms. Myers's prefiled direct testimony as Schedule 2-1, SWBT indicated that because of demands on its resources from implementing Local Number Portability, Local Plus would not be fully implemented for approximately 6-9 months after approval. OPC, Staff, and STCG agreed that it was appropriate to implement ICOS upon the elimination of COS. The other parties to the proceeding were opposed to ICOS but did not take a position on whether it should be implemented before COS is eliminated.

In the Commission's Report and Order in Case No. TW-97-333, the Commission ordered COS to be eliminated by March 1, 1998. On February 17, 1998, the Commission issued an order extending the deadline and allowing the service to be eliminated in phases beginning June 1, 1998. However, in no event is COS to be eliminated later than February 28, 1999.

3. Should the "morphing clause" that allows SWBT to change the provisions of this tariff without Commission approval be approved?

The clause in the tariff which the Staff has labeled as a "morphing clause" is part of the Local Plus offering rather than the ICOS offering and therefore, is more appropriately addressed in that context.

B. IS ICOS PRICED APPROPRIATELY?

1. Should this plan be classified as local or toll?

Ms. Myers testified that SWBT offered this service as a local service because it has numerous attributes of a local service. ICOS uses a local dialing pattern (7 digits or 10 digits), the service is available for a flat rate, and the service is provisioned in the switch. Ms. Myers also testified that COS was offered as a local plan in the past by SWBT

and that SWBT believes that its Local Exchange Tariff is the appropriate location for Local Plus. Ms. Myers stated during cross-examination that COS service is currently classified as toll in SWBT's tariff.

Dr. Childers testified for Staff that ICOS should be offered as a toll plan, and the intervenors and OPC generally agree with Dr. Childers's opinion. However, most of the evidence presented regarding the question of whether the proposals in the tariff were toll or local was directed at the filing of the Local Plus portion of the tariff.

MMG argues that because ICOS will replace COS which is currently classified as toll, ICOS should also be classified as toll.

2. What cost study should be provided to the Commission?

SWBT argues that no cost study is needed due to the extenuating circumstances surrounding this proposal. Ms. Myers testified that SWBT did not perform a cost study for ICOS for several reasons. First, SWBT was attempting to avoid the time delay necessary to conduct a cost study, so that ICOS could begin benefiting customers immediately upon the elimination of COS. Second, SWBT had filed the same rates as those previously approved by the Commission for GTE for one-way Interim COS in Tariff No. 9800607. Third, Ms. Myers testified that because this was proposed as an interim filing and was only available in a limited number of specified exchanges, SWBT would suffer no irreparable harm if these rates did not cover their costs. Finally, SWBT believed that the proposed rates would be acceptable to Staff because the rates proposed for ICOS are higher than the rates proposed by Staff in Case No. TW-97-333.

OPC indicated in the Hearing Memorandum and its briefs that it was not opposed to the proposed price for ICOS.

Staff's witness, Ben Childers, testified that ICOS should be subject to a cost study to determine that it is priced above cost, including imputed access charges, and is providing a contribution to joint and common costs.

AT&T's witness, Michael J. Pauls, testified that the rates should cover all costs of providing the service. According to Mr. Pauls's testimony, to do otherwise could create a barrier to competition in the intraLATA toll market within the state of Missouri.

3. Is ICOS offered above cost?

All the parties agree that there is no way to determine if ICOS is offered above cost without a cost study.

C. SHOULD A DEFINITE SCHEDULE FOR IMPLEMENTATION BE REQUIRED IN THE TARIFF?

SWBT argues in its brief that it cannot provide an implementation schedule for ICOS because it will be implemented as the "target local exchanges are converted to equal access pursuant to schedules" to be developed which are not under the control of SWBT. However, SWBT indicates that it will have the service available for its customers as COS is eliminated in the petitioning exchanges. SWBT provided a list in its proposed tariff of the exchanges in which ICOS would be available.

Dr. Childers testified that usually an implementation schedule is not necessary because services will be available on the effective date of the tariff. Dr. Childers stated that Staff would prefer an implementation schedule for ICOS but that, because of the particular

SWBT also sponsored the testimony of Nancy L. Reiter. Ms. Reiter testified that the revenues from Local Plus were expected to be cross-elastic with revenues from DDD Toll, MCA, and intraLATA access services. Ms. Reiter explained that this means that the demand for Local Plus is expected to impact the demand for SWBT's other services.

SWBT argues that because of changes in the industry the traditional lines between local and toll have been blurred. SWBT states that the service may replace intraLATA toll for some customers, but in some instances it will also replace MCA which is a local service. In its brief SWBT argues that "COS is a locally dialed interexchange calling service" that was previously classified as a non-toll service and is currently classified as toll. On the other hand, MCA, which also has a local dialing pattern is classified as local. SWBT points out that cellular providers define local calling scopes which include what would traditionally be called a toll service if provided on the landline system. Attached as Schedule 1 to Ms. Myers's Surrebuttal Testimony were examples of advertisements by MCI and AT&T characterizing some of their intraLATA toll services as "local toll" thus further blurring the distinction.

