BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the filing by Southwestern Bell Telephone Company of new intrastate tariffs, rates, tolls and charges applicable to intrastate telecommunication services furnished within the State of Missouri.	CASE NO. TR-83-253
In the matter of Southwestern Bell Telephone Company for authority to file tariffs offering a Rate Stability Plan for Centrex C.O. Customers.	CASE NO. TR-83-288

REPORT AND ORDER - PART I -
ACCESS CHARGE RATE STRUCTURE AND METHODOLOGY,
AND INTRALATA TOLL SETTLEMENTS

Date Issued: November 22, 1983

Date Effective: January 1, 1984

SOUTHWESTERN BELL TELEPHONE COMPANY

Cases No. TR-83-253 and TR-83-288

Report and Order, Part I
Access Charge Rate Structure and Methodology
and IntraLATA Toll Settlements

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SOUTHWESTERN BELL TELEPHONE COMPANY
CASES NO. TR-83-253 and TR-83-288

SUMMARY

The Commission finds that there shall be no intrastate end user common line charge in Missouri. The Commission rejects the imposition of a charge imposed on customers for toll "access" as a distinct service or rate element.

The Commission adopts a statewide access charge tariff structure identical to the Company proposed access structure with respect to the carrier's carrier element and the carrier's common line element applicable to access services provided to interexchange carriers.

The access charge tariffs to be authorized in these proceedings shall not be applicable to radio common carriers.

The Commission adopts the Staff's proposal that two statewide pools be created for the purpose of establishing statewide carrier access tariffs and for the purpose of establishing statewide intraLATA toll rates. Staff's proposal recognizes that access charge tariffs must be in place by January 1, 1984, for all Missouri telephone companies. Staff's proposal preserves the existing statewide toll system to the greatest extent possible during a one-year transition period.

The Commission finds that the cost of a local loop can arise from a demand for local and/or long distance services and therefore should be recovered through at least local exchange, carrier access and toll services. To announce that economic efficiency requires that interLATA toll carriers be provided with free access to the local loop is patently absurd. The FCC Plan which intends to place virtually all costs associated with the local loop on end users is contrary to public policy in that it threatens the goal of universal service. Therefore, the Commission rejects the imposition of a similar plan for intrastate Missouri telecommunication services.

The Commission is not persuaded that bypass, arbitrage, and competition necessitate the imposition of an access charge rate level methodology identical to that filed at the federal level.

The Company has not proven any imminent threat of bypass and has not shown what portion of either existing or potential bypass in Missouri is uneconomic or related to pricing decisions of this Commission.

The Commission determines that developments of bypass technologies and specific or "targeted" bypass potential should be carefully monitored. Staff, Public Counsel and the Company should attempt to establish a reasonable mechanism for regulatory response to specific or "targeted" bypass threats.

The Commission has jurisdiction over telecommunication services which originate and terminate within the State of Missouri. The Commission is committed to assuring that OCCs not provide intrastate telecommuniations services without authority of this Commission. The Commission will establish and enforce appropriate mechanisms for accurately recognizing intrastate traffic. The Commission will not establish an access rate level methodology based on assertions of the inevitable misreporting of OCC's as to the nature of their traffic.

The record reflects that WATS resellers are operating and OCCs are operating within Missouri although the nature and extent of their services are unknown.

A blanket restriction against intraLATA competition as proposed by Staff is premature since there exist no WATS resellers nor OCCs which have secured a certificate from this Commission authorizing intraLATA operations. All toll providers providing toll service within Missouri are subject to Commission regulation and the Commission expects all WATS resellers and OCCs to seek a certificate from this Commission before engaging in intrastate telecommunications services. Therefore, the General Counsel shall immediately notify all OCCs and WATS resellers known or reasonably believed to be doing business intrastate in Missouri and advise them to file an application for certification with this Commission no later than January 31, 1984. Any OCC or WATS reseller doing such business in Missouri without Commission certification could face liability for statutory fines and penalties under the provisions of Sections 386.570 and 386.600, RSMo 1978.

The Commission finds that a premium access charge should be assessed against AT&T Communications, as an interim measure, because the quality of interconnection of OCCs to local exchange networks is inferior to the quality of interconnection available to AT&T Communications in Missouri.

In recognition of the changing economic climate in the telecommunications industry and of the need to address appropriate pricing for telecommunications services, the access services tariffs, the statewide toll intraLATA toll tariffs, and related pools authorized in this order shall remain in effect for an interim one year period.

The Commission will address the Universal Service Fund further in its Report and Order, Part II, in this case.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CASE NO. TR-83-253

In the matter of the filing by Southwestern Bell Telephone Company of new intrastate tariffs, rates, tolls and charges applicable to intrastate telecommunication services furnished within the State of Missouri.

CASE NO. TR-83-288

In the matter of Southwestern Bell Telephone Company for authority to file tariffs offering a Rate Stability Plan for Centrex C.O. customers.

APPEARANCES: Jack C. Lorenz, General Solicitor - Missouri, James E. Taylor, General Attorney - Missouri, Alfred G. Richter, Jr., Edward L. Eckhart, Paul G. Lane, and Michael Thompson, Attorneys at Law, 100 North Tucker, Room 630, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

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James M. Fischer, Public Counsel and Michael C. Pendergast, Assistant Public Counsel, 1014 Northeast Drive, Jefferson City, Missouri 65101, for the Office of the Public Counsel and the public.

Kent M. Ragsdale, General Counsel, Steven Dottheim and William C. Harrelson, Deputy General Counsel, and Edward J. Cadieux, Assistant General Counsel, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REPORT AND ORDER - PART I- ACCESS CHARGE RATE STRUCTURE AND METHODOLOGY, AND INTRALATA TOLL SETTLEMENTS

Procedural Background: On February 1, 1983, Southwestern Bell Telephone Company (hereinafter Southwestern Bell, SWB or the Company) submitted to the Missouri Public Service Commission (hereinafter the Commission) an Application and revised tariff sheets reflecting rates for intrastate telecommunication services in the State of Missouri. Said tariffs were designed to permanently increase annual revenues by $254.8 million. The Company gave the revised tariff sheets an effective date of March 3, 1983. The Commission accepted the revised tariff sheets for filing and assigned this matter Docket No. TR-83-253. Pursuant to Commission order, an early prehearing conference was held on February 15, 1983. On March 2, 1983, the Commission suspended the revised tariff sheets to January 1, 1984.

The Order of March 2, 1983, also established deadlines for the filing of minimum filing requirements and prepared testimony and schedules by the Company, and for the filing of prepared direct testimony and schedules by other parties; and established April 1, 1983, as the date by which applications to intervene were to be filed, August 15, 1983 as the date for the prehearing conference to begin, and August 29, 1983 as the date for the hearing to begin.

Pursuant to Commission Order, local hearings in this case were held as follows: in Jefferson City, Missouri on June 17, 1983; Cape Girardeau, Missouri on June 24, 1983; Springfield, Missouri on July 8, 1983; Kansas City, Missouri on July 15, 1983; and St. Louis, Missouri on July 22, 1983. The Company provided notice of the local hearings as directed by the Commission and in compliance with 4 CSR 240-2.110(12).

The following parties have been granted intervenor status:

United States Department of Defense (DOD)

State of Missouri (State)

City of St. Louis, Missouri (St. Louis)

Missouri Public Interest Research Group (MoPIRG)

Missouri Alarm Association (MAA)

General Telephone Company of the Midwest (GTMW)

Fidelity Telephone Company (Fidelity)

Continental Telephone Company of Missouri (Continental)

Eastern Missouri Telephone Company (Eastern Missouri)

Missouri Telephone Company (Missouri Telephone)

Citizens Telephone Company (Citizens)

MoKan Dial, Inc. (Mo-Kan)

City of Cape Girardeau, Missouri (Cape Girardeau)

City of Dexter, Missouri (Dexter)

City of Mexico, Missouri (Mexico)

Central Telephone Company of Missouri (Centel)

United Telephone Company of Missouri (United)

U.S. Telephone, Inc. (U.S. Tel)

William G. Bowles, Jr., d/b/a Mid-Missouri Mobilfone (Mobilfone)

City of Edina, Missouri (Edina)

City of Chillicothe, Missouri (Chillicothe)

Allied Telephone Company of Missouri, Inc. (Allied)

Goodman Telephone Company (Goodman)

Seneca Telephone Company (Seneca)

Mid-Missouri Telephone Company (Mid-Missouri)

Lathrop Telephone Company (Lathrop)

Grand River Mutual Telephone Corporation (Grand River)

Kingdom Telephone Company (Kingdom)

Ellington Telephone Company (Ellington)

Oregon Farmers Mutual Telephone Company (Oregon)

Miller Telephone Company (Miller)

Northeast Missouri Rural Telephone Company (Northeast Missouri)

Green Hills Telephone Corporation (Green Hills)

GTE Sprint Communications Corporation (GTE Sprint)

Steelville Telephone Exchange, Inc. (Steelville)

Le-Ru Telephone Company (Le-Ru)

Alma Telephone Company (Alma)

Granby Telephone Company (Granby)

McDonald County Telephone Company (McDonald County)

Mark Twain Rural Telephone Company (Mark Twain)

Rock Port Telephone Company (Rock Port)

Craw-Kan Telephone Cooperative, Inc. (Craw-Kan)

AT&T Communications of the Southwest (AT&T-C) [previously known as ATT Interexchange Organization (ATTIX) or Bell System Missouri Interexchange Organization (BSMIO)]

AT&T Information Systems, Inc. (ATTIS) [previously known as American Bell, Inc.]

The City of Trenton, Missouri, the Missouri Hotel and Motel Association and the Missouri Retailers Association withdrew their interventions prior to the prehearing conference.

On April 20, 1983, the Company filed its Motion for Protective Order regarding the use and handling of proprietary information. On May 11, 1983, the Commission issued its Protective Order.

On May 6, 1983, the Company filed its Request to File Testimony Out of Time on behalf of Company witness Dr. Alfred Kahn. On June 6, 1983, the Commission granted the Company's request.

By its Order of May 6, 1983, the Commission ordered an early prehearing conference to discuss various true-up matters. This prehearing conference was held on May 18, 1983 as scheduled.

