

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

APPEARANCES: Craig S. Johnson, Attorney at Law, Stockard, Andereck,
 Hauck, Sharp & Evans, P. O. Box 1280, Jefferson City,
 Missouri 65102, for Choctaw Telephone Company.

Randy Bakewell, Assistant Public Counsel, P. O. Box 7800,
 Jefferson City, Missouri 65102, for the Office of the
 Public Counsel and the Public.

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

Hearing
Examiner: Mark A. Grothoff

REPORT AND ORDER

On May 29, 1992, Choctaw Telephone Company (Choctaw) filed a proposed tariff to increase its monthly Community Optional Service (COS) surcharge from \$2.09 and \$4.17 per residential and business access line, respectively, to \$4.02 and \$8.04. The proposed tariff is designed to recover approximately \$933 per month in revenues, exclusive of gross receipts and franchise taxes, which Choctaw alleges it is losing due to its provision of COS. The proposed tariff bears an effective date of July 20, 1992.

On June 10, 1992, the Commission suspended Choctaw's proposed tariff for 120 days beyond July 20, 1992. On June 12, 1992, the Commission suspended Choctaw's proposed tariff for an additional 30 days until December 17, 1992.

On July 21, 1992, the Commission established a procedural schedule for this matter. The parties subsequently filed testimony with the Commission. A prehearing conference was held on September 14, 1992, at which Choctaw, the Staff

of the Commission (Staff) and the Office of the Public Counsel (Public Counsel) attended.

On September 21, 1992, the parties waived cross-examination and submitted this matter for consideration on the prefiled testimony and briefs. The parties subsequently filed briefs.

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:

Choctaw alleges that it is losing approximately \$933 per month due to its provision of COS and seeks to increase its COS interim local charge to \$4.02 and \$8.04 per residential and business access line, respectively, to recover those alleged losses. Choctaw proposes that its proposed tariff be implemented on an interim subject to refund basis.

Choctaw argues that on April 27, 1990, the Cole County Circuit Court (Circuit Court) ruled in *State of Missouri ex rel. Contel of Missouri, Inc. et al. v. Public Service Commission*, CV190-190cc, et al. (1990), that COS could not be ordered on a revenue reducing basis. Choctaw states that the Circuit Court ruled that revenues could not be reduced absent allegations and findings that existing rates and revenues are unreasonable. Choctaw also argues that since revenue neutrality in the provision of COS has been ordered by the Circuit Court and since Choctaw is losing revenues due to its provision of COS, its proposed tariff increasing its COS surcharge should be approved.

Staff agrees with Choctaw that the Circuit Court order entitles Choctaw to maintain revenue neutrality in its provision of COS. Staff estimates that Choctaw is losing \$887 per month due to its provision of COS and Staff states that Choctaw should be authorized to recover such losses outside of a general rate proceeding.

Staff states that its calculations are based on information supplied by Choctaw and that Staff is reasonably certain that its calculations are correct although Choctaw has had continuing problems with data collection and maintenance which raise the possibility that Staff's calculations were based on faulty underlying information. Staff's recommendation to allow Choctaw to recover revenue losses despite Choctaw's data problems is based on the proposal to collect such revenue on an interim subject to refund basis.

Public Counsel takes the position that the Circuit Court order entitles Choctaw to revenue neutrality only upon initial implementation of COS. Public Counsel argues that inasmuch as revenue neutrality has already been granted pursuant to the Circuit Court order, Choctaw cannot increase its COS interim local charge outside the context of a general rate proceeding.

Public Counsel states that Section 392.240 RSMo Supp. 1991, provides that rate changes may only be made after a review of all relevant factors in general, and of the average return upon the value of the utility's property in particular, and that the Circuit Court was simply implementing the provisions of Section 392.240 when it ordered that companies had to be given an opportunity for revenue neutrality or a fair return on equity before implementation of COS rates. Public Counsel argues that Choctaw's proposed COS surcharge increase should be rejected because Choctaw has not established, based on all relevant factors, that it is underearning or that its revenue on equity is unjust.

Public Counsel further states, alternatively, that Choctaw should be denied its surcharge increase because there are significant questions about the pre-COS and post-COS revenue information Choctaw has provided. Public Counsel argues that because of the problems associated with the information supplied by Choctaw, Choctaw has failed to meet its burden of proof.

Section 392.240 RSMo Supp. 1991, states in pertinent part:

Whenever the commission shall be of the opinion...that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any telecommunications company...are unjust, unreasonable, unjustly discriminatory or unduly preferential, or that the maximum rates, charges or rentals chargeable by any such telecommunications company are insufficient to yield reasonable compensation for the source rendered, the commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, charges and rentals to be thereafter observed....

The April 27, 1990 Circuit Court order states in pertinent part:

...the Commission's Report and Order...which reduces the existing rates and revenues of LECs involved in providing COS without taking any evidence or making any finding that the rates and revenues of the affected LECs are unlawful or otherwise unreasonable or...without maintaining revenue neutrality for those LECs is reversed....*State of Missouri ex rel. Contel, supra*, at p. 5.

The Commission finds that the Circuit Court, in ordering revenue neutrality or a fair return on equity upon implementation of COS rates, was following the provisions of Section 392.240 directing that all relevant factors, including a fair return on equity, be considered before a change in rates is implemented. Since all relevant factors had not been considered in establishing COS rates, the Circuit Court ordered that revenue neutrality be established upon the implementation of COS in order to protect the LECs. Once Choctaw's initial COS rates establishing revenue neutrality were approved, any change in such rates must comply with the provisions of Section 392.240.

Just as the Commission was prohibited from forcing Choctaw to implement a rate reduction without a reasonable opportunity to protect its return on equity, so Section 392.240 prohibits Choctaw from foisting a rate increase on its customers without considering all relevant factors, including Choctaw's return on equity. Although Section 392.240 requires that all relevant factors, including return on equity, be considered before any change in rates is

implemented, Choctaw's return on equity has not been presented or considered in this case.

Choctaw bears the burden of proof to show that the proposed surcharge increase is just and reasonable. The Commission finds that because not all relevant factors were presented or considered, Choctaw has failed to meet its burden of proof. Thus, the Commission determines that Choctaw's proposed tariff to increase its monthly COS surcharge should be rejected.

Conclusions of Law

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

Choctaw is a public utility subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392, RSMo 1986, as amended. The tariff filed by Choctaw which is the subject matter of this proceeding was suspended pursuant to Section 392.230, RSMo Supp. 1991.

The standard for Commission approval of the proposed surcharge increase is whether it is just and reasonable based on all relevant factors. Pursuant to Section 392.230.6, RSMo Supp. 1991, the burden of proof to demonstrate that the proposed surcharge increase is just and reasonable is upon Choctaw.

The Commission has found that Choctaw has failed to meet its burden of proof. Thus, the Commission concludes that the tariff filed by Choctaw to increase its monthly COS surcharge should be rejected.

IT IS THEREFORE ORDERED:

1. That the tariff filed by Choctaw Telephone Company in this case is hereby rejected.

2. That this Report and Order shall become effective on December 17,
1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC., Concur.

Dated at Jefferson City, Missouri,
on this 4th day of December, 1992.