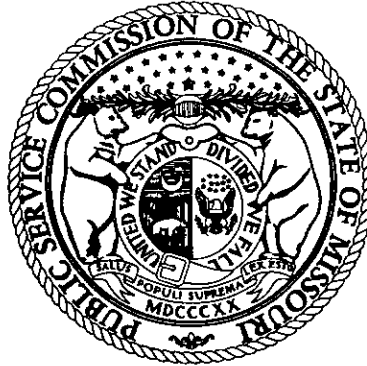


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



The Staff of the Missouri Public
Service Commission,

Complainant,

v.

Miller Telephone Company, a Missouri
Corporation,

Respondent.

Case No. TC-98-350

REPORT AND ORDER

Issue Date: May 6, 1999

Effective Date: May 18, 1999

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-98-350</u>
)	
Miller Telephone Company, a Missouri)	
Corporation,)	
Respondent.)	

APPEARANCES

William K. Haas, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

W.R. England, III, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for Miller Telephone Company.

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

Leo J. Bub, Senior Counsel, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

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.

REGULATORY LAW JUDGE: **Vicky Ruth.**

REPORT AND ORDER

Procedural History

On February 13, 1998, the Staff of the Missouri Public Service Commission (Staff) filed a complaint against Miller Telephone Company (Miller) regarding the rates and charges of Miller. The complaint notes that Staff completed an audit of Miller's books and records and has concluded that Miller's rates are unreasonable and that its revenues should be reduced by \$100,000 on an annual basis. The motion further noted that Staff discussed the results of its audit with Miller and requested that Miller modify its rates and charges, but that those discussions did not reach a satisfactory conclusion from the Staff's perspective.

On February 23, 1998, the Commission issued its Notice of Complaint directing Miller to answer by March 25, 1998. At Miller's request, the Commission granted the company an additional two weeks, from March 25, 1998, to April 8, 1998, in order to answer or satisfy the complaint. On April 8, 1998, the parties filed a Stipulation and Agreement. Staff stated in the stipulation that it conducted a per-book review of Miller's earnings based upon the twelve months ending June 30, 1997. Staff and Miller executed a Stipulation and Agreement resolving the issues surrounding Staff's audit.

On April 13, 1998, the Commission issued an Order Giving Notice and Setting Intervention Period. This order provided that any party wishing to intervene shall file an application to do so no later than

May 13, 1998. On that date, Southwestern Bell Telephone Company (SWBT) and AT&T Communications of the Southwest, Inc. (AT&T), filed applications to intervene. The Commission issued an order granting the intervention applications of SWBT and AT&T on May 27, 1998.

The May 27 order also scheduled a prehearing conference for June 16, 1998, and directed the parties to file a proposed procedural schedule. On June 19, 1998, the Staff filed a Motion to Establish Procedural Schedule, and the Commission issued an Order Adopting Procedural Schedule on July 20, 1998. Direct testimony was filed on behalf of Staff and Miller on August 6, 1998. Staff and Miller filed additional direct testimony on August 10, 1998. AT&T and Miller filed rebuttal testimony on September 14, 1998, and SWBT, Staff, and Miller filed surrebuttal testimony on October 13, 1998. Miller filed an additional affidavit on October 15, 1998.

The parties filed a Hearing Memorandum on October 27, 1998, and an evidentiary hearing was held on November 20, 1998. During the hearing, the Commission reserved Exhibit Nos. 13-16 for the late filing of exhibits offered in response to questions raised during the hearing. Although the parties were given the opportunity to make objections to these late-filed exhibits, no objections were filed. Miller filed an initial brief on January 13, 1999, and Staff and SWBT filed initial briefs on January 14, 1999. On February 1, 1999, Miller, Staff and SWBT filed notices that they would not be filing reply briefs. On the same date, AT&T filed a reply brief. The Office of the Public Counsel (Public Counsel) did not file either initial or reply briefs.