On March 18, 1983, the Company filed proposed tariffs providing for the introduction of a Rate Stability Plan for Centrex C.O. customers. On May 5, 1983 the Commission suspended these tariffs for 120 days until September 2, 1983 and instituted Case No. TR-83-288. On May 6, 1983 the Commission ordered Case No. TR-83-288 consolidated with Case No. TR-83-253 and further ordered the proposed tariffs suspended until March 2, 1984. On June 20, 1983 the Commission approved the Company's Rate Stability Plan for Centrex C.O. customers on an interim basis.

On May 18, 1983, the Company filed its Request for Extension of Time in Which to File Testimony and Request for Additional Hearing Dates. On June 6, 1983 the Commission granted the Company's request.

On June 24, 1983, the Staff filed its Motion for Continuance. Company filed a response to Staff's motion on June 29. On July 25, the Commission again modified the schedule of proceedings.

On August 9, 1983, the Staff, Company and Public Counsel filed a Joint Motion for Continuance of filing deadlines for Staff's direct testimony and schedules on rate of return, rate design, access charge rate structure and settlements, and Public Counsel's supplemental testimony and schedules on rate design and access charge rate structure. It was further requested that the prehearing conference on rate of return, settlements, rate design, quality of service, access charge rate structure and policy be held on the dates of August 24, 1983 through September 2, 1983. It was suggested in this motion that the cross-examination on those issues be held on the dates of September 6, 1983 through September 23, 1983. It was also requested that the Company's filing dates for updated accounting testimony and schedules as well as access charge rate levels be extended to September 23, 1983. This date was also to be the filing date for other parties' accounting testimony and schedules. The date for the filing of direct testimony and schedules on access charge rate levels by Staff, Intervenors and Public Counsel was sought to be changed to October 7, 1983. This motion further suggested that the accounting prehearing conference should begin on October 3, 1983 and the hearing should commence on October 10, 1983. Finally, this motion sought to change the hearing date on access charge rate levels to October 17, 1983 through October 21, 1983. By its Order of August 11, 1983 the Commission granted this Joint Motion except that the Commission's Order established the hearing dates for the accounting hearing to commence on October 11, 1983.

The prehearing conference began on August 24, 1983. The following parties did not attend or communicate with any party respecting their intention regarding this proceeding: Cape Girardeau, Dexter, Mexico, Edina and Chillicothe.

On September 1, 1983, AT&T and AT&T Information Systems, Inc. (ATTIS, and formerly known as American Bell, Inc.) filed an Application for Late Intervention in these proceedings. The Commission's decision to grant leave to ATTIS to intervene was announced from the bench during the hearing on September 7, 1983. On the same day, ATTIS filed a "Motion to Sever and Suspend" and a "Motion for Continuance." By Order of the Commission on September 8, 1983, which Order was filed in written form on September 13, 1983, the Motion to Sever and Suspend was denied and the Motion for Continuance was granted. As a result, the rate design issue pertaining to inside complex wire was continued until the October portion of the hearings in this case. A schedule of proceedings pertaining to that issue was also set by the Order filed on September 13.

On September 6, 1983, Southwestern Bell, Staff and Public Counsel filed with the Commission a Joint Motion for Partial Rescheduling respecting the portion of the accounting issues concerning the Central Services Organization (CSO) budget. On September 14, 1983, the Commission issued its Order Setting Hearing Days for the CSO Issue, granting the Joint Motion for Partial Rescheduling.

The accounting and complex wire prehearing conference commenced on October 3, 1983. The only parties in attendance were Southwestern Bell, Staff, Public Counsel, AT&T Communications and ATTIS. The prehearing conference on access charge rate levels commenced on October 11, 1983.

Hearings were held before the Commission on September 6-23, 1983, inclusive, on the issues of policy, rate design, rate of return, quality of service and access charge rate structure and methodology. An additional day of hearing on the access charge rate structure and methodology issue was held on October 5, 1983.

On October 12, 1983, certain accounting issues were submitted to the Commission without cross-examination and hearings were held on the management efficiency issue. The hearing of that issue continued to October 13, 1983.

Hearings concerning access charge rate levels were held before the Commission on October 17, 19-21, and 26, 1983. Those hearings included testimony concerning access services billing and collection. On October 18, 1983, the complex inside wire rate design issue was heard by the Commission.

On November 1, 1983, a Stipulation and Agreement in settlement of the CSO accounting issue was presented to the Commission.

On November 15, 1983, the Commission issued its Order setting additional hearings on contested accounting issues to be held on November 21-23, and 30, and December 1,1983.

On October 12, 1983, various radio common carriers (RCCs) doing business in the State of Missouri filed a complaint against Southwestern Bell Telephone Company in P.S.C. Case No. TC-84-66 (<u>Atlas Mobilfone, Inc., et al., v. Southwestern Bell Telephone Company</u>). The Complaint prayed an Order of the Commission setting apart, in a separate docket, all issues concerning Southwestern Bell's proposed access charges for interconnection with radio common carriers, and freezing the rates for RCC interconnection at current levels pending completion of that separate proceeding. By Order of October 14, 1983, issued in Case No. TC-84-66 and in Case Nos. TR-83-253 and TR-83-288, the Commission set oral argument of counsel for October 20, 1983 to address the procedures which should be followed by the Commission for deciding the issues raised in the complaint case. By separate Order in Case No. TC-84-66, issued simultaneouly with this Report and Order, the Complaint is being dismissed for the reasons stated therein.

Other procedural matters were presented to the Commission during the course of these proceedings which have not been set out in this Report and Order, but which are reflected in the official case file of these proceedings.

Initial briefs were filed by the parties to this case concerning the September portion of the hearings (as supplemented on October 5) on or about October 17, 1983. Reply briefs were filed on that portion of the hearings on or about October 28, 1983. Initial briefs concerning access charge rate levels were filed on or about November 10, 1983, and reply briefs on that issue were filed on or about November 18, 1983. The remaining issues, other than certain contested accounting issues, were addressed in briefs filed on November 14, 1983.

In the first hearing memorandum filed by the parties in this case (Joint Exhibit #1), the Commission was urged to issue its Order establishing the proper rate structure for access charges, and the methodology to be used for deriving access charge rate levels, in advance of its Order addressing the other issues in this case, in order to allow all telephone companies within the Commission's jurisdiction to file appropriate and necessary access services tariffs to become effective on January 1, 1984. Therefore, the Commission's Report and Order in this case is divided into two (2) parts. The instant Report and Order, Part I, addresses access charge rate structure and rate level methodology, and intraLATA toll settlements. The remaining issues before the Commission in this case will be addressed in Report and Order, Part II, to follow.

Findings of Fact

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

I. <u>Setting the Stage: Some Background on Separations and Settlements, Competition, Divestiture and Access Charges</u>:

Historically, telecommunications services in the United States have been provided by regulated monopolies. In order to effectuate the public policy goal of making affordable telephone service available to all citizens ("universal service"), competition in telephone service was prohibited at both the federal and state levels, and systems of nationwide and statewide average pricing of telephone services were instituted. The telephone system became an integrated end-to-end system, so that any telephone subscriber could call any other telephone subscriber even though each was served by a different telephone company. Uniform rate schedules were developed based on average costs, and the telephone companies "pooled" all revenues produced by the application of the uniform rate schedules to joint service, and the expenses, taxes, property costs and reserves related to those services. The various telephone companies considered themselves a "partnership" in this noncompetitive market.

Systems of separations, and the divisions of revenues and settlements related thereto, have been developed as part of this integrated telephone system. Under the system of dual regulation (federal and state) of the telephone companies, separations procedures have determined the allocation of a telephone company's plant, revenues, expenses, taxes and reserves between the interstate and intrastate jurisdictions. The procedures prescribed for such separations are set forth in the <u>Separations Manual</u> issued by the Cooperative Committee on Communications of the National Association of Regulatory Utility Commissioners (NARUC) and the Federal Communications Commission (FCC). The Manual has been incorporated by reference into the FCC's Rules and Regulations as Part 67. Current separations procedures were adopted by the FCC in 1970, and are generally referred to as the "Ozark Plan".

Settlements procedures were also developed among the telephone companies, based on the Separations Manual, to govern the payments from the partnership pool to independent telephone companies for participation with others in the provision of joint services. Settlements payments have been based on individual companies' separations studies or on average schedules.

In addition, division of revenues procedures were developed within major telephone companies such as the Bell System for the allocation of revenues produced by application of uniform rate schedules to services supplied among the affiliated carriers (eg., AT&T Long Lines and twenty-four [24] Bell System operating companies) on the basis of cost results produced by uniform separations study methods. Thus, the telephone companies recovered access costs through the end-to-end, bundled rates for intrastate and interstate message toll service (MTS), wide area telephone service (WATS) and private line services, and were compensated through the division of revenue and settlements processes.

Since 1956, a series of actions at the federal level have introduced and increased competition in the regulated telecommunications industry. The first inroads of competition into the previously monopolistic telephone markets were made in the area of customer premises equipment (CPE), with the decisions of the Federal Communications Commission in the Hush-a-Phone and Carterfone cases. Hush-a-Phone v. U.S., 238 F.2d 266 (D.C.Cir. 1956); Re: Use of Carterfone in Message Toll Telephone Service, FCC Docket No. 16942, 77 PUR3d 417 (1968).

In 1971, the Federal Communications Commission allowed the entry of other common carriers (OCCs) into the long distance telecommunications market. Re: Specialized Common Carriers Services, First Report and Order, FCC Docket No. 18920, 29 FCC2d 870 (June, 1971). A long legal battle between OCCs and AT&T ensued as OCCs sought to secure interconnection with the local network in order to provide competitive telecommunications service. The OCCs won this battle before the FCC and the federal courts, thereby becoming legitimate competitors in the interstate long distance telecommunications market. See Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 250 (3rd Cir. 1974); MCI Telecommunications Corp. v. FCC, 561 F.2d 365 (D.C. Cir. 1977); MCI v. FCC, 580 F.2d 590 (D.C. Cir. 1978). As OCC competition developed, the telephone companies began to provide access service to the OCCs under special OCC access tariffs.

