

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the joint application of)
Missouri Telephone Company for permission)
to merge with MTC Merger Corporation and)
ALLTEL Corporation for permission to)
acquire the capital stock of Missouri)
Telephone Company.)

CASE NO. TM-91-348

APPEARANCES: Robert L. Hawkins, Jr., Attorney at Law, Hawkins Law Offices
P.O. Box 1497, 103 Jackson Street, Jefferson City, Missouri 65102,
for Missouri Telephone Company.

H. Edward Skinner, Attorney at Law, Ivester, Skinner & Camp, P.A.,
111 Center Street, Suite 1200, Little Rock, Arkansas 72203, and
Stephen B. Rowell, Staff Attorney, ALLTEL Missouri, Inc.,
One Allied Drive, Little Rock, Arkansas 72203,
for ALLTEL Missouri, Inc.

John R. Bakewell, 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.

Penny G. Baker, Deputy General Counsel, Missouri Public Service
Commission, P.O. Box 360, Jefferson City, Missouri 65102,
for Staff of the Missouri Public Service Commission.

HEARING
EXAMINER: Beth O'Donnell

REPORT AND ORDER

Procedural History

On May 3, 1991, Missouri Telephone Company (MoTel) and ALLTEL Corporation (ALLTEL) filed a joint application requesting authority to merge MTC Merger Corporation (MTC) into MoTel, and approval of ALLTEL's acquisition of the capital stock of MoTel as a result of the proposed merger. By order issued May 22, 1991, the Commission directed its Executive Secretary to provide notice of this application and established an intervention deadline of June 21, 1991, which was later extended to July 19, 1991.

The Commission directed MoTel to use its bills to notify customers of the proposed merger. In addition, the Commission directed ALLTEL to instruct its wholly-owned subsidiary providing service in Missouri, ALLTEL Missouri, Inc. (AMI) to also use its bills to send notice of the proposed merger to AMI's customers.

There were no interventions in the case but the Office of the Public Counsel (Public Counsel) and the Commission's Staff (Staff) participated in it. By notice issued July 30, 1991, the Commission established a procedural schedule. Pursuant to the procedural schedule direct and rebuttal testimony were prefiled. A Stipulation and Agreement (Stipulation) was concluded among the parties and presented to the Commission at a hearing held September 4, 1991.

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.

MoTel and ALLTEL seek permission for MTC to merge into MoTel, and ALLTEL to acquire the capital stock of MoTel. ALLTEL is a Delaware corporation with its principal offices located at One Allied Drive, Little Rock, Arkansas 72202. ALLTEL owns all the capital stock of MTC and AMI. AMI is a certificated provider of telecommunications services in the State of Missouri. ALLTEL has no customers in the State of Missouri except through its wholly-owned subsidiary AMI. MTC is a Missouri corporation with its principal offices located at 205 East High School Drive, Dixon, Missouri 65459.

MoTel owns all the capital stock of Eastern Missouri Telephone Company (EMTC) and both are Missouri corporations with their principal offices located at 1705 South Lillian Street, Bolivar, Missouri 65613.

In their application MoTel and ALLTEL state that MoTel and EMTC will continue to maintain their separate corporate identities and financial books and

records and provide telephone services to their subscribers according to the terms and conditions currently authorized at the present rates.

As a result of negotiations among the parties, a Stipulation has been concluded wherein the parties to this case have settled the matters at issue among them and recommend that the Commission approve the application requesting authority for ALLTEL and MoTel to merge subject to six conditions set forth in the Stipulation. These conditions are as follows:

1. That ALLTEL and MoTel identify separately on their books and records the costs associated with the merger so that these costs can be identified and excluded from the cost of service charged to Missouri ratepayers;
2. That ALLTEL and MoTel identify for Staff and Public Counsel journal entries at the corporate parent level and the Missouri jurisdictional level so no acquisition costs in such journal entries will be included in the cost of service charged to Missouri ratepayers;
3. That MoTel will continue to abide by the Commission's quality of service rule, 4 CSR 240-32, and not consolidate with ALLTEL the reporting of data required by this rule for a period of two years without prior notice to Staff and Public Counsel;
4. That MoTel continue to maintain separate basic property records as long as it is a separate legal corporate entity;
5. That MoTel notify Staff and Public Counsel at least 60 days prior to relocating any portion of its books and records currently being kept in Missouri to any other jurisdiction; and
6. That MoTel notify Staff and Public Counsel at least two months prior to any scheduled or required notice to its customers or the

public of its intent to implement any plans during the first two years after the merger resulting in significant changes in its current operations.