On February 24, 1999, Miller filed a motion to strike the reply brief of AT&T. Miller argued that AT&T was the only party to object to the Stipulation and Agreement, and that it is unlikely that a hearing would have been held if not for AT&T's intervention. Miller alleged that due to AT&T's failure to file an initial brief, the other parties declined the opportunity to file reply briefs since the absence of an initial brief from AT&T left nothing warranting a response. AT&T filed a response on March 8, 1999, and argued that an initial brief is not required in order for AT&T to reply to the initial briefs of other parties. AT&T alleged that it exercised its prerogative to merely reply to the contentions of the other parties as opposed to filing an initial brief itself. The Commission issued an order denying the motion to strike on March 23, 1999.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

I. Uncontested Issues

The Stipulation and Agreement submitted by Staff and Miller contains several provisions that did not draw objection from any party. Those provisions are:

A. Revenue Reduction

The Stipulation and Agreement provides that Miller's earnings will be reduced on an annual basis by approximately \$90,708, which is approximately the level of excess earnings identified in the Staff's audit.

B. Removal of Touchtone Charges

The Stipulation and Agreement would eliminate Miller's existing Touchtone additive, resulting in a decrease in annual local service revenue of \$18,264.

C. Depreciation Rates

The Stipulation and Agreement authorizes Miller to adopt new depreciation rates that are consistent with Staff's "generic" depreciation rates for small companies. The Staff provided a schedule which shows the revenue requirement impact resulting from the adoption of the stipulated depreciation rates is \$1,934.

D. Amortization

Miller is constructing a new building to connect the central office switch and business office buildings and is replacing backbone feeder cables with fiber optic cable. Miller is also replacing its

analog carrier. Miller previously obtained Commission approval to borrow \$2,098,600 for this construction. The Stipulation and Agreement authorizes Miller to book a special amortization of \$6,037 per month (\$72,444 per year), for the duration of Miller's modernization and construction program, and until the Commission approves a request by Miller to end it. The \$72,444 represents the difference between total overearnings (\$90,708) and the elimination of the touchtone charge (\$18,264). The special amortization will be used as a permanent reduction in Miller's rate base calculation.

The Commission notes that under the terms of the Stipulation and Agreement, Miller agrees to provide the Commission's Accounting Staff with semiannual financial statements in such detail as to specifically identify the special amortization. The Commission will require the Staff to provide an annual update or report to the Commission regarding the status of the special amortization and the method by which the new assets are booked.

II. Contested Issues

A. Approval of the Stipulation and Agreement

The Staff, Miller and Public Counsel argued that the Commission should approve the Stipulation and Agreement. SWBT did not oppose the Commission's approval of the Stipulation and Agreement in this case.

AT&T argued that this complaint proceeding is the proper forum to address Miller's intrastate access service rates. AT&T alleged that the Commission should reject the Stipulation and Agreement and address

the current rate disparity between Miller's intrastate interLATA and intrastate intraLATA access service rates.

B. Parity Between InterLATA and IntraLATA Access Rates

The major contested issue is whether Miller's access rates should be redesigned to bring interLATA and intraLATA access rates to parity. Staff argued that although Carrier Common Line (CCL) rate parity has been achieved for other companies, the Commission has stated in a recent decision¹ that the impact on the company's access customers must be mitigated where possible during the period of transition to a competitive environment. Staff stated that in regard to the switched access customers of Miller, CCL rate parity would simply translate into a rate increase for intraLATA traffic. Staff also envisioned that subsequent future proceedings might provide other avenues to achieve CCL rate parity. In addition, Staff argued that any overearnings the company might be experiencing will be short-lived in that once the company completes its modernization and upgrade program, it will no longer be experiencing any overearnings. Based on these considerations, Staff recommended the Commission reject the proposal to achieve Carrier Common Line rate parity.