In 1974, the United States Department of Justice (DOJ) filed an antitrust lawsuit against AT&T, Western Electric Co., Inc. and Bell Telephone Laboratories, Inc. (Bell Labs), alleging monopolization by the defendants with respect to a broad variety of telecommunications services and equipment in violation of Section 2 of the Sherman Antitrust Act. In this lawsuit, the government initially sought the divestiture from AT&T of the Bell operating companies (BOCs) as well as the divestiture and dissolution of Western Electric. Although the DOJ changed its requested relief several times over the next several years, the divestiture of all, or at least some, of the BOCs remained one of the government's principal alternative relief requests.

Meanwhile, in 1978, the FCC initiated Docket No. 78-72 to determine the optimal market structure for both message toll service (MTS) and wide area telephone service (WATS). The advent of competition for MTS necessitated the establishment of an appropriate compensatory mechanism to allow exchange telephone companies to recover their "access" costs for providing originating and terminating access to interexchange carriers. This docket would result, in 1983, in significant changes in the existing separations procedures and pricing philosophy, as discussed below.

While the FCC continued its investigation in Docket No. 78-72, it initiated a Joint Board proceeding addressing two other related aspects of the separations process. In FCC Docket No. 80-286, the FCC removed embedded customer premises equipment (CPE) from the separations process by establishing a "base amount" for separations purposes and reducing that amount by 1-60th a month for five (5) years beginning in January, 1983. No investment or expense associated with CPE incurred after January 1, 1983 is allowed to be allocated to the interstate jurisdiction. In addition, after sixty (60) months, all amounts in the CPE plant accounts as of January 1, 1983 are to be removed from the separations process so that, at the end of that five (5) year period, all investment associated with embedded CPE will be allocated to the intrastate jurisdiction. Secondly, the FCC in Docket No. 80-286 imposed a freeze on the subscriber plant factor (SPF) at the average 1981 level. This factor is used under the "Ozark Plan" to allocate investment in non-traffic-sensitive (NTS) plant to the interstate and intrastate jurisdictions. "NTS" plant refers to the "local loop" between a customer's premises and the telephone company's local central office, and specifically includes station equipment, subscriber lines, and the non-traffic-sensitive portion of central office equipment. Although the freeze was adopted for the stated intent of preserving the status quo pending the results of the Federal-State Joint Board investigation, the language of the FCC's decision made it clear that, in fact, the FCC intended to halt the increase in the total interstate allocations of these NTS costs.

In October of 1983, the Federal-State Joint Board recommended to the FCC in Docket No. 80-286 that the current frozen SPF percentage be continued until January 1, 1986, followed by a transition period in which a basic twenty-five percent (25%) interstate NTS allocation factor will be phased in. Under the Joint Board recommendation, no telephone company's service area within a particular state will be subject to a decrease in its interstate NTS allocation of more than ten (10) percentage points in any one (1) year. If the FCC adopts the Joint Board recommendation, SPF will be replaced by this equal percentage basic NTS allocation of twenty-five percent (25%), which is approximately equal to the current nationwide average interstate allocation of NTS local exchange plant costs.

Two other recent developments in this ongoing process of change in telecommunications markets have had far-reaching and foundational impact on the entire telecommunications industry, and the agencies of government which regulate that industry. In 1982, a consent decree was entered into between the parties in the antitrust lawsuit which had been filed in 1974 by the United States Department of Justice (DOJ) against AT&T, and Western Electric Company and Bell Labs. This consent decree modifies a 1956 consent decree entered into by the same parties in settlement of an earlier antitrust suit brought by the government against AT&T. As a result, the 1982 consent decree is referred to as the Modified Final Judgment, or MFJ. U.S. v. AT&T, et al., 582 F.Supp. 131 (D.D.C. 1982), aff'd., 103 S.Ct. 1240 (1983). At the heart of the MFJ is the requirement that AT&T divest itself of the twenty-two (22) wholly-owned Bell Operating Companies (BOCs). In addition, the FCC in February, 1983, issued its Third Report and Order in Docket No. 78-72, establishing a new system of access charges which would, over a six-year period, shift virtually all of the interstate NTS costs associated with access to the end user customer.

One major rationale underlying the antitrust lawsuit, and underlying the court's approval of the consent decree, was that AT&T had the ability to engage in anticompetitive conduct because of its control of the local operating companies. Judge Harold Greene, in his Opinion issued August 11, 1982, stated that divestiture of the operating companies would prevent AT&T from discriminating against intercity competitors, either by subsidizing its own intercity services with revenues from the monopoly local exchange services, or by obstructing its competitors' access to the local exchange network.

The opinion of the United States District Court for the District of Columbia in U.S. v. AT&T, et. al., approving the consent decree was filed on August 11, 1982. Subsequent opinions of the court refining the details of the consent decree were filed on April 20, 1983 and on July 8, 1983. Although the court has stated that "it would be misleading to refer to the agreement as a modification of the 1956 decree", since the agreement encompasses far more than a modification of the 1956 judgment, the cumulative opinions of the court in the antitrust case have become known generally as the "Modified Final Judgment" or MFJ, and will be so designated for purposes of this Report and Order. (See footnote 31 of the Court's Opinion filed August 11, 1982).

Under the terms of the MFJ, the divested operating companies would provide local telephone service in a geographic area known as the "exchange area," now generally referred to as a LATA (Local Access Transport Area). These post-divestiture LATAs, which now have been approved by the court, generally include no more than one (1) standard metropolitan statistical area. The State of Missouri will be divided into three (3) LATAs, basically corresponding to the three (3) existing telephone "area codes" in this State. Small portions of the adjoining State of Kansas have been included in the Kansas City LATA, and the St. Louis LATA extends into Illinois in three (3) places. The Springfield LATA is located entirely within the State of Missouri. In addition, a portion of Central Missouri, including the cities of Columbia and Jefferson City, are designated as a separate Market Area, which gives that area most of the characteristics of a separate LATA for purposes of the restriction against interLATA service by Bell Operating Companies.

Under the MFJ, the divested Bell Operating Companies cannot provide interLATA telecommunications service. InterLATA service is to be provided in a competitive market by interexchange carriers, including OCCs and a new AT&T subsidiary, which in Missouri has come to be known as AT&T Communications of the Southwest. Under the MFJ, the divested operating companies are required to provide access (interconnection) services to interexchange carriers equal in type, quality and price to the services provided to AT&T and its affiliates. [As clarified by the Order of July 8, 1983, equal access under the MFJ is access whose overall quality in a particular area is equal within a reasonable range which is applicable to all carriers. Identical values for loss, noise, echo, etc. are not required.] The availability of such equal access is to be phased in, being generally available to all interexchange carriers by September 1, 1986. If less than equal access is ordered and provided to an interexchange carrier, a lesser rate than the equal access rate must be charged, based on the cost of providing the less than equal access. All access services provided by the BOCs to interexchange carriers are to be priced on a tariffed, unbundled and cost-based rate structure. Rates for access services will be broken down to individual elements or components so as not to require any carrier to subscribe to services not used by that carrier. All carriers must be charged uniform rates for equal units of traffic, under the terms of the MFJ.

Immediately after divestiture, the BOCs will be providing primarily non-competitive, regulated monopoly types of telecommunication services, including local exchange and intraLATA toll and private line services, directory listings (including Yellow Pages) and directory assistance, mobile and coin telephone services, service connection services and, of course, access services to interexchange carriers. The MFJ requires that the present division of revenue process for the sharing of interstate toll revenues among AT&T and the Bell System Operating Companies, including Southwestern Bell, be cancelled.

The type and quantity of customer premises equipment (CPE) business in which Southwestern Bell engages is also affected by the MFJ. Under the decision of the Federal Communications Commission in a case which has become known as Computer Inquiry II (FCC Docket No. 20,828, 35 P.U.R.4th 143), affirmed, Computer and Communications Industry Association v. FCC, 693 F.2d 198 (D.C.Cir. 1982), the FCC required the deregulation of all new customer premises equipment as of January 1, 1983, and provided that the Bell System could only provide new CPE through a fully separated subsidiary after that date. As a result, American Bell, Inc. was born on January 1, 1983, and Southwestern Bell discontinued the provision of new CPE on the same date, but maintained, and offered for lease (and later for sale), CPE which SWB already owned at January 1, 1983 ("embedded CPE"). Under the provisions of the MFJ, Southwestern Bell is now required to divest itself of all embedded CPE on January 1, 1984, by spinning off (and transferring to AT&T at the time of divestiture) a new subsidiary referred to, for want of an official name as yet, as EBO (Embedded Base Organization). Having divested itself of all its CPE business as of the time of divestiture, Southwestern Bell will then be able to reenter the CPE market anew on a nonregulated basis, under the terms of the MFJ.

While the United States District Court was participating in the fashioning of the MFJ consent decree which created the need for the establishment of access charges to be paid by AT&T to the divested BOCs and established the standard for equal access to OCCs, the Federal Communications Commission was concluding the investigatory docket initiated in 1978 to determine the optimal market structure for message toll service (MTS) and wide area telephone service (WATS). On February 28, 1983, the FCC issued its "Third Report and Order" in Docket No. 78-72. An order modifying the "Third Report and Order", upon reconsideration, was issued by the FCC on July 27, 1983. By these Orders, the FCC has established guidelines which all local exchange telephone companies must follow in preparing tariffs governing local exchange access for interstate telephone usage.

By its decisions in Docket No. 78-72, the FCC is implementing a shifting of non-traffic-sensitive (NTS) costs (defined above in relation to FCC Docket No. 80-286) from interexchange carriers to the end user customer. This shifting of NTS costs to the the end user is to occur over a six (6) year transition period beginning January 1, 1984 and ending December 31, 1989. Under the FCC access charge plan, interexchange carriers will pay access charges for interconnection with a local telephone company to cover the local exchange company's traffic-sentitive (TS) costs (the "Carriers Access Charge" or "Carrier's Carrier Charge"), and to cover a portion of the NTS costs of the customer's local loop (Carrier's Common Line Charge). The remainder of the NTS costs allocated to the interstate jurisdiction under separations procedures approved by the FCC, will be paid by the end user customer in the form of a flat rate, monthly End User Common Line Charge (EUCLC). This monthly End User Common Line Charge is to be $2.00 per residential line and $6.00 per business line in

1984. The residential EUCLC is to be increased to $3.00 per month in 1985 and $4.00 per month in 1986. Thereafter, the residual NTS costs included in the Carrier Common Line Charge will be transferred proportionally to the EUCLC through the remaining three (3) years of the transition period. At the end of the six-year transition period, most of those NTS (local loop) costs that were previously recovered from interstate long distance rates will be paid for by customers through flat monthly charges (the EUCLC). Exchange carriers' interstate traffic-sensitive (TS) costs associated with handling interexchange carriers' interstate traffic will be borne only by the interexchange carriers.