These conditions are set forth with greater specificity in the Stipulation which is attached as Attachment A to this Report and Order and incorporated herein by reference. The Commission determines that, given these conditions to which MoTel has agreed for protecting ratepayers from any costs or quality of service concerns arising from the merger, there is no detriment to the public interest. Therefore, the Commission will authorize the merger as requested subject to the conditions set forth in the Stipulation.

Conclusions of Law

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

MoTel and AMI are public utilities rendering telephone service in the State of Missouri under the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo 1986, as amended. The Commission has jurisdiction of this case pursuant to Section 392.300, RSMo Cum. Supp. 1990, which provides, in pertinent part, that no telecommunications company shall transfer any part of its franchise, facilities or system nor by any means merge such system or franchise or any part thereof without having first secured from the Commission an order authorizing it so to do.

The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest since to deny a property owner the opportunity to dispose of such assets, in the absence of a showing of detriment to the public, would be to deny the property owner an important aspect of property ownership. *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 335 Mo. 448, 73 S.W.2d 393, 400 (Mo. banc 1934). *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980).

No party to this case has suggested that this proposed merger might be detrimental to the public interest provided the conditions set forth in the Stipulation are imposed. The Commission has determined that the proposed merger would not be detrimental to the public interest on this basis. Therefore, the Commission concludes that this merger and acquisition of stock should be authorized under the conditions enumerated herein.

IT IS THEREFORE ORDERED:

1. That Missouri Telephone Company and ALLTEL Corporation be authorized hereby to merge MTC Merger Corporation into Missouri Telephone Company.
2. That ALLTEL Corporation be authorized hereby to acquire all the capital stock of Missouri Telephone Company.
3. That nothing in this order shall be considered as a finding by the Commission of the reasonableness of the expenditures herein involved, or of the value for ratemaking purposes of the properties herein involved, or as an acquiescence in the value placed upon said properties by Applicants. Furthermore, the Commission reserves the right to consider the ratemaking treatment to be offered these transactions, and their resulting cost of capital, in any later proceeding.
4. That this order shall become effective on the 24th day of September, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch,
and McClure, CC., Concur.
Perkins, C., Absent.

Dated at Jefferson City, Missouri,
on this 13th day of September, 1991.

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Joint Application)	
of Missouri Telephone Company for)	
Permission to Merge with MTC Merger)	Case No. TM-91-348
Corp. and ALLTEL Corporation for)	
Permission to Acquire the Capital Stock)	
of Missouri Telephone Company)	

STIPULATION AND AGREEMENT

COME NOW ALLTEL Corporation ("ALLTEL"), Missouri Telephone Company ("MTC"), the Office of Public Counsel ("OPC") and the Staff of the Missouri Public Service Commission ("Staff"), hereafter referred to as the Stipulating Parties, and for their Stipulation and Agreement in the above-referenced docket state as follows:

The Stipulating Parties concur in and recommend that the Missouri Public Service Commission approve the Application filed by Applicants ALLTEL and MTC on May 3, 1991, subject to the following six (6) conditions:

1. Identification of Merger Associated Costs.

ALLTEL and MTC agree to identify separately on their books and records the additional or distinguishable costs directly incurred by ALLTEL and MTC in the negotiation, preparation, execution, and legal review of the proposed plan of merger and acquisition agreement; the preparation and mailing of all required notifications including notification to the shareholders of MTC and notification to cellular partners;

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obtaining all regulatory approvals including approval of the merger; and all other legal and professional fees incurred as a result of the proposed transaction. None of these merger costs will be included in the cost of service of Missouri ratepayers.

2. Treatment of Acquisition Adjustment. ALLTEL and MTC agree to identify for Staff and OPC journal entries which will result, at the corporate parent level and the Missouri jurisdictional level, from completion of the proposed merger and acquisition, and no such acquisition costs represented by or appearing in such journal entries will be included in or recovered by the cost of service of Missouri ratepayers.