Miller noted that although it is not opposed to the concept of bringing its interLATA and intraLATA access rates to parity, it does not believe that this is the case in which to do so. Miller stated that

¹ Case No. TR-97-567, In the Matter of the Tariff Filing of ALLTEL Missouri, Inc., to Consolidate Its Access Rate Tariffs, Report and Order adopted August 27, 1998.

setting access rates at parity in this case would shift access expense from one group of customers (i.e., interLATA) to another group of customers (i.e., intraLATA), and would likely create additional controversy.

The Office of the Public Counsel (Public Counsel) indicated that it supports the approval of the Stipulation and Agreement and indicated that no further adjustment to rate design is necessary at this time.

AT&T, however, recommended that the Commission set the originating and terminating CCL rate, for both interLATA and intraLATA service, at \$0.0367 per access minute of use. AT&T argued that setting the originating and terminating CCL rates for both interLATA and intraLATA access service at the same level provides a more equitable apportionment of the CCL cost/contribution recovery to Miller's intrastate access customers.

SWBT opposed AT&T's proposal to change access rates, arguing that AT&T seeks to redesign those rates to benefit itself. SWBT noted that AT&T proposed to significantly decrease interLATA rates (which are the access rates AT&T primarily pays) and fund that decrease by increasing rates to Miller's intraLATA access customers (primarily SWBT). SWBT alleged that it is inappropriate to require intraLATA access customers to fund this rate decrease for interLATA access customers. SWBT argued that increasing intraLATA access rates as proposed by AT&T would put upward pressure on short-haul toll rates, and would also discourage IXCs from offering intraLATA toll services in Miller's exchanges and participating in the intraLATA presubscription process there.

AT&T's position must be rejected. Although Common Carrier Line (CCL) rate parity has been achieved for some companies, the Commission finds that the impact on access customers is a factor which should be considered and mitigated where possible. Although AT&T's proposal may be revenue-neutral to Miller, it would increase access rates for Miller's intraLATA access customers by decreasing rates for the interLATA access customers. In this instance, the Commission declines to require the parties to bring interLATA and intraLATA access rates to parity as proposed by AT&T.

Conclusions of Law

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

Miller is a local exchange telecommunications service provider as defined under Section 392.410, RSMo Supp. 1998, and, therefore, is subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 392, RSMo.

The Commission has the legal authority to approve a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

Orders of the Commission must be based upon competent and substantial evidence on the record. § 536.140, RSMo 1994. Based upon its findings of fact, the Commission concludes that the Stipulation and Agreement submitted by Miller and Staff should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed by Miller Telephone Company and the Staff of the Missouri Public Service Commission on April 8, 1998, is hereby approved (see Attachment A).

2. That the Staff of the Missouri Public Service Commission shall provide the Commission with an annual update of Miller's financial statements in such detail as to specifically identify the status of the special amortization and the method by which the new assets are booked. The annual update shall be filed in a new docket within one year of the effective date of this order.

3. That those motions and objections not specifically ruled on in this order are hereby denied or overruled.

4. That late-filed exhibits numbered 13-16 are received into evidence.

5. That this Report and Order shall become effective on May 18, 1999.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Lumpe, Ch., Crumpton and Drainer,
CC., concur.
Murray and Schemenauer, CC., dissent,
with dissenting opinions attached.

Dated at Jefferson City, Missouri,
on this 6th day of May, 1998.

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

In the matter of the investigation into the)
earnings of Miller Telephone Company.)