The underlying rationale of the FCC for this access charge system and the shifting of NTS costs to the end user is that such a shift promotes network efficiency and prevents uneconomic bypass. The FCC felt that by reason of the separations process, an economically unjustifiable amount of non-traffic-sensitive (NTS) costs were allocated to the interstate jurisdiction to be recovered on a usage sensitive basis and thereafter, through the pricing of interstate long distance service, to be passed on to the users of toll service. In the FCC's opinion, this practice allowed basic telephone rates to be priced well below the cost incurred in providing such service, and further resulted in large volume toll users paying, in toll rates, for much of the cost incurred in the provision of basic service. While allegedly not efficient from an economic standpoint, the system was at least sustainable until the interjection of toll competition and the development and use of bypass technologies. As the FCC stated in its Third Report and Order in Docket No. 78-72, at paragraph 109, p. 135;

> Because users have alternatives to the traditional telephone network, it is increasingly difficult to force heavy users to pay rates that greatly exceed their costs. Such users would abandon the network, leaving the small consumers who have fewer options with the full costs of the network. Indeed, attempts to overrecover costs from those groups most able to escape these charges may backfire and result in inferior service to large and small users alike...

The FCC's rationale will be developed and analyzed more fully hereinbelow. (See Section IX: "Proposed Shift of NTS Costs to End User").

On October 18, 1983, the FCC suspended until April 3, 1984, the interstate access charge tariffs which had been filed on behalf of all local exchange telephone companies as required by FCC Docket No. 78-72. Thus, those tariffs (including the $2.00 per month Federal EUCLC) are not likely to become effective on January 1, 1984, coincident with divestiture, as previously anticipated.

The convergence of the implementation of the MFJ and of the FCC access charge decision in Docket No. 78-72 have added substantial and complex new dimensions to this Southwestern Bell Telephone Company rate case. These federal actions require that the traditional division of revenues processes utilized by Missouri telephone companies, including Southwestern Bell, be revisited and revised. Under the MFJ, access charge tariffs must be implemented under which Southwestern Bell can charge interexchange carriers for their intrastate use of SWB local exchange facilities. In addition, the MFJ, by prohibiting Southwestern Bell from engaging in intrastate, interLATA toll services after divestiture, mandates changes in the scope of existing settlement agreements between Southwestern Bell and the independent telephone companies in Missouri. While the FCC's decision in Docket No. 78-72 does not require the filing of intrastate access charge tariffs, the FCC in that docket envisioned that interexchange carriers would compensate all local exchange carriers for their use of local exchange facilities through the payment of access charges, and encouraged state regulatory commissions to adopt similar access charges in order to promote administrative efficiency. Moreover, the increasing existence of interstate toll competition, and the potential for intrastate toll competition, may significantly change the traditional telephone "partnership", and require that a new system of recovery for the usage of exchange facilities be devised.

Therefore, this Commission's decision concerning the structure of access charges and the methodology to be utilized in establishing access charge rate levels will apply to all forty-eight (48) of the telephone companies within this Commission's jurisdiction, and will result in the filing of appropriate access services tariffs by each of those companies. The division of revenues, plant and expenses related to intraLATA toll service in Missouri must also be addressed.

II. Southwestern Bell Proposal for Access Charge Rate Structure and Rate Level Methodology.

A. Access Charge Structure. Southwestern Bell requests the Commission to approve access charge tariffs which substantially "mirror" the rate structure contained in the interstate access charge tariffs filed by the Exchange Carriers Association (ECA) with the FCC in response to that agency's decision in Docket No. 78-72. The Company submits that such "mirror-image" access charges are desirable to avoid alleged administrative difficulties and customer confusion by reason of a dual interstate-intrastate access charge system. Southwestern Bell also advocates the approval by the Commission of a new system for dividing the revenues from intraLATA toll services between SWB and the independent telephone companies which is incorporated into the "USITA/Southwestern Bell Joint Report", an agreement which was entered into between Southwestern Bell and several of the independent telephone companies during 1983. The issue of the appropriate method for dividing revenues from intraLATA toll ("Settlements") will be separately addressed below.

Southwestern Bell's proposed access charge tariff would have three (3) rate elements: a Carrier's Carrier Charge (CCC), a Carrier's Common Line Charge (CCLC), and an End User Common Line Charge (EUCLC). The Carrier's Carrier Charge allows the local exchange companies to recover their traffic-sensitive (TS) costs associated with transporting messages between the interexchange carrier's point of presence (POP) within a LATA, and the SWB central office serving the end user or customer, and will also recover the traffic-sensitive costs associated with central office switching features selected by the carrier. Carrier's Carrier Services can be either switched (MTS or WATS-like) or dedicated (private line-like services). Typically, the facilities required to provide carrier access services (excluding the customer's local loop or access line) includes central office equipment, interoffice trunking from the end office serving the customer to the central office serving the carrier, and dedicated facilities from that serving central office to the carrier's POP. The specific type of facilities provided depends upon the type of access requested by the carrier. The facilities may be similar to those used to provide local exchange service, or they may be sophisticated data-type services. The level of the access rates to be charged will be based on the specific serving arrangement requested by the carrier.

1. Carrier's Carrier Charges. Southwestern Bell's proposed rate structure for Carrier's Carrier Charges is divided into three (3) subcategories: (a) Carrier Switched Access Charges, (b) Special or Dedicated Access, and (c) Ancillary Services.

a. Carrier Switched Access Charges. Carrier Switched Access Charges include Access Connections (for interface at the interexchange carrier's point of presence), to be charged on a flat rate non-recurring basis related to capacity or facilities ordered; Local Transport (transport between the interexchange carrier's serving wire center and the wire center serving an end user or customer), to be billed on a per minute-of-use basis by mileage band; and End Office Switching (switching and end user termination functions at the local end office), which will be billed on a minutes-of-use basis at rates varying according to the individual features provided to the interexchange carrier. All of these services and facilities will be ordered and paid for by interexchange carriers. The Switched Access Services to be offered by Southwestern Bell will be available in five (5) groups, known as Feature Groups A, B, C, D & E. The Feature Groups vary depending on the type of access utilized to connect to the carrier, the type of termination in the local office that serves the carrier's POP, the type of call that can be placed, and the calling area that can be accessed. The availability of equal access for all carriers (Feature Group D) is to be phased in between October, 1984 and September, 1986. Until equal access is available, Southwestern Bell proposes to include a Premium Access Charge to be applied to AT&T Communications, which will have Feature Group C access, since Feature Group C offers certain service features not available to OCCs utilizing Feature Groups A or B. A Premium Access Charge is required in the interstate access tariff under the FCC's decision in Docket No. 78-72. The Premium Access Charge proposal will be discussed separately below.

b. Special (Dedicated) Access. Special or Dedicated Access involves those dedicated facilities utilized to provide intrastate non-switched access services to carriers. The Company proposes to replace the currently effective intrastate Facilities for Other Common Carrier's Tariff in total with the Special Access tariff. End-link connections for those interLATA services which will be transferred to AT&T Communications upon divestiture will also be provided as Special Access services.

Company's proposed Special Access rate structure consists of five (5) rate elements: (1) Access Connections, which connect the carrier to its serving wire center and which will be billed on a monthly flat rate basis; (2) Special Transport, which includes interoffice channel mileage and channel terminals, and which will be billed on both a flat rate (channel terminals) and a per mile basis; (3) Features and Functions, which include transmission equipment, signaling, conditioning, bridging, hubbing, etc., and which will be billed on a monthly flat rate basis; (4) Special Access line, which connects the end user or customer to the serving wire center, and which will be billed on a monthly flat rate basis; and (5) Dedicated Access Line, which will be provided in connection with the closed end of a WATS service, and which will be billed on a monthly flat rate basis.

Consistent with the FCC's decision in Docket No. 78-72, SWB has proposed an intrastate surcharge of $25.00 to apply to all Special Access services which are toll substitutes, including those access services which are used to provide the closed end of a foreign exchange (FX) or WATS service, or used to provide the end link of a private line. The surcharge is designed to provide revenue support to common access line costs from private line networks utilized primarily to connect to the local exchange network in order to complete interexchange calls. If actual measurement of such usage becomes possible in the future, the charge may be converted from a flat-rate to a usage sensitive rate. Company also proposes that carriers should continue to be prohibited from ordering facilities from the Private Line Tariff in connection with their provision of MTS (toll) type services. It is the Company's position that all carriers should be required to order facilities from the proposed Access Services tariff, and should not be allowed to "tariff shop" for lower rates in the Private Line tariff.

c. Ancillary Services. Southwestern Bell's proposed Carrier's Carrier Charge tariffs also include certain Ancillary Services, including Ordering Options available for both Switched and Special Access services. GTE Sprint alleges that certain of the Ordering Options are discriminatory against carriers, as discussed below (see Sections V. L. and X. C.).

Other Ancillary Services proposed by SWB in this case include Directory Assistance service to be provided to interexchange carriers; Special Facilities Routing; Specialized Service or Arrangements; Additional Engineering and Labor Options; and Miscellaneous Services, including such options as presubscription, testing services, provision of access service billing information, and maintenance of service.

Finally, Company has also proposed to offer a variety of Ancillary Billing and Collection Services for carriers. The contested billing and collection services issues in this case will be addressed in Report and Order, Part II.