Ms. Myers testified that the Texas Public Utility Commission (Texas Commission) has determined Local Plus to be a hybrid service with characteristics of both local and toll services. Ms. Myers stated that the Texas Commission allowed SWBT to file Local Plus in its General Exchange Tariff rather than its Local Exchange Tariff. SWBT also offered as an exhibit to its brief the Report and Recommendations of the Administrative Law Judge in Cause No. PUD 980000134 before the Oklahoma Commission, and as a late-filed exhibit, the final decision of the

Oklahoma Commission in a similar LATA-wide Local Plus offering. The Oklahoma Commission found that the service was neither local nor toll, but allowed SWBT to include the service in its General Exchange Tariff.

COMPTEL-Mo witness, Michael Jay Ensrud, stated during cross-examination that because this service has characteristics of both local and toll it is possible to characterize it as a hybrid.

Ms. Meisenheimer testified that it is OPC's position that Local Plus is "more closely aligned with current toll offerings than with local offerings and will be perceived by customers as [a] substitute for toll services to which they already subscribe."

Dr. Childers testified for Staff that there are many characteristics of Local Plus which make it similar to a toll plan, including: 1) the lack of a community of interest; 2) its role as a replacement for intraLATA toll calling plans; 3) the fact that it is a one-way service, while local is generally a two-way service; and 4) the fact that SWBT intends to pay access in the same manner as it pays access for intraLATA toll traffic. Dr. Childers also testified in response to questions from the bench that the fact that SWBT is offering to pay access charges for a local service makes the service a "hybrid situation."

MCI and Staff argued in their briefs that the service is interexchange as defined in Section 386.020(24), RSMo, and, therefore, not a local service. MMG's witness, William Biere, testified that a call could traverse up to 430 miles under the Local Plus plan. MMG argued that traveling a long distance is characteristic of toll rather than local service. COMPTEL-Mo concurs that the service should be classified as toll, citing the same factors as Staff and the intervenors. STCG also

concur and adds that Local Plus is similar to the Outstate Calling Area (OCA) service and SWBT's Designated Number Optional Calling Plan which are both classified as toll services.

1. What are the implications of classification as either local or toll?

SWBT argues that local classification of Local Plus will allow it to provide the service using a locally-dialed (7- or 10-digit) calling pattern. Ms. Myers and Ms. Countryman testified that the survey conducted by SWBT shows that a local dialing pattern would be a factor in many customers' determination of whether to purchase the service. Ms. Myers testified that subscribers to Local Plus will receive a message indicating there is no need to dial a "1" if the subscriber attempts to make an intraLATA call using "1+". She agreed during cross-examination that a customer who has chosen to subscribe to Local Plus will not be able to obtain intraLATA service from any other carrier by dialing "1+". Ms. Myers stated that this feature was intended to protect the customer from paying a per-minute rate for a service previously purchased on a flat-rated basis. Both Ms. Reiter and Ms. Countryman testified that even with the successful introduction of a similar Local Plus service in Texas, the 10XXX⁵ calling traffic continues to increase in that state.

Ms. Meisenheimer testified that if the service is classified as local the classification may preclude toll providers from being eligible to resell the service without obtaining additional authority from the Commission. Therefore, toll providers who are not also certified as

⁵ It should be noted that 10XXX dialing now requires dialing 10-10-XXX. This is a dial-around feature that allows a customer to make a call using the interexchange carrier of the customer's choice by dialing the interexchange carrier's code in the form of 10-10-XXX, regardless of who the customer's presubscribed interexchange carrier is.

local service providers may have a competitive disadvantage. Ms. Meisenheimer testified that OPC takes the position that classifying the service as toll would benefit SWBT's secondary carriers' (SCs) customers because the service would also have to be made available to those customers under the PTC Plan.

The Staff's position, as testified to by Dr. Childers, is that Local Plus would be anticompetitive because intraLATA presubscription will not affect Local Plus customers. Dr. Childers testified that this creates a barrier to entry which is prohibited under 47 U.S.C. 253. Dr. Childers also raised the issue of a potential increase in the amount SWBT might receive from both the federal and state Universal Service Fund if this service were classified as local. He stated that if "intraLATA toll is converted to local, it may be that all or almost all of SWBT's instate network may be classified as local for fund recovery." Dr. Childers indicated that by classifying the service as local, SWBT can avoid imputing the cost of access and thereby avoid having to demonstrate that the service is priced above cost.

MCI concurred with Staff's assessment that classifying this service as local would be anti-competitive. MCI witness, Randy R. Klaus, testified that the IXCs could not sell a LATA-wide unlimited calling plan on a flat-rated basis because the IXCs would have to pay access charges on a usage-sensitive basis. MCI argued that SWBT intends to price this service so that no competitor can match the price and thus retain high volume customers when intraLATA presubscription is implemented in SWBT's service area. MCI and COMPTel-MO noted that local classification would mean that a company which only has interexchange service authority would

not be able to resell Local Plus without obtaining a certificate of local service authority.

Mr. Biere testified for MMG that if Local Plus is classified as local, the 1996 Telecommunications Act will require SWBT to negotiate interconnection agreements with other local exchange carriers (LECs) in order to terminate Local Plus traffic in their exchanges. Mr. Biere stated that if Local Plus, which he believes is a toll service, is implemented without being provided to the SCs, this would violate the public policy which prohibits defining a toll service differently based upon locality or exchange. If the service is classified as toll, Mr. Biere stated that equal access and dialing parity would have to be provided to the IXCs or the service would be anticompetitive. Because Local Plus customers would not be able to reach intraLATA toll carriers by dialing "1+" (to dialing 10XXX), dialing parity would be precluded.