Case No. TC-98-350

FILED
APR 08 1998
MISSOURI
PUBLIC SERVICE COMMISSION

STIPULATION AND AGREEMENT

The Staff of the Missouri Public Service Commission (Staff) has performed a per books review of the earnings of Miller Telephone Company (Company). The Staff's audit was based upon twelve (12) months ending June 30, 1997. Upon completion of its preliminary earnings analysis, the Staff began negotiations with the Company. Although the Company and Staff engaged in extensive negotiations, they were not able to resolve all of their differences and, on February 13, the Staff filed a complaint against Miller Telephone Company. Thereafter, the Company and Staff continued their negotiations and, as a result, stipulate and agree as follows:

1. The Company's annual earnings will be reduced by approximately \$90,708 on an annual basis.

2. This reduction in earnings is to be accomplished as follows:

A. Beginning on the effective date of a Commission Report and Order approving this Stipulation and Agreement in its entirety, the Company will eliminate its charge for touchtone service which is currently \$2 per month. The Company currently has approximately 761 touchtone customers. Thus, the elimination of this charge will result in a reduction in revenues of approximately \$18,264 annually.

B. Beginning the first full month after the effective date of a Commission Order approving this Stipulation and Agreement in its entirety, the Company will accrue depreciation expense based upon the depreciation rates contained in Attachment A attached hereto and

incorporated herein by reference. The Staff used these depreciation rates to calculate the Company's revenue requirement.

C. The Company is in the initial phase of a \$2,098,600 modernization and upgrade program (the financing for which the Commission recently approved in Case No. TF-98-109). The Staff does not oppose the Company's modernization and upgrade program. The Company anticipates that its construction program will be completed approximately fifteen (15) months after receipt of funds from the Rural Utility Services (RUS) Agency. Beginning the first full month after the effective date of a Commission Report and Order approving this Stipulation and Agreement in its entirety, the Company will book a special amortization of \$6,037 per month. This special amortization will result in an additional \$72,444 of charges to the depreciation reserve on an annual basis. The special amortization will continue for the duration of the modernization and upgrade program until such time as the Commission approves a request by the Company to end the special amortization. The Company and Staff agree that the special amortization will be used as a permanent reduction in the Company's rate base calculation. The Company agrees to provide the Commission's Accounting Staff semiannual financial statements in such detail as to specifically identify the special amortization.

3. The Company will prepare draft tariff sheets incorporating the rate changes identified in paragraph 2.A. above and provide such drafts to Staff no later than April 22, 1998.

4. The approval of this Stipulation and Agreement in its entirety by the Commission will satisfy Staff's complaint filed herein and conclude Staff's per books earnings investigation of the Company upon which said complaint was based.

5. None of the signatories to this Stipulation and Agreement shall have been deemed to have approved or acquiesced in any ratemaking or procedural principle or any method of cost determination or cost allocation, or any service or payment standard and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

6. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation and Agreement in its entirety, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

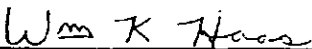
7. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights to present testimony and to cross-examine witnesses pursuant to Section 526.070(2) RSMo.; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo. 1994; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo. 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo. 1994.

8. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each Party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all Parties. All memoranda submitted by the Parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all Parties, and shall not become

a part of the record of this proceeding or bind or prejudice the Party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves this Stipulation and Agreement.

WHEREFORE, the signatories respectfully request that the Commission issue its order approving the terms of this Stipulation and Agreement and for such other orders as are reasonable in the circumstances.


Respectfully submitted,



William K. Haas
Senior Counsel
Missouri Bar No. 28701

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Attorney for the Staff of the
Missouri Public Service Commission



W. R. England, III
Missouri Bar No. 23975

Brydon, Swearingen & England, P.C.
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(573) 635-7166
(573) 634-7431 (Fax)

Attorneys for Miller Telephone Company

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 8th day of April, 1998.