2. Common Line Charges. The second and third elements of Southwestern Bell's proposed access services tariff relate to Common Line Charges. The Common Line is the "local loop" facility which connects the customer's premises with the telephone company's end office (central office or switching wire center). This local loop is the access line which provides an individual customer with access to the telephone

network. Historically, the costs of that customer access line, which costs are generally referred to as non-traffic-sensitive (NTS), have been recovered in part from end users in the form of flat rate local exchange rates; in part on a usage sensitive basis as a part of intrastate toll rates; and in part on a usage sensitive basis as a part of interstate toll rates. As stated above, under the FCC's decision in Docket No. 78-72, the majority of interstate allocated local loop costs will, over a six (6) year transition period, be removed from interstate toll rates and instead be paid by end users on a flat rate basis in the form of an interstate End User Common Line Charge (EUCLC). Southwestern Bell has proposed that such intrastate NTS costs also be shifted to end users over a transition period and be paid by such customers on a flat rate basis, either as part of their local exchange rate or as a part of an intrastate EUCLC. During the transition, carriers would continue to pay a portion of such costs in the form of an intrastate Carrier Common Line Charge (CCLC).

a. Carrier's Common Line Charge. SWB's proposed Carrier's Common Line Charge (CCLC) would be identical to the interstate CCLC proposed by the ECA. The federal Carrier's Common Line Charge will have four components: (a) CPE interstate allocation; (b) inside wire interstate allocation; (c) Universal Service Fund (USF); and (d) residual NTS costs remaining after recovering federal End User Common Line Charges. The Universal Service Fund will begin on January 1, 1986, funded by a "high-cost factor," which will work to leave a portion of NTS costs in the Carrier's Common Line Charge for high cost companies in order to help mitigate the impact of the "NTS cost shift" on the customers of those companies. Moreover, a rate differential will be computed for premium access. The phased removal of CPE from the interstate rate base was ordered in the FCC's Computer Inquiry II, and this removal will be complete four (4) years after access charges become effective. Similarly, inside wiring costs which were capitalized before the FCC determined that they should be expensed will disappear from the interstate rate base by the mid 1980s. Thus, at the end of the transition period when all embedded CPE, inside wire and residual NTS costs have been removed, only the USF will remain in the interstate Carrier Common Line Charge.

b. End User Common Line Charge (EUCLC). As previously stated, under the interstate ECA tariff and SWB's proposal here, the residual NTS local loop costs would be gradually transferred over a six-year period from the Carrier's Common Line Charge to an End User Common Line Charge (EUCLC). Under Southwestern Bell's proposal, at the end of the transition period end users would be assigned virtually the entire cost associated with their individual access to the network. That cost would be recovered through a combination of local exchange and End User Common Line charges, on a flat rate basis. Southwestern Bell points out that the mere establishment of a Missouri EUCLC would not lead to higher local exchange rates, but would result merely in local exchange rates being divided into two (2) parts rather than a single, higher local exchange rate. If Southwestern Bell's proposed access charge structure is approved, the flat rate charge for local service paid by each Missouri customer would be the total of (1) that customer's local exchange rate, (2) the intrastate EUCLC, and (3) the interstate EUCLC (set by the FCC). If the FCC program for shifting NTS costs to the end user over a six-year period were adopted by this Commission, these three (3) rate elements would cover the cost of the local loop or access line facilities provided to end user customers at the end of the six-year transition period. Southwestern Bell submits that the principal reason for establishing an intrastate EUCLC is to establish a rate element to serve as a means for recording the shift of revenue requirement which would occur as intrastate Carrier Common Line Charges were phased out over the six-year transition period, resulting in a revenue requirement shift to local exchange customers.

3. General Agreement. There is general agreement among the parties to this case that the proposed rate structure set out in Southwestern Bell's proposed access charge tariffs is reasonable for purposes of this case, in the interest of

administrative simplicity, except, perhaps, for the EUCLC. Staff and Public Counsel do not wholeheartedly endorse the establishment of a Missouri intrastate EUCLC, and strongly object to the policy of the FCC established in Docket No. 78-72 of shifting NTS local loop access costs entirely to the end user, as discussed more fully below.

B. Southwestern Bell's Proposed Access Charge Rate Level Methodology.

Southwestern Bell proposes that access charge rate levels should be at parity with its interstate access charge rate levels, except as to the End User Common Line Charge (EUCLC) which SWB proposes to set residually in Missouri. The Company submits that access charge rate level parity is essential in order to avoid artificial distortions in the routing and reporting of long distance calls, a possibility referred to by many parties in this case as "arbitrage". Southwestern Bell further alleges that parity rate levels are necessary in order to avoid the encouragement of uneconomic bypass of the local network, particularly by large business users. Arbitrage and bypass will be examined fully below. The Company also argues that dual access charge rate levels (interstate and intrastate) would cause customer confusion and discontent and cause unnecessary administrative difficulties and expenses for the Company.

It is Southwestern Bell's position that there is little, if any, difference in the actual costs incurred in providing interstate interLATA access, intrastate interLATA access, and intrastate intraLATA access. In addition, Southwestern Bell asserts that application of the federal access rates to Missouri intrastate access services will actually produce a transitional contribution to local exchange service above the costs of providing Missouri intrastate access services, since Southwestern Bell's Missouri NTS costs are below the national average; the CPE portion of the Federal Carrier's Common Line Charge will be pure contribution as applied to Missouri; and the Missouri interstate Subscriber Plant Factor (SPF) is substantially greater than the interstate usage of the Company's facilities. Therefore, it is Southwestern Bell's position that parity rate levels are compensatory and contributory, and provide the best opportunity for preventing bypass, arbitrage and administrative complexity.

In addition, SWB submits that parity of rate levels will moderate the impact of shifting NTS costs to the end user customer by allowing that transfer to occur gradually over a six-year period. After January 1, 1986, the Universal Service Fund approved by the FCC will also help ease the impact of the NTS shift upon high-cost independent telephone companies. Southwestern Bell's parity proposal includes a Premium Access Charge applied to AT&T Communications. Both the Universal Service Fund and the Premium Access Charge proposals are discussed separately below.

Southwestern Bell (joined by General, Allied, Centel, United, Citizens and Fidelity Telephone Companies) oppose any mandatory pooling of intrastate access charges, although the FCC has required mandatory pooling of the Carrier's Common Line Charge (including the high cost factor assessed by the FCC in order to fund the Universal Service Fund). Southwestern Bell (and the independent telephone companies just named) advocate that Carrier's Carrier Charges, Carrier Common Line Charges and End User Common Line Charges be handled by each telephone company on a "bill and keep" basis by the serving company. That means each company would bill carriers and customers for their appropriate portions of the access charges, and would then keep those revenues. The FCC has authorized voluntary pools for the interstate Carrier's Carrier Charges and the End User Common Line Charges. SWB has opted to participate in the interstate pool of Carrier's Carrier Charges, but not in the pool of End User Common Line Charges.

III. <u>Staff Proposal for Access Charge Rate Level Methodology</u>

The Staff strongly opposes the FCC plan to shift all NTS costs to end users. However, since an access charge plan must be in place by January 1, 1984, Staff favors an access charge tariff structured to mirror the Carrier's Carrier Charge element and the Carrier's Common Line Charge element of the interstate proposed ECA tariff. Staff did not recommend that the EUCLC element be adopted unless a revenue deficiency was determined during the rate level phase of this proceeding which would necessitate an EUCLC charge.

Staff opposes the Company's position that the rate levels of the Carrier's Carrier Charge and the Carrier's Common Line Charge should be identical to those filed on the federal level. Staff recommends instead of parity levels a Missouri plan of access charges for an interim period which are aimed at continuing existing separation procedures to the extent possible. Staff's proposal encompasses a comprehensive statewide plan for prescribing and recovering interLATA access charges as well as intraLATA toll revenues. Staff's recommendation is contained in Exhibit 130, Pages 1 and 2.

With respect to access charges, Staff's proposal establishes statewide interLATA access charges at parity with the federal ECA counterparts (or at higher levels) for TS and NTS access services. Staff proposes a mandatory interLATA access charge pool in which all local exchange telephone companies would participate for the purpose of determining statewide TS and NTS average costs of access services. The statewide TS and NTS costs would be based on Separations Manual procedures utilizing Southwestern Bell's authorized return, capital structure and income tax components. Access charge revenues would be divided on a basis where the participants would recover their individual TS and NTS expenses with the balance shared in proportion to their individual TS and NTS rate bases where expenses in rate base are determined using Separations Manual procedures. Southwestern Bell would administer the pool with all participants cooperating by providing SWB with the requisite data in a timely and accurate manner. The pool would become operative January 1, 1984, and remain in existence for at least one year but no longer than two years. Staff's proposal further provides that interexchange carriers operating between points in Missouri must be certificated by the Commission and must keep data on the volume and nature of their services in a manner that distinguishes interstate and intrastate services.

Staff's plan is an attempt to facilitate the transition after divestiture, to balance the competing interests of Bell and the independent companies, to mitigate the effects of shifting NTS costs to end users under the federal plan and to avoid the sudden abandonment of statewide averaging.

IV. IntraLATA Toll Settlements

A. Company and Staff Proposals. Effective Janaury 1, 1984, Southwestern Bell will be restricted to the provision of toll services intraLATA. Thus, SWB will no longer be allowed to provide intrastate interLATA toll services. Consequently, the present toll settlements arrangements between SWB and the independent companies must be modified.

Under the current settlements process, all intrastate revenues collected under common toll tariffs are remitted to Southwestern Bell by the independents and pooled with Southwestern Bell's revenues. From the pool, the independents receive the recovery of their intrastate toll-assigned costs which are calculated in accordance with the Separations Manual, plus a rate of return on their toll-assigned investment equal to Southwestern Bell's achieved overall return. Southwestern Bell receives the residual of the pooled revenues after the independents have been compensated. An independent may either elect to conduct studies of its own specific costs (cost company) or receive payments based upon a nationwide average cost calculation (average schedule company). In Missouri, more than half of the independents are average schedule companies.

For intraLATA toll settlement purposes, Southwestern Bell and a number of the independent companies recommend adoption of the USITA/Southwestern Bell Joint Report issued on May 16, 1983. The following companies have reached agreement on the USITA/Southwestern Bell Joint Report: Southwestern Bell Telephone Company, Allied Telephone Company, General Telephone Company, United Telephone Company, Central Telephone Company, Citizens Telephone Company, Fidelity Telephone Company, Chariton Valley, KLM and New Florence Telephone Companies.