3. Quality of Service Data. MTC will continue to be bound by the Commission's Quality of Service Rule, 4 CSR 240-32, and the collection of data and reporting of same will continue as prescribed in such rules. For a period of two (2) years from the date of the Commission's Order approving the proposed merger and acquisition, ALLTEL and MTC agree not to make any consolidation or aggregation in the reporting of such data without prior notice to Staff and OPC.

4. Continuing Property Records. MTC agrees that as long as MTC is a separate legal corporate entity it will continue to maintain separate basic property records so that studies can be performed based upon monthly information as to dates of installation and removal.

5. Books and Records. MTC agrees to notify Staff and OPC at least sixty days prior to relocating any portion of

its books and records currently kept in Missouri to other jurisdictions.

6. Notification of Changes in Operations. MTC agrees to notify Staff and OPC at least two months prior to any scheduled or required notice to customers or the public of the intent to implement any plans during the first two years after the merger is effective which will result in significant changes in its current operations. "Significant changes in its operations" is limited to: (a) the closing of a business office; or (b) the dismissal or termination (other than for disciplinary reasons or retirement) of a significant number of employees of MTC and its subsidiaries employed on the date of this Stipulation and Agreement. If no notice to customer or the public is required or contemplated, notification to Staff and OPC shall be provided two months before such plans are to be implemented. However, Staff and OPC may agree to a shorter period of time for implementation of such plans. The Staff and OPC reserve their right to bring any concerns they have with the plans to the attention of the Commission. However, such reservation of right and ALLTEL's and MTC's agreement with this paragraph should not be construed to confer any additional jurisdiction, supervision, control, authority, or power to the Commission over ALLTEL's or MTC's operations other than which it currently has by law.

ADDITIONAL STIPULATIONS

A. None of the Stipulating Parties shall be

precluded from filing a tariff, complaint, petition, application, or other pleading to amend, modify or nullify the Stipulation and Agreement or any provision thereof in the event extraordinary circumstances due to statutory, regulatory or judicial actions, acts of nature or of persons or entities who are not a party to this Agreement which are beyond the control of ALLTEL, MTC, OPC, or Staff, as the case may be, and which would cause the continued adherence to this Stipulation and Agreement to become unfair and unreasonable. The burden will be upon the party making such filing to demonstrate that extraordinary circumstances have arisen, beyond the control of ALLTEL, MTC, OPC, or Staff and which would cause the continued adherence to the Stipulation and Agreement to be unfair and unreasonable.

B. This Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of this case, and none of the parties to this Stipulation and Agreement shall be prejudiced or bound in any manner by the terms of the Stipulation and Agreement in any other proceeding, except as otherwise specified herein.

C. Except as are specifically applicable to this Stipulation, none of the parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying or allegedly underlying this Stipulation and Agreement.

D. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the stipulating parties waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1, RSMo 1986; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 1986; and their respective rights to judicial review pursuant to Section 386.510, RSMo 1986.

E. This Stipulation and Agreement has resulted from extensive negotiations among the Stipulating Parties and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation and Agreement in total, or in the event the merger is not consummated, the Stipulation and Agreement shall be null and void and no party shall be bound by any of the agreements or provisions hereof.

F. The Staff shall have the right to submit to the Commission, in memorandum form, an explanation of its rationale for entering into this Stipulation and Agreement, and to provide to the Commission whatever further explanation the Commission requests. The Staff's memorandum shall not become a part of the record of this proceeding and shall not bind or prejudice the Staff in any future proceeding or in this proceeding in the event the Commission does not approve the Stipulation and Agreement. Any rationales advanced by Staff in such a memorandum are its own and not acquiesced in or

otherwise adopted by the other stipulating parties.

Respectfully submitted,

ALLTEL CORPORATION

Valerie F Boyce

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Valerie F. Boyce

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CERTIFICATE OF SERVICE

I, Valerie F. Boyce, hereby certify that a true and correct copy of the foregoing Stipulation and Agreement was served on all parties of record, via hand delivery or 1st Class mail, this 23rd day of August, 1990.

Valerie F. Boyce

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