Mr. Pauls testified on behalf of AT&T that if the service were classified as toll, as in his opinion it should be, it would have to meet an imputation test. He stated that if Local Plus is classified as toll, IXCs will be able to offer similar plans on their own or through resale without the expense and delay of obtaining additional service authority or interconnection agreements. Mr. Pauls also testified that if the service were characterized as local, resale would be precluded by IXCs which did not also have local service authority.

Mr. Ensrud testified on behalf of COMPTel-MO that SWBT would need to impute the cost of applicable access in order to avoid predatory pricing.

STCG witness Robert C. Schoonmaker testified that, assuming the PTC Plan is eliminated and SWBT exits the Secondary Carrier markets, if

SWBT later chooses to re-enter those markets it will not have to provide Local Plus to the SCs' customers if it has been designated as a local service. Only toll services are required to be made available to all exchanges. Mr. Schoonmaker also theorized that IXCs might follow this lead and reclassify services as local in high cost, rural areas.

2. What is the appropriate costing standard?

SWBT argued that the appropriate cost standard is that Local Plus must cover incremental costs. Ms. Reiter testified that SWBT had performed a contribution analysis, the results of which were attached as Schedule 3 to her prefiled Direct Testimony. Ms. Reiter testified that the contribution analysis showed that Local Plus revenues are expected to exceed the incremental costs of the service and to make a contribution to common costs. She testified that SWBT also completed a service benefit analysis and determined that Local Plus will have a positive net impact over a three-year period. Schedule 2 attached to Mr. Moore's testimony is SWBT's 1997-1999 Missouri Local Plus Cost Study which identifies the incremental recurring and nonrecurring costs associated with Local Plus.

Ms. Myers testified that SWBT would "revise its Local Exchange Tariff to make Local Plus available for resale under the same terms and conditions SWBT applies to its own end users." She stated that certified Competitive Local Exchange Carriers (CLECs) can resell Local Plus at wholesale discount rates. Ms. Reiter testified that it is SWBT's position that making a service available for resale guards against being priced under cost and, therefore, imputation of access charges is not necessary. She stated that, since SWBT is the underlying carrier, it is

assuming the risk and will be the one harmed if the service is priced inappropriately.

SWBT cited to the Commission's previous decision in In the Matter of Southwestern Bell's tariffs to revise P.S.C. Mo-No. 26, Long Distance Message Telecommunications Service Tariff to introduce Designated Number Optional Calling Plan, Case No. TT-96-268, Report and Order, issued December 20, 1996, which held that an imputation test is not needed if the service is made available for resale with the appropriate wholesale discounts. SWBT also argued that both the Texas Commission and the Oklahoma Commission concluded that the availability of resale to competitors eliminates the need for an imputation test.

OPC and MMG took the position that the service should recover its costs and make a contribution to joint and common costs.

Staff's position was that, if classified as a local service, Local Plus should be priced to recover all costs, including imputation of access charges, and a reasonable contribution to joint and common costs. Dr. Childers testified if Local Plus is classified as an intraLATA toll service it should be priced above cost, including imputation of access charges.

MCI took the position that Local Plus should have to meet an imputation test. Mr. Klaus testified that Local Plus would not pass an imputation test unless a large number of customers purchasing the service are low volume customers. These low volume customers will not receive any financial benefit from paying the flat rate. Mr. Klaus stated that customers are not likely to choose to do that. Mr. Klaus testified that the Commission could cure this defect by altering the rate structure of the tariff to include a usage-sensitive component.

COMPTEL-Mo also took the position that an imputation test is needed. Mr. Ensrud testified that Local Plus could not pass an imputation test. He provided an example based on composite SWBT originating and terminating access rates to demonstrate that if an IXC attempted to duplicate SWBT's service it would reach a "break-even" point at between 5 and 9.08 hours of use for the residential customer. Mr. Ensrud testified that access charges of the other incumbent LECs were higher than SWBT's access charges. COMPTEL-Mo argued that, given the estimates provided in Ms. Reiter's highly confidential testimony for calls on the high end of the access charge rates, Local Plus will not recover the cost of access.

STCG also argued that Local Plus should have to pass an imputation test.

Mr. Pauls testified for AT&T that one way to mitigate the anticompetitive aspect of SWBT's failure to meet an imputation test would be to offer Local Plus for resale at wholesale rates on an unrestricted basis. Mr. Pauls stated that this would be in compliance with Section 251(c)(4)(A) of the Telecommunications Act of 1996 which requires incumbent LECs to offer any of its retail services to other telecommunications companies for resale at wholesale rates. He testified that resale "would at least allow all intraLATA toll providers to compete in the sale of service to end-users, even if access prices would otherwise preclude such competition."

STCG argued, and Mr. Ensrud testified, that for its members to remain revenue-neutral in an Originating Responsibility Plan (ORP) environment they would also have to impute originating and terminating access in order to provide a service similar to Local Plus. According

to Mr. Ensrud, imputing these charges would make it an "economic impossibility" for the small LECs to offer a similar service.

3. What are the appropriate terms and conditions for terminating calls in third-party LEC exchanges?

Mr. Schoonmaker testified for STCG that if Local Plus was classified as local interconnection agreements would need to be negotiated with the LECs where the termination of traffic would occur. During cross-examination, Mr. Schoonmaker testified that, regardless of how the Commission classified this service, STCG's clients would view terminating access as the appropriate mechanism for intercompany compensation. He testified that paying the rates established in access tariffs would be consistent with STCG's clients' negotiated interconnection agreements with SWBT.