The Joint Report recommends a plan for the sharing of intrastate intraLATA toll revenues from toll services provided by the exchange carriers under uniform statewide tariffs. The Joint Report provides that beginning in 1984 all exchange carriers would participate in an intraLATA toll pool which would include intraLATA TS costs and NTS costs not removed through state end users' charges (EUCLC). The intraLATA toll revenues would be pooled and divided based upon the pool's achieved rate of return subsequent to the payment of average schedule companies. For intraLATA toll settlements, the frozen intrastate SPF through 1985 would be used by the participants to allocate NTS costs to intrastate toll. To determine intrastate NTS costs assigned to the intraLATA toll pool, the intrastate toll NTS costs for each company would be allocated between interLATA and intraLATA based on SLU minutes of use. Beginning in 1984 a portion of NTS costs would be recovered by each carrier through an intrastate toll end user charge (EUCLC). NTS costs would be transferred to end users over a five-year period, during which period all NTS costs would be phased out of the pool. At the end of the period, all NTS costs would be recovered from state end user charges (EUCLC) and each company would bill and keep such charges with the possible exception of a high cost factor portion if a mandated state Universal Service Fund has been established. Thus, at the end of the transition period (December 31, 1988) only intraLATA TS costs and revenues would be included in the intraLATA toll pool.

The Joint Report is premised on the shift of intraLATA NTS costs to end users in anticipation of competition. In this regard it is consistent with the federal access charge plan and its underlying rationale. In addition, the Joint Report equalizes the rates of return for Bell and the independents.

Staff proposes a mandatory intraLATA pool utilizing the same concepts contained in its proposed mandatory access charge pool. All intraLATA toll costs and revenues would be pooled. TS and NTS costs would be determined according to Separations procedures utilizing Bell's authorized rate of return, capital structure and income tax components. The remaining revenues would be divided in accordance with each company's TS and NTS intraLATA toll rate base. Bell would administer the toll pool, which would commence on January 1, 1984 and remain in existence for at least one year but no longer than two years. Staff's intraLATA toll pool settlement plan does not provide for the removal of NTS costs from the pool. In addition, Staff proposes that the Commission restrict intraLATA competition to the extent practicable.

Like its access charge plan, Staff's intraLATA settlements plan is recommended as an interim measure aimed at maintaining the status quo to the extent possible in an effort to avoid the sudden abandonment of statewide average toll rates and to mitigate the impact of the shift of NTS costs to end users on the federal level.

V. The Proposals of Other Parties on Access Charge Rate Level Methodology and IntraLATA Toll Settlements

A. Public Counsel The Public Counsel recommends the "Montana Plan" as an interim measure pending the Commission's determination of an appropriate permanent access charge plan. The Montana Plan, which was received into evidence as Exhibit 101, provides for parity of access charges and a maximum $2 EUCLC. An end user revenue requirement in excess of $2 would be recovered through a Universal Service Fund which would be funded through a uniform surcharge on all exchange customers. The plan provides for a voluntary pool for intrastate toll and access charges. Carriers not participating in the pool would be assessed access charges and, in turn, would assess access charges on pooling carriers. NTS costs applied to the pool would be reduced by ten percent (10%) in 1984, and be further reduced in later years by agreement of the parties. The End User Common Line Charge would be billed and kept by the carriers.

Alternatively, Public Counsel endorses Staff's statewide plan, since in Public Counsel's opinion it does not represent a major departure from the status quo during the interim period, pending the implementation of a permanent plan. Public Counsel, however, does not support Staff's recommendation to restrict intraLATA toll competition.

B. Independent Telephone Group. The Independent Telephone Group is composed of the following intervernors: Missouri, Lathrop, Grand River Mutual, Seneca, Goodman, Mid-Missouri, Miller, Oregon Farmers Mutual, Northeast Missouri Rural, Green Hills, Steelville, Alma, Granby, McDonald County, Mark Twain Rural, Rock Port and Le-Ru. The Group proposes that the Carrier's Carrier Charge be structured at parity with the federal Carrier's Carrier Charge, but that the rate levels of that charge be based on statewide averages instead of nationwide averages. The Group recommends that the Carrier's Common Line Charge be based on Separations-determined statewide averages, and be billed on a flat rate per connection or on tapered (declining block) use for purposes of minimizing bypass. The Independent Group opposes an End User Common Line Charge, but recommends a Universal Service Fund if the Commission should impose an end user charge. The Group proposes a premium on AT&T designed to compensate for the contribution imbalance between interLATA and intraLATA toll revenues. The Independent Group supports one statewide access charge and intraLATA toll pool to be administered by an association of exchange carriers.

Alternatively, the Independent Group endorses the Staff's plan subject to the following modifications: (1) The Commission should consider maintaining a division of revenues process modeled on present settlement arrangements. (2) The Commission may wish to combine the two separate pools for division of revenue purposes, but consider them separate for ratemaking purposes in order to reconcile possible differences in ratemaking policies which may affect the revenue levels of the two pools. (3) In arriving at a plan to recover shortfalls in revenues brought about by parity and the maintenance of current intrastate toll levels, the Commission should consider (a) the extent to which uniformity in the relationship between levels of interLATA and intrastate intraLATA toll rates is desirable; (b) the differences between current levels of non-traffic-sensitive interLATA contributions and intraLATA non-traffic-sensitive contributions in an access charge environment; (c) the extent to which differences between intrastate interLATA access charge levels and their interstate counterparts are feasible; and (d) to what extent demand and prevailing industry practices should determine the pricing of intraLATA toll.

C. Continental Telephone Company Continental Telephone Company supports parity of access charges and rate levels with their federal counterparts with end user charges (EUCLC) determined residually. Continental opposes the pooling of the Carrier's Carrier Charge and the End Users Common Line Charge, but recommends pooling of certain elements of the Carrier's Common Line Charge.

With respect to settlements, Continental opposes the Joint Report and instead proposes that Southwestern Bell be treated like an interexchange carrier. To this end, Continental proposes intraLATA access charges at parity with interLATA access charges and that all independents' toll facilities be leased to Southwestern Bell. Further, Continental supports a state Universal Service Fund which mirrors the federal proposed Universal Service Fund beginning in 1986.

D. General Telephone Company General proposes carrier access charges at parity with each individual company's interstate proposed federal tariffs, as to both structure and rate levels, with the EUCLC determined residually. General opposes the pooling of access charges and supports the adoption of the Joint Report for settlement purposes. General further recommends that interexchange usage be charged beginning when the end user's call is handed off to the interexchange carrier, whether or not the call is completed.

E. Allied Telephone Company Allied supports parity with interstate access structure and rate levels for each company. Allied opposes the Premium Access Charge proposed to be assessed on AT&T and supports a Missouri high cost factor to fund the Universal Service Fund in 1986. Allied does not support the pooling of End User Common Line Charges and recommends that the Commission permit only voluntary pooling of Carrier's Carrier Charges. With respect to settlements, Allied supports the Joint Report.

F. United Telephone Company United proposes that access charges be identical in structure and rate levels to their interstate counterparts, including the premium charge assessed on AT&T. United recommends that the EUCLC be priced residually and that mandatory pooling of access charges not be implemented. United also supports the Joint Report for settlement purposes.

G. Eastern Missouri and Kingdom Telephone Companies Eastern Missouri and Kingdom support the mandatory participation in the interLATA revenue requirement developed by all exchange service providers. Further, these companies support interLATA statewide pooling and the imposition of licensing fees for communication services to avoid bypass and to protect universal service.

Alternatively, these companies endorse the Staff's statewide plan subject to the same conditions and modifications expressed by the Independent Group, which are set forth above.

H. MoKan and Craw-Kan. MoKan and Craw-Kan propose mandatory pooling of intrastate toll traffic, mandating the participation of interexchange as well as exchange carriers. A joint state tariff would be imposed and the pool would be administered by a state carrier association.

Alternatively, MoKan and Craw-Kan also support the Staff plan subject to the same conditions as expressed by the Independent Group.

I. Central Telephone. Central Telephone proposes that access charge structures and rate levels be at parity with the federal proposed structure and rate levels. Central opposes pooling and supports a residually priced EUCLC.

Central proposes intraLATA access charges in lieu of revised settlements. Alternatively, Central supports the Joint Report for settlements purposes on an interim basis.

J. The City of St. Louis. The City of St. Louis recommends that the Commission defer any decision on access charges until the FCC acts on the interstate access tariffs which it recently suspended until April 3, 1984.

K. MoPIRG. MoPIRG opposes End User Common Line Charges and recommends that all access charges be recovered from interexchange carriers. MoPIRG supports a moderate increase in toll rates as an alternative to any significant increase in local exchange rates.

L. GTE Sprint Communications Corporation. GTE Sprint supports the shifting of all NTS costs to end users over a transition period. GTE Sprint maintains that access arrangements to be offered to OCCs which are denominated Feature Groups A, B and D are inferior. GTE Sprint asserts that equal access will only be accomplished by the provision to OCCs of a trunk side connection to Class 4 offices. Until such "equal access" is provided, GTE Sprint recommends that a Premium Access Charge be imposed on Southwestern Bell and AT&T to reflect their alleged superior access.

In its cover letter attached to its reply brief, GTE Sprint recommends that in light of the FCC's action of October 18, 1983, suspending interstate access tariffs until April 3, 1984, the Commission defer final action on local access tariffs until the FCC acts. Pending FCC action, GTE Sprint recommends that the Commission require that the terms of the existing federal tariffs govern state intrastate access obtained by OCCs.

Finally, GTE Sprint maintains that the following provisions of the proposed access tariff are discriminatory: (1) the routing of nondesignated interexchange traffic to AT&T under Feature Group D; (2) the allocation of scarce facilities on a first come, first served basis; (3) the unavailability to the OCCs of high capacity facilities; (4) the application of the Special Construction and Nonstandard Ordering Interval provisions to OCCs; and (5) the discretion provided Southwestern Bell over facility changes irrespective of the impact.