Wm K Haas

Miller Telephone Company
Depreciation Rates
Case No. TC-98-350

Account	Account Number	Net Salvage	Average Service Life	Rate (%)
Vehicles - Combined	2112	12	8.6	10.23
Vehicles - Passenger Cars	2112.1	10	6.3	14.29
Vehicles - Light Trucks	2112.2	9	7.9	11.52
Vehicles - Heavy Trucks	2112.3	13	9.9	8.79
Garage Work Equipment	2115	1	13.0	7.62
Other Work Equipment	2116	6	14.0	6.71
Buildings	2121	2	35.0	2.80
Furniture	2122	6	14.0	6.71
Office Equipment - Office Support	2123.1	3	10.0	9.70
Office Equipment - Company Communications	2123.2	3	8.4	11.55
General Purpose Computers	2124	13	6.4	13.59
Digital Switching	2212	0	15.0	6.67
Radio Equipment	2231	2	11.3	8.67
Circuit Equipment- Combined	2232	-3	10.0	10.30
Circuit Equipment - Digital	2232.x	-3	10.0	10.30
Circuit Equipment- Analog	2232.x	-3	10.0	10.30
Public Telephones	2351	10	10.3	8.74
Other Terminal Equipment/Subscriber Carrier	2362	0	8.7	11.49
Poles	2411	-30	21.0	6.19
Aerial Cable - Metallic	2421.1	-16	21.0	5.52
Aerial Cable - Fiber	2421.2	-10	21.0	5.24
Aerial Cable - Drop	2421.3	-15	17.0	6.76
Underground Cable - Metallic	2422.1	-5	26.0	4.04
Underground Cable - Fiber	2422.2	-5	28.0	3.75
Buried Cable - Metallic	2423.1	-3	24.0	4.29
Buried Cable - Fiber	2423.2	-3	28.0	3.68
Buried Cable - Drop	2423.3	-2	21.0	4.86
Submarine Cable	2424	-1	21.0	4.81
Aerial Wire	2431	-70	12.0	14.17
Conduit Systems	2441	0	50.0	2.00

Attachment A

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

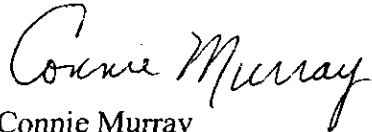
The Staff of the Missouri Public Service)
Commission,)
Complainant,)
v.)
Miller Telephone Company, a Missouri)
Corporation,)
Respondent.)

Case No. TC-98-350

Dissenting Opinion of Commissioner Connie Murray

I respectfully dissent from the majority opinion. For the reasons articulated in the Dissenting Opinion of Commissioner Schemenauer, I would reject the Stipulation and Agreement.

Respectfully submitted,



Connie Murray
Commissioner

Dated at Jefferson City, Missouri,
on this 6th day of May, 1999.

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

The Staff of the Missouri Public Service)
Commission,)
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v.)
Miller Telephone Company, a Missouri)
Corporation,)
Respondent.)

Case No. TC-98-350

Dissenting Opinion of Commissioner Robert G. Schemenauer

I respectfully dissent from the majority opinion regarding the disposition of the overearnings of Miller Telephone Company (Miller).

It is not in the public interest to reward Miller with an open-ended special annual amortization of \$72,444 after it has overearned \$100,000 annually at the expense of Missouri telephone subscribers.


Staff presented a weak argument in recommending this accounting sleight of hand. It assumed that Miller could justify, and would request and receive, a rate increase after the modernization project was completed. This is unfounded speculation on the part of Staff.

A better resolution would have been to reduce both the interlata and intralata originating and terminating CCL rates by the full \$72,444. These exorbitant rates are being paid by all Missouri telephone subscribers who call into or out of Miller's exchange.

Staff suggestions that the disparity between CCL rates and their reduction could be considered in another docket are neither expedient nor justified. Miller's CCL rates should have been addressed to the extent possible in this case. Staff additionally suggested that Miller's CCL rates could be reduced by shifting the cost to the Missouri Universal Service Fund when it is implemented. This is another accounting sleight of hand. The telephone subscribers of Missouri will still be paying these rates albeit under a different name.

For these reasons and others I respectfully dissent and pray that further creative accounting maneuvers that reward overearning companies are disposed of before being included in a proposed Stipulation and Agreement.

Respectfully submitted,



Robert G. Schemenauer
Commissioner

Dated at Jefferson City, Missouri,
on this 6th day of May, 1999.