If the service is classed as toll, Mr. Schoonmaker stated that STCG would expect the same terms and conditions that apply under the PTC Plan to apply to Local Plus. STCG would also want any changes determined by the Technical Committee formed pursuant to Case No. TO-97-217⁶ to apply. Mr. Schoonmaker admitted that, according to the figures provided by Ms. Reiter, the small telephone companies could expect revenue from the Local Plus traffic terminating to their exchanges to be ten times greater over a three-year period than the loss of toll traffic terminating access revenues.

Mr. Biere testified for MMG that he believed terminating access charges should be paid if the service is classified as toll. Mr. Biere

⁶ In the Matter of an Investigation Concerning the Continuation or Modification of the Primary Toll Carrier Plan When IntraLATA Presubscription is Implemented in Missouri (the PTC case).

stated that if the Commission determines the service is local, access charges would be a "good way" to handle the compensation issue.

SWBT argues that access tariffs apply to the termination of this traffic because it is interexchange traffic regardless of how it is classified. SWBT also argues that paying terminating access charges is consistent with the negotiated interconnection agreements SWBT has with CLECs which have been approved by the Commission. Ms. Reiter provided confidential documentation showing that, if the traffic terminating to the small telephone company exchanges increased as Mr. Schoonmaker suggested, then STCG members would likely receive a windfall of revenues from the access charges.

Staff argued that the proper classification of this service is toll and therefore terminating access charges would be the appropriate method of compensation. However, Staff suggested that because the issues of compensation and payment of access are currently being considered by the Technical Committee in the PTC case, the Commission should refrain from determining what compensation is appropriate until it receives the final recommendations of the Technical Committee.

MCI, AT&T, and OPC agreed that terminating access is appropriate intercompany compensation if the service is classified as a toll service.

Mr. Biere testified on behalf of MMG that compensation at the access tariff rate is consistent with SWBT's interconnection agreements. However, he also stated that Local Plus should not be made available until interconnection agreements have been submitted and approved by the Commission in accordance with 47 U.S.C. 252(e). Mr. Biere recommended that the tariff be rejected and not reconsidered until after the elimination of the PTC Plan is completed. He suggested that whatever

conditions for terminating access are found to be applicable as a result of the PTC case should also be applied to this traffic.

4. May SWBT reclassify a transitionally competitive toll service as a noncompetitive local telecommunications service?

Dr. Childers testified for Staff that if Local Plus is approved with a local classification, the Commission would be reclassifying a transitionally competitive toll service as a noncompetitive local service. Dr. Childers's concern is that this moves in the direction of less competition instead of more competition.

SWBT responded that it had not requested any specific type of competitive classification of this service, nor had it requested the proceeding contemplated by Sections 392.361 and 392.370, RSMo, for classifying or reclassifying telecommunication services. Ms. Myers testified that this service will not replace intraLATA toll, but would be another option for customers.

Dr. Childers agreed during cross-examination that SWBT had not requested that its message toll, WATS, 800 number, or other services which have been previously classified as competitive be reclassified, and that those services will remain available to SWBT customers. However, Dr. Childers added that the customers who subscribe to Local Plus will not need another intraLATA toll service.

MMG argued that, under Section 392.400, RSMo, if Local Plus were approved as a local service, it would be eligible to be subsidized by SWBT's toll services. MMG states that, if approved as a toll service, pursuant to Section 392.400, RSMo, Local Plus would be able to contribute to the cost of local services, but local services would not be able to contribute to the cost of Local Plus.

OPC, MCI, and AT&T agree that only the Commission can reclassify Local Plus as transitionally competitive or competitive, but presented no further evidence or argument regarding this issue.

D. SHOULD LOCAL PLUS BE AVAILABLE TO THE EXCHANGES WHERE SWBT IS THE PRIMARY TOLL CARRIER?

STCG argued that Local Plus should be available to the customers of the SCs where SWBT is the PTC. Mr. Schoonmaker testified for STCG that "SWBT should be required to offer Local Plus to all customers that are offered toll service from its message toll tariffs whether they reside in Southwestern Bell exchanges or in the exchanges of other telephone companies."

Mr. Ensrud testified for COMPTel-MO that SWBT's failure to offer Local Plus to customers of the SCs is a "reasonable business choice" because SWBT cannot pay both originating and terminating access charges to the SCs for Local Plus and have the service remain profitable.

MMG argued in its brief that if Local Plus is approved it should be available to all customers in each LATA. However, Mr. Biere testified for MMG that he would not recommend offering the service only to have it removed. He stated that in his experience, customers did not like having services eliminated. Mr. Biere suggested that the tariff be rejected and not be reconsidered again until after the elimination of the PTC Plan.

Ms. Meisenheimer stated on behalf of OPC that as long as the PTC Plan is in effect, SWBT should provide Local Plus to the customers of the SCs.

Ms. Myers testified for SWBT that Local Plus will not be implemented for six to nine months from the date of approval of the tariff. Ms. Myers suggested that SWBT will not be offering toll services

to the SCs' exchanges after the elimination of the PTC Plan. She stated that it would cause great customer dissatisfaction to offer Local Plus for a short time to the SCs' customers and then take the service away. In addition, SWBT argued that even if there is some overlap between the PTC Plan and the implementation of Local Plus, it would be a relatively short interval. Therefore, it would be confusing to the customers of the SCs to have Local Plus for a short period of time only to have it removed when SWBT is no longer the primary toll carrier.