M. AT&T Communications. AT&T Communications maintains that the FCC access charge plan constitutes rational pricing for an increasingly competitive market. Therefore, AT&T supports intrastate access charges at parity with their federal counterparts. However, AT&T Communications opposes the Premium Access Charge to be imposed upon it, contending that such a premium is not supported by the record, is not cost based and is unfair.

VI. Analysis of the "Threat of Bypass".

Southwestern Bell asserts that access charges in excess of the rate levels set in the interstate arena will encourage bypass of the local network by the interexchange carriers and large business customers. Bypass is the origination and/or termination of a call without the use of a local telephone company's plant. Bypass involves the use of communication facilities which route two-way voice or data signals without using the local telephone company exchange plant. Bypass can be illustrated by a large business which places a microwave tower atop its corporate office building in each of two different cities, and transmits its intracompany voice and data communications between those buildings directly by microwave, instead of going through the local switched network of the telephone company in each city. Southwestern Bell presented voluminous testimony describing various proposed and actual bypass technologies, including the use of cable television system wire, microwave radio, cellular radio, digital termination services, fiber optics systems, satellite transmissions and atmospheric optical systems.

The Company believes that the development of bypass has been influenced by the pro-competitive stance of the FCC, technological advancements, economic factors (eg., potential for revenues from large customers who are located in narrow geographical areas), technical performance (such as bypass systems for high-speed digital transmissions), and investor interests. Southwestern Bell argues that bypass will result in the largest business customers of the company leaving the local network, resulting in unused telephone facilities ("stranded investment") which will cause the remaining customers to incur the cost of supporting the system. Those remaining customers, SWB argues, will pay higher prices for their services, thereby stimulating further bypass and further increasing costs to the residential and small business customers.

Southwestern Bell presented the results of a survey performed for it by Dr. Joseph Kraemer. Dr. Kraemer took a census of the one hundred (100) largest customers in the State of Missouri, of whom eighty (80) agreed to participate in the survey. Each of these customers generated at least $35,000 per month in WATS and MTS billing from Southwestern Bell. The survey revealed that twenty-four percent (24%) of these eighty (80) large business customers currently engage in some form of bypass, while fifty-four percent (54%) either engage in bypass now or intend to do so within the next three (3) years. Sixteen (16) Missouri customers who do not now engage in bypass have been approached by interexchange carriers who are seeking direct interconnection. Of the nineteen (19) customers who currently engage in some form of bypass, eleven (11) have systems which are presently operational in Missouri. Microwave radio, satellite transmission and cable/wire systems are actually in use in the State of Missouri in bypass applications. Dr. Kraemer's census indicated that price was the most significant single factor in reaching the decision to bypass given by those customers who are actually engaging in bypass today. The survey also indicated that fifty-seven percent (57%) of the large customers in the survey would directly interconnect with an interexchange carrier, thereby bypassing the local network, for savings of twenty percent (20%) or less.

Within the State of Missouri, one percent (1%) of business customer locations provide thirty-four percent (34%) of business MTS revenues, while ten percent (10%) of business customer locations provide seventy-three percent (73%) of business MTS revenues. These customers are located in relatively narrow geographical areas, as exemplified by the fact that one (1) of the two hundred ten (210) wire centers in the State of Missouri accounts for ten percent (10%) of business MTS revenues, while two percent (2%) of the Missouri wire centers account for twenty-eight percent (28%) of the business MTS revenues. Considering both MTS and out-WATS, one percent (1%) of the business customer locations provide fifty-six percent (56%) of the business toll revenues.

Southwestern Bell concludes, and urges, that bypass is a real and significant threat which must be considered by this Commission; and that cost-based pricing is essential to its survival in the future. Southwestern Bell argues that, given the significant revenue concentration from a small number of business customers, the availability of cost-effective bypass technologies, and the economic incentive on the part of both interexchange carriers and customers to bypass to avoid access charges, the likelihood of bypass is greatest with regard to access charges. In the Company's view, two major items must be accomplished in order to properly respond to the threat of bypass. First, SWB's local loop must be upgraded to handle higher speed data and the central office must be updated to handle digital traffic. In order to finance that upgrade, however, Southwestern Bell states that regulators must accelerate depreciation schedules and set the rate of return of SWB appropriately so that capital can be attracted. This question will be addressed in Report and Order, Part II, in this case, under the Rate of Return issue.

The second response to the "threat of bypass" advocated by Southwestern Bell is cost-based pricing to large business customers and to interexchange carriers. SWB asserts that since large business customers are willing to bypass for savings of twenty percent (20%) or less, regulators must decide whether to adopt cost-based pricing or risk the eventual higher rates and possible deterioration of service resulting from uneconomic bypass. Cost-based pricing, according to Southwestern Bell, will permit the Company to compete effectively with bypass providers and with other carriers offering intraLATA toll and private line services.

Southwestern Bell argues that once a customer is lost to bypass, the local telephone company is not likely to gain that customer back since the customer has made a substantial investment in technology, the management personnel who made that investment decision have a vested interest to protect, and the bypass technology may well meet that customer's needs. Further, SWB submits that the cost of operation and maintenance of a bypass system is relatively low in comparison to the facility's investment. Thus, Southwestern Bell urges the Commission to discourage bypass before it occurs by the implementation of parity access charge rate levels.

Other parties to this case, and particularly the Staff, Public Counsel and MoPIRG, challenge the Company's assertion that potential bypass of the local network rises to the level of a "threat" at the present time. Staff also argues that the Company's evidence fails to distinguish between "economic" and "uneconomic" bypass, and that there is nothing which this Commission can do to prevent economic bypass. Staff further asserts that there is a self-fulfilling prophecy inherent in the position advanced by Southwestern Bell. If all NTS costs are recovered from end users in order to assure that access charges to carriers are what SWB describes as "cost-based", in order to discourage uneconomic bypass, the result might be general bypass of the local exchange network. In fact, approximately fifty percent (50%) of the total telephone bills of Southwestern Bell's largest one hundred (100) business customers is for local exchange service, not toll service. Thus, the shifting of NTS costs from toll prices to local exchange prices in order to avoid bypass of the local network for purposes of toll calling, could encourage bypass of the local network for local calling. MoPIRG reinforces this concern by observing in its brief that two of the four current bypass cases set forth in Dr. Kraemer's study involved bypass of the local network for the transmission of local calls between facilities of the local company involved. This would suggest, MoPIRG argues, that the higher the price for basic exchange service, the greater incentive there is for similar businesses to bypass the local network.

Staff does assert that it is concerned with bypass and would be interested in knowing when competitive bypass threats are imminent. Staff submits that there may exist flexible regulatory means of meeting specific competitive bypass threats, which would allow competitive bidding by Southwestern Bell in large user or "targeted" bypass situations. Staff submits that it may be in the public interest to entertain a "stand-alone test" for the pricing of access to large volume users in order to avoid a loss of revenue and the stranding of investment which would result from bypass by a large business customer. Basically, such a stand-alone test would put a cap on the amount of common and joint costs to be allocated to a particular line of business, which would result in a total cost to a customer or a group of customers which would be no greater than that which would occur if such customers were served by an independent and alternative source.

The Staff recommends that the Commission order Southwestern Bell to monitor, and report to the Commission Staff, any developments which threaten bypass of the Company's public switched network. Staff asserts that when significant targeted bypass potential becomes known to the Company, such circumstances should be reported to the Staff. In turn, if the Company or the Company and the Staff determine that some appropriate regulatory response would be in the public interest, an application should be filed with the Commission requesting such relief.

It is clear to this Commission that competition in the provision of telecommunications services exists and appears to be growing. Competition which results in the avoidance or bypass of the local switched network could result in stranded investment, leaving more telephone plant to be paid for by fewer monopoly customers through higher local rates. On the other hand, the shifting of NTS costs to end user customers could encourage users of local service to bypass the local switched network or to leave that network entirely. Therefore, the task before the Commission is to try to establish just and reasonable rates for telecommunications services which recover the costs of those services, including a proper portion of local loop costs, without encouraging uneconomic bypass.

"Uneconomic bypass" is bypass of the local exchange network which results from pricing telecommunications services above their long-run marginal costs. For example, it is the position of the Company and other parties to this case, and apparently that of the FCC, that long distance (toll) rates have been maintained over the years by regulators (the FCC and state public utility commissions) at levels substantially above the costs of providing such long distance services, in order to keep flat rate basic exchange service rates below their actual costs. In a competitive market, it is argued, the artificial maintenance of above-cost pricing for a particular telecommunications service in order to subsidize some other telecommunications service will inspire bypass of the local exchange network not because the bypass service may be obtained at a lower cost than the comparable regulated service, but because the bypass service may be obtained at a lower price than the regulated service, which has been priced above cost. This is the type of bypass which is referred to as "uneconomic bypass." On the other hand, "economic bypass" results from the availability from competitive vendors of comparable or superior equipment or services at lower long-run incremental costs than those of the regulated telephone company.

The Commission determines that developments in bypass technologies and in specific or "targeted" bypass potential should be carefully monitored. In addition, the Staff, Public Counsel and Company should meet, as recommended by the Staff in its brief, to attempt to establish a reasonable mechanism for regulatory response to specific or targeted bypass "threats" as they may materialize in relation to major SWB business customers.

However, Southwestern Bell has not proven upon the instant record any imminent threat of uneconomic bypass. In fact, the Company has not proven what portion of either existing or potential bypass in Missouri is uneconomic, and thereby related to the pricing decisions of this Commission.

While the Commission acknowledges that increased competition in certain segments of the telecommunications market may require a general movement, over time, toward more precisely cost-based pricing of telecommunications services, access services cannot be based upon long-run incremental costs in this case because no long-run incremental costs for access services have been provided upon the record. Nor is there evidence as to the cost of bypass to the potential bypasser. Further, there is no evidence in this record that access which is priced above parity with the proposed interstate ECA tariff will encourage uneconomic bypass.

In addition, it cannot be established upon the record of this case that the inclusion of NTS local loop costs in access charge rate levels raises those rates above "economic" or "cost-based" price levels. Local loop costs can arise from a demand for local and/or long distance service, and therefore should be contributed to by local exchange, carrier access and toll charges. The interexchange carrier who can obtain access to a customer through the local loop access line which connects the customer to the local switched network avoids the costs of duplicating or replacing the access line. This is discussed more fully below under section IX, "Proposed Shift of NTS Costs to End User: Economic and Regulatory Rationale".

Southwestern Bell asserts that the Staff misses the mark by emphasizing that there exists no cost-effective alternative to the local switched network nor any duplication of the local switched network to date, and by submitting that bypass systems are placed by large business users for non-switched service and to accomodate high speed data transmission. The Company argues that it has not and does not contend that replication of the local switched network is the immediate threat from bypass. Rather, says SWB, the true threat of bypass comes from the potential loss of interexchange carrier access, intraLATA private line and intraLATA toll revenues from large business customers. However, the record of this case suffers from a paucity of specific evidence as to the nature and extent of existing bypass of the local exchange network in Missouri. The Company's allegations are applied with a broad brush; the fine details do not appear of record. Thus, the Commission cannot discern for any particular large business customer who is now engaging in some bypass, for what percentage or type of its toll services it is bypassing the local switched network; or for what percentage or type of its local exchange traffic it is bypassing that network. A business could conceivably bypass the local network at either the originating or terminating end of a frequently "traveled" telecommunications path, but not the other end. A business which engages in a high level of local telephone calling to other businesses or residences broadly distributed within its local calling scope would have no bypass technology economically available to it in the foreseeable future for that type of calling. The evidence upon the record of this case simply does not prove that this Commission should or could take some specific action respecting the prices of access services which would discourage uneconomic bypass.

As discussed earlier, to attempt to fashion a pricing structure by regulation designed to discourage bypass without distinguishing whether the bypass at issue is economic or uneconomic could result merely in the shifting of additional costs to the end user customer by decreasing the level of contributions to joint and common NTS costs from other more competitive services, while ultimately discouraging not a whit of bypass because the bypass in question proved to be "economic." Such a blind approach could have the further negative effect of encouraging bypass at the local exchange end of the process by (1) making local exchange service so expensive that large business local exchange users bypass the local network for that portion of their calling instead of the toll portion, or (2) making local exchange service so expensive that a significant number of local exchange residential and/or business customers simply leave the system (a process which might become known as "economic termination").

For these reasons, upon the record of this case, the Commission finds that Southwestern Bell Telephone Company has failed to prove that the threat of uneconomic bypass of the local switched network requires parity as an access charge rate level methodology.

The Commission observes that economic bypass cannot be effectively regulated against, although this Commission may use its facility authorization power pursuant to Section 392.260, RSMo 1978, and the exercise of its rate jurisdiction over carriers providing intrastate access, to discourage long-term bypass potential. Facility control could be used to prevent an interexchange carrier from locating multiple points of presence (POPS) within a LATA or LATAs in order to avoid access charges. Elsewhere in this Report and Order, the Commission announces its intention to require that all OCCs and WATS resellers doing intrastate business within the State of Missouri seek certification from this Commission, as required by Missouri law. This is true as to AT&T Communications also, at least as to any services other than interLATA toll service. The exercise of facility control will be addressed by the Commission as it considers applications for authority and/or rates from toll carriers (or potential toll carriers).

In addition, the Commission agrees with the Public Counsel that the Company can discourage bypass by the use and enforcement of termination charges in relation to major capital expenditures for access services. Termination agreements which permit SWB to charge disconnection fees to recover capital investment costs which have been incurred exclusively for a particular business customer could be used as potential mechanisms for preventing or deterring bypass of the Company's local exchange network, and would place the economic burden for stranded investment plants on those customers who have benefited from the installation and maintenance of such plant.

VII. Analysis of the "Threat of Arbitrage."

Another major rationale propounded by Southwestern Bell for establishing intrastate access charge rate levels at parity with the federal ECA tariff rate levels is to avoid an artificial distortion in the routing and reporting of long distance calls. This potential practice has been referred to frequently in this case as "arbitrage". The Commission takes official notice of the fact that the word "arbitrage" means a simultaneous purchase and sale of the same security or equivalent securities in order to profit from price discrepancies. To use the term to describe artificial distortions in the routing and reporting of long distance calls in order to take advantage of price discrepancies is certainly an expansion of the term's true definition. However, recognizing that the term has taken on this expanded definition in practice, at least during 1983 within the telecommunications industry, the Commission will continue to utilize the term "arbitrage" as a convenient shorthand.

If the State of Missouri establishes access charges at rate levels higher than those established for the same access services under the federal ECA tariff, (assuming, of course, that the federal ECA tariff is ultimately approved by the FCC), interexchange carriers will be motivated to route calls over their facilities in a manner which causes the call to become interstate instead of intrastate, in order to subject the call to the lower interstate level of access charges. For example, calls originating in the St. Louis, Missouri metropolitan area and destined to other points in the State of Missouri could be transported via microwave facilities located just across the river in Illinois in order to convert the call from intrastate to interstate. The Commission rejects this argument. Section 153(3) of Title 47 of the United States Code provides, in part, that "interstate communication" or "interstate transmission . . . shall not . . . include wire or radio communication between points in the same state, territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a state commission." Thus, the Communication's Act of 1934 (of which Section 153[3] is a part), defers jurisdiction to this Commission for wire or radio communication between points in the same state, although such communications travel through any place outside of this state. Section 392.190, RSMo 1978, confers upon this Commission jurisdiction over communication by telephone "between one point and another within the State of Missouri . . . ". A telephone communication which originates within the State of Missouri and terminates within the State of Missouri is a Missouri intrastate telephone call within the jurisdiction of this Commission, to which Missouri intrastate access charges would apply, whether that call is directly routed from the origination point to the termination point or is routed through Honolulu, Hawaii or Nome, Alaska. Therefore, system reconfiguration or call routing in order to attempt to transform an otherwise Missouri intrastate call into an interstate call would be useless and unsuccessful, assuming one could monitor or otherwise determine the jurisdictional nature of the call. This is the more serious threat of arbitrage.

The proponents of parity argue that intrastate access charges must mirror those of the interstate jurisdiction because it will be difficult or impossible to distinguish interstate and intrastate communications carried by the OCCs. The problem, it seems, is that ninety percent (90%) of OCC connections with Southwestern Bell local exchanges are ENFIA-A connections. Among the several alleged deficiencies of ENFIA-A connections, which are discussed more fully in the discussion of the proposed Premium Access Charge below, is the fact that automatic number identification (ANI) is not available under an ENFIA-A line-side connection. Without ANI, the OCC, such as GTE-Sprint or MCI, is not able to ascertain the exact origin point of any telephone call it carries. The OCC obviously will know the location of the OCC facility at which the call is received and from which the call is transmitted, and will know the termination point of the call. But a call carried by GTE-Sprint from its facilities near Kansas City may have originated in Kansas City, Kansas; in Kansas City, Missouri; or in Chicago, Illinois on a foreign exchange (FX) line. ANI allows for automatic identification of the calling number.

After the implementation of the FCC's interstate access charge plan pursuant to Docket No. 78-72, and under the proposed access tariffs in this case, ENFIA (Exchange Network Facilities for Interstate Access) connections will come to be known as "Feature Groups." Feature Group A will be comparable to existing ENFIA-A. Feature Group D will be the fruition of the "equal access" required by the MFJ. Feature Groups B (direct) and B (tandem) will be comparable to existing ENFIA-B and C connections. ATTCOM access will become Feature Group C. ANI is available as an optional feature under ENFIA-B, and will be available under Feature Groups B, C and D as well.

The short-term potential for arbitrage by the misreporting of the jurisdictional nature of calls by OCCs in order to gain the application of more favorable interstate access charges is not substantial. In that short-run period, AT&T Communications will carry the vast majority of intrastate interLATA toll calls. As of August, 1983, the interstate market share for ATTCOM for 1984 was estimated to be roughly ninety-three to ninety-four percent (93-94%) of the total. ATTCOM has ENFIA-C (Feature Group C) connection with Southwestern Bell, including ANI. Since Southwestern Bell will do the billing for ATTCOM for at least the year 1984, and because ANI is available through Feature Group C connections, the vast majority of interstate and intrastate interLATA toll calling will not be subject to arbitrage by misreporting the jurisdictional nature of those calls.

In the long run, increasing toll competition would indicate that the OCC toll market share is growing. In order to maintain some equitable and economically sound contribution by OCCs to NTS costs, it is imperative that the Commission begin to put in place a mechanism to monitor and estimate, if not definitively determine, the jurisdictional nature of OCC traffic.

Staff recommends that the Commission consider, in the long run, requiring OCCs to acquire Feature Group B access as a condition of doing business in Missouri, pursuant to Section 392.240.2, RSMo 1978. Staff further recommends that, in the short run, the Commission require the use of statistical sampling methods to obtain a statistically reasonable estimate of the percentage of interstate versus intrastate calls carried by the OCC. The OCCs already study calling patterns and usage using statistical methods as a part of market studies in order to analyze potential new markets.

The Commission finds that the potential for misreporting of the jurisdictional nature of telephone communications by OCCs in order to avoid intrastate access charges which are higher than interstate access charges is not a persuasive reason for adopting access charge rate levels in Missouri at parity with the proposed interstate access charge levels. In the short run, the vast majority of toll messages transported within the State of Missouri will be carried by AT&T Communications, and the jurisdictional nature of those calls will be clearly identified because of the automatic number identification (ANI) feature of ATTCOM's ENFIA-C connections with the local exchange telephone companies. In addition, this Commission is committed to assuring that OCCs not provide intrastate Missouri telecommunications services without the authority of this Commission. As a part of either the authority application cases filed by OCCs in Missouri, or the enforcement actions brought by the Commission against uncertificated OCCs doing business in Missouri, the Commission will establish and enforce appropriate and reasonable mechanisms for accurately recognizing intrastate versus interstate traffic. Such mechanisms could include statistical sampling methods of developing a reasonable estimate of intrastate Missouri toll business, or requiring at least ENFIA-B (Feature Group B) connections by any OCC doing business in Missouri, in order to secure ANI.

The Commission observes that either the deliberate misreporting of toll traffic as interstate, rather than intrastate, or the intentional avoidance of a