STCG witness Robert Schoonmaker agreed during cross-examination that it would not be appropriate to include the SC exchanges in the tariff if the PTC Plan has been eliminated by the implementation date of Local Plus.

E. WILL LOCAL PLUS BE AVAILABLE FOR RESALE?

Ms. Myers testified that SWBT would "revise its Local Exchange Tariff to make Local Plus available for resale under the same terms and conditions SWBT applies to its own end users." Ms. Myers stated that CLECs would be able to sell the service at a discounted rate, and IXCs would be offered the service at the tariffed rate. She testified that SWBT had not yet amended its tariff or filed amended local exchange tariff sheets which would make the changes necessary to allow resale. SWBT argued that the Federal Telecommunications Act of 1996 (the Act) does not require resale at a discount to the IXCs. However, Mr. Bailey testified that SWBT would be willing to negotiate with the IXCs regarding a discounted rate.

Staff, MCI and AT&T agree that 47 U.S.C. 251(c) requires that an incumbent LEC offer services such as Local Plus for resale at a wholesale rate and argues that the tariff must be rejected at least until these

tariff changes are made. Mr. Klaus testified for AT&T that it is in the public interest to eliminate restrictions on resale, in that it encourages the creation of new services and technology, results in more efficient use of facilities, lower rates, and moves rates toward a cost-based structure thus enhancing competition. Mr. Klaus testified that an IXC could not effectively compete by reselling the service without a discount.

COMPTEL-MO argued in its brief that even if the tariff allows resale, the certificate of an IXC only authorizes the sale of inter-exchange services and not local exchange services. COMPTEL-MO argued that the IXCs would have to get additional authority from the Commission in order to resell Local Plus. COMPTEL-MO also argued that if the Commission does not require resale at a wholesale rate, it would impede competition, because negotiating with SWBT for a discount would be a lengthy process.

Mr. Pauls testified that AT&T already has an interconnection agreement with SWBT that would allow it to purchase Local Plus as a CLEC at a wholesale discount of 19.2 percent.

1. Is a restriction on aggregation by resellers appropriate?

Ms. Myers stated that SWBT wants the resale of Local Plus to other carriers to include the same restrictions it places on its own customers. She stated that the major concern of SWBT in restricting resale is that there be no aggregation⁷ of the service. She stated that SWBT does not intend for the customer, including another telecommunications company, who purchases a single plan at the tariffed

⁷ The term "aggregation" used in this context was defined by Mr. Ensrud, as being "the buying of a large component and parceling it out to a number of different customers."

or wholesale rate to be able to resell the service to multiple users. Ms. Myers testified that the agreements SWBT has with CLECs, with the exception of MCI and AT&T, all restrict aggregation in this manner. She stated that SWBT will not offer the service if aggregation is allowed as it would not be financially viable.

Ms. Reiter testified that the cost study done by SWBT presumed only one end user per plan purchased, and if the service was available for aggregation SWBT would not be able to cover its costs of providing the service. Additionally, SWBT argued that the Act does not prohibit all restrictions, but only requires that restrictions on resale be reasonable, and states that the Commission has previously determined that restrictions on aggregation are reasonable.

COMPTEL-MO was the only party which proposed that there be no restriction on aggregation. Mr. Ensrud testified regarding how aggregation would work. He admitted during cross-examination that the Commission has the authority to determine whether restrictions in the tariff are reasonable. COMPTEL-MO argues that aggregation should be allowed as it would be no different than a single end user using the service 24 hours a day, which is authorized by the tariff.

Staff pointed out that the Commission has only determined that aggregation is a reasonable restriction as to toll services, but has not yet made such a ruling as to local services.

2. **Should consideration of Local Plus be denied or delayed until SWBT has negotiated interconnection agreements with other ILECs, giving those ILECs an opportunity under the provisions of the 1996 Telecommunications Act to negotiate arrangements suitable for their internal business purposes and for their customers?**

Mr. Bailey testified that SWBT did not need to negotiate interconnection agreements because the Act only requires negotiation when wireline traffic originates and terminates within the mandatory local calling scope. If the wireline traffic is not both originating and terminating, it is subject to the applicable interstate or intrastate tariffs. Thus, in the case of Local Plus, Mr. Bailey claims that terminating access charges are the appropriate intercompany compensation. Mr. Bailey testified that if a negotiated rate is necessary, the CLECs will receive less compensation than they would if terminating access is paid.

The other parties agree that unless the service is classified as a local service no interconnection negotiations will be necessary.

F. HOW IS TRAFFIC MEASUREMENT AFFECTED?

1. **What network changes are required to accommodate Local Plus and should SWBT be required to obtain other LECs concurrence before implementing such network changes?**

Mr. Bailey and Ms. Myers testified for SWBT that the network reconfigurations required by SWBT would be translation changes in the switches so that the Local Plus traffic could be recognized. Mr. Bailey testified that otherwise the traffic measurement would remain the same.

No evidence was presented to indicate that significant changes would be necessary by the other LECs to accommodate Local Plus traffic. However, STCG indicated that because SWBT stated there may be a need for additional trunking facilities and terminating traffic was expected to

grow, more information is necessary to make this determination. MMG also argued that SWBT's admission that more trunking facilities might be necessary means that SWBT should be required to get consent from the independent companies before increasing the amount of terminating traffic.

SWBT argued that since the LECs would be paid their full tariffed rate they will be fully compensated for the use of their facilities. In addition, SWBT argued that none of the long distance companies had ever been required to get permission from the LECs to increase the amount of traffic they terminated.

2. What suitable assurances and verifications will be required of SWBT to assure that Local Plus traffic is appropriately measured?

Ms. Myers and Mr. Bailey testified that once the network reconfigurations are in place, Local Plus traffic will be measured the same as any other terminating traffic. Mr. Bailey stated that SWBT will measure Local Plus traffic which terminates to other LECs and traffic that terminates to customers served by CLECs operating in SWBT exchanges. He testified during cross-examination that if the method of intercompany compensation changes because of the PTC case, SWBT will use the new method for paying for terminating calls. Mr. Bailey also stated that SWBT will allow the independent companies to audit its billing mechanism. In addition, the witnesses stated that the measurement of MCA traffic would not be changed.

MMG argued that, for verification purposes, SWBT should be required to record all Local Plus traffic both terminating and originating. Mr. Biere testified for MMG that if the LEC does not have

the ability to record traffic put on its network by another carrier, then it cannot be assured that it is receiving the appropriate compensation.

Mr. Klaus testified on behalf of MCI that in order for the service to be competitive, a usage-sensitive rate structure should be used. All traffic would have to be measured, in order to implement a usage-sensitive structure.

COMPTEL-Mo argued that SWBT should measure all traffic so that it can provide detailed billing to its customers. COMPTEL-Mo argued that without detailed billing, customers cannot make an informed choice about how they should handle intraLATA charges.

MCI, AT&T, and OPC also argued that customers should be able to receive detailed billing in order to make an informed decision about the cost of the service.

Ms. Reiter testified that SWBT does not intend to make detailed billing available to its customers. She stated that in her experience, very few customers have requested detailed billing when it was available. In addition, she believed that customers actually want less detail on their monthly statements. SWBT late-filed Exhibit 27HC explaining the costs of implementing such a billing system.

- 3. Should Local Plus, with its implicit assumption that LEC-to-LEC PTC Plan feature group C signaling and traffic measurement protocols will be retained indefinitely, be approved in light of the Commission decision to determine the PTC Plan?**

SWBT has stated that any changes in measurement recommended by the Technical Committee in the PTC case would also be implemented for Local Plus traffic. This issue has been assigned to the Technical Committee in the PTC case currently pending before the Commission;

therefore, no determination of this issue is necessary in this proceeding.

4. **Is the provisioning of Local Plus with LEC-to-LEC feature group C signaling and traffic measurement protocols consistent with intraLATA toll equal access, if IXC's will be required to utilize feature group D signaling and traffic measurement protocols?**

SWBT has stated that any changes in measurement recommended by the Technical Committee in the PTC case would also be implemented for Local Plus traffic. This issue has been assigned to the Technical Committee in the PTC case currently pending before the Commission; therefore, no determination of this issue is necessary in this proceeding.

G. IS LOCAL PLUS DISCRIMINATORY?

SWBT argued that Local Plus offers parity of service under Section 392.185(7), RSMo Supp. 1997, because the service is offered equally to SWBT's rural and urban customers. However, Ms. Myers testified on behalf of SWBT that customers who are served by an exchange which has a central office in another state will not be eligible for the service. Ms. Myers testified that MCA subscribers could purchase the service at a discounted rate.

SWBT argued that the other LECs can offer a similar service to their customers, and that Local Plus should not be rejected because other companies are not willing to offer this type of service. Ms. Myers testified that by offering Local Plus, SWBT will be able to address the demands of many of its customers for an optional expanded calling service.

Staff agreed that the parity issue alone is not sufficient to reject SWBT's tariff. OPC agreed with SWBT's arguments regarding parity, so long as the service was not classified as a local service.

Dr. Childers testified on behalf of Staff that charging a different price for the subscribers of MCA and nonsubscribers would create a disparity between rural and urban customers.

MCI and AT&T argued that Local Plus is discriminatory to IXCs if they are not allowed to purchase the service at a wholesale discount for resale or if an imputation test is not used. They argued that SWBT controls an essential input which is needed for a competitor to provide the service and without one of these safeguards, SWBT is able gain a competitive advantage which is discriminatory to the competition.

MMG argued that disparity will be created because the carriers serving less densely populated areas and high cost exchanges do not have the economies of scale to enable them to provide this type of service. MMG believes that Local Plus is discriminatory to the independent companies because its customers will be unable to receive like services for equal prices. MMG's witness, Mr. Biere, argued that Local Plus is discriminatory because it is charging a different price for a service that SWBT already offers, i.e. regular Message Toll Service (MTS). Mr. Biere stated that, by charging a flat rate for Local Plus, SWBT is basically charging a different rate for the same service for subscribers to Local Plus and nonsubscribers who use regular MTS.

Ms. Myers testified, and the tariff indicates, that customers who subscribe to MCA and to Local Plus will only be charged \$20 per month for residential Local Plus service and \$40 per month for business service. Thus, Local Plus is being offered at a discount to MCA subscribers.

Ms. Myers stated that the reason for the discount is that MCA is a two-way expanded calling plan which already allows the customer to call many of the same people in the LATA that Local Plus would allow the customer to call. SWBT argues that the customer should not have to pay the charge a second time for service they are already receiving through MCA if they want the added benefits from Local Plus of calling one-way to the rest of the LATA. Ms. Myers also testified that if a customer decides to purchase Local Plus and drop MCA service, she would have to change her phone number. Therefore, some customers may prefer to pay for both services in order to avoid the inconvenience of changing phone numbers.

Dr. Childers testified for Staff that by charging different rates for MCA and non-MCA customers, the service will result in geographic deaveraging in violation of Section 392.200.5, RSMo Supp. 1997.

H. SHOULD LOCAL PLUS BE APPROVED PRIOR TO SWBT'S IMPLEMENTATION OF INTRALATA PRESUBSCRIPTION IN ITS 166 EXCHANGES SERVING 2.4 MILLION, OR 80 PERCENT OF MISSOURI'S CUSTOMERS?

SWBT argued that the service should be implemented as quickly as possible. SWBT offered its customer survey into evidence to support Ms. Myers's and Ms. Reiter's testimony that there is a demand for this service. In addition, SWBT intends to offer this service in part as an option to customers who are losing COS. Ms. Myers testified to the benefits the service would provide to the customers. SWBT argues that delay in implementing this service would harm those customers. SWBT also argues that it would not be gaining any unfair advantage over competitors since the service would be available for resale and LECs could offer a similar service to their customers through their own facilities.

MCI and AT&T argued that Local Plus should not be implemented in its current format before intraLATA presubscription is available.

Mr. Biere testified for MMG that the introduction of Local Plus before intraLATA presubscription is available would eliminate a majority of the market in which the IXC's intend to compete. MMG has concerns that, if SWBT is allowed to offer this service, it will discourage the IXC's from offering an attractive toll plan and limit competition in the less profitable areas of the state.

Dr. Childers expressed concern that implementing Local Plus before intraLATA presubscription was in place would stall competition because, for subscribers to Local Plus, intraLATA presubscription would have no meaning. Dr. Childers testified that because subscribers to Local Plus will not be able to reach another carrier by dialing 1+, this will preclude the implementation of intraLATA presubscription.

SWBT's tariff indicates that the minimum subscription period for Local Plus service is one month and the service is billed monthly. The service is also an optional service.

I. IS THE 7-DIGIT DIALING PROVISION OF LOCAL PLUS CONSISTENT WITH THE FEDERAL DIALING PARITY REQUIREMENTS?

Staff's witness Dr. Childers and MCI's witness Mr. Klaus both expressed concern that SWBT was not planning to make the local dialing pattern available to the competition. However, Ms. Countryman testified for SWBT that competing LECs can offer similar dialing patterns through their own facilities or through unbundled network elements purchased from SWBT. In addition, Ms. Countryman stated that competitors could offer their customers automatic dialers to access their networks. Or, in the alternative, Ms. Myers and Ms. Countryman testified that the service,

with a 7- or 10-digit local dialing pattern, will be available for resale to the IXC's and the CLECs.

J. SHOULD THE "MORPHING CLAUSE" THAT ALLOWS SWBT TO CHANGE THE PROVISIONS OF THIS TARIFF WITHOUT COMMISSION APPROVAL BE APPROVED?

Dr. Childers testified that Section 2.1.2.C.4 of SWBT's proposed Local Exchange Tariff, creates a situation where SWBT may unilaterally change or withdraw its tariff based on its own interpretation of state and federal law. Section 2.1.2.C.4 of SWBT's Local Exchange Tariff as filed February 5, 1998, states:

This tariff shall only be effective as long as the use restrictions and the rules and regulations in this tariff remain in effect for all users (including any exchange telecommunications company or other company reselling this service, and their customers.) In the event any of these use restrictions or rules and regulations are held not to apply to all such users, upon notification by the Telephone Company to the Commission, this tariff shall not be available except to existing subscribers of the service at existing service levels at existing locations. SWBT shall also have the right to withdraw this service offering in its entirety.

It is Staff's position that such a "morphing clause" is inappropriate and should not be approved. Dr. Childers testified that if SWBT was concerned about restricting aggregation of this service, it should have simply included such a restriction in its tariff. Staff stated in its brief that the Commission had previously determined in Case No. TO-97-40⁸ that a restriction on the aggregation of toll services was a reasonable restriction on resale. Thus, it is Staff's position that SWBT should

⁸ In the Matter of AT&T Communications of the Southwest, Inc's Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.

specifically include the restriction on aggregation in the language of the tariff.

Ms. Myers testified that the morphing clause merely permits SWBT to limit Local Plus to existing customers or discontinue the offering if the use restrictions which apply to end users of the service, including aggregation, are found not to be applicable to all users of the service including other telecommunications companies. SWBT argues that it has attempted to address concerns about aggregation in other proceedings before the Commission but that the issue of whether or not resale restrictions will apply to resale of a local service has not yet been addressed.

It is OPC's position that the "morphing clause" "reduces the ability of OPC and other interested parties to effectively review and comment on the service, and severely restricts the PSC's oversight to protect the public interest and consumers." MCI, AT&T, and MMG were also generally opposed to the "morphing clause" being approved.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Although the type of services proposed by SWBT in this case are services the Commission would like to see implemented, the Commission

finds that as filed, the proposals are insufficient. Specifically, the Commission finds that Local Plus is not a local service and should not be filed in the company's Local Exchange Tariff. Since the Commission is rejecting the tariff and the Interim COS service was filed as part of the same tariff as Local Plus, Interim COS must also be rejected.

Because the Commission is rejecting the tariff, not all issues have been specifically addressed in this order. However, the Commission recognizes that it is important to have options available which will meet the needs of customers for expanded calling scope services. Therefore, the Commission will make some specific comments on several of the issues raised in order to provide guidance to telecommunications companies for offering Local Plus type services.

The evidence presented suggests that a Local Plus type of service is not appropriately classified as either local or toll, but rather is a hybrid and is more appropriately filed in the company's General Exchange Tariff. The Commission recognizes that in the rapidly changing telecommunications environment certain services are not easily categorized by the traditional "local" or "toll" definitions and that services are emerging which contain characteristics of both local and toll. The classification of these services should be considered on a case by case basis.

Since Local Plus has characteristics of both local and toll, i.e. is a hybrid, it is appropriate to use terminating access as a method of intercompany compensation. However, imputation of access charges would not be necessary if this type of service is available for resale at a wholesale discount to CLECs and IXC's. In order to enable customers to obtain this type of service by using the same dialing pattern, the

dialing pattern functionality should be made available for purchase to IXCs and CLECs on both a resale and an unbundled network element basis. Furthermore, it is in the public interest for such a plan to include optional detailed billing for customers at no more than a nominal fee. Detailed billing will enable customers to determine if they are receiving value from the service.

A restriction on aggregation of a this type service would be a reasonable restriction on resale. In addition, IXCs should not be required to obtain any additional authority or certification to resell a hybrid service such as Local Plus and resale should be available on the same schedule of implementation for which the LEC implements the service.

Because the Commission is rejecting this tariff, the issue of the so-called "morphing clause" (paragraph C.4. of the 2nd Revised Sheet 48 of Southwestern Bell Telephone Company's Local Exchange Tariff) is moot. However, the Commission notes that in order for a company to withdraw a tariff, it must follow Commission procedures, including obtaining approval for discontinuance of the service.

Finally, the Commission encourages all telecommunications providers to offer extended calling scope services through the use of their own facilities or by contracting with others. The Commission is aware that the public interest would be served by having such services available to all customers. Therefore, we encourage all telecommunications providers to work cooperatively with other carriers and with this

Commission to remove any barriers which would make such services cost prohibitive.

Conclusions of Law

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

The Commission has jurisdiction over the operations of, and the rates charged by, Southwestern Bell Telephone Company pursuant to Chapters 386 and 392 of the Revised Statutes of Missouri 1994. This law also gives the Commission authority to review all tariffs filed with the Commission and to reject or suspend tariffs that fail to comply with state law, Commission rule or order, if they include unjust or unreasonable rates, or are not in the public interest. §§ 386.250 and 392.200, RSMo Supp. 1997.

The burden of proof to show that a proposed tariff is just and reasonable is upon the telecommunications company. § 386.430. Based upon its findings of fact, the Commission concludes that Southwestern Bell Telephone Company has not met its burden of proof. Thus, the tariff is rejected and Southwestern Bell Telephone Company is encouraged to file tariffs in compliance with the Commission's findings above.

The Commission ordered the elimination of COS by March 1, 1998, in its Report and Order in Case No. TW-97-333, and by further Order issued on February 17, 1998 extended the elimination deadline. In the Order extending the deadline, the Commission authorized the elimination of COS in phases beginning June 1, 1998 and in no case ending later than February 28, 1999.

The Commission concludes that pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, each local exchange carrier has the

duty not to prohibit, and not to impose unreasonable or discriminatory limitations on, the resale of its telecommunications services.

The Commission concludes that pursuant to Section 251(c)(4) of the Telecommunications Act of 1996, local exchange carriers also have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company is granted leave to file its Initial Brief in excess of the page limit.

2. That MCI Telecommunications Corporation is granted leave to file its Initial Brief in excess of the page limit and to include highly confidential information.

3. That Southwestern Bell Telephone Company is granted leave to file its Reply Brief in excess of the page limit.

4. That Southwestern Bell Telephone Company's motion to file a late-filed exhibit is granted. The Oklahoma Corporation Commission's June 26, 1998, Final Order approving Southwestern Bell Telephone Company's Local Plus offering in Oklahoma will be included in the record.

5. That the proposed tariff filed by Southwestern Bell Telephone Company on February 5, 1998, is rejected. The specific tariff sheets which are rejected are:

P.S.C. Mo.-No. 24 Local Exchange Tariff

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2nd Revised Sheet 49, Replacing 1st Revised Sheet 49

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2nd Revised Sheet 51, Replacing 1st Revised Sheet 51

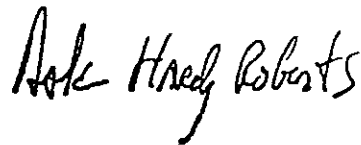
2nd Revised Sheet 52, Replacing 1st Revised Sheet 52

2nd Revised Sheet 53, Replacing 1st Revised Sheet 53

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6. That this Report and Order shall become effective on
September 29, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crompton, Drainer, Murray and
Schemenauer, CC., concur and
certify compliance with the
provisions of Section 536.080,
RSMo 1994.

Lumpe, Ch., absent.

Dated at Jefferson City, Missouri,
on this 17th day of September, 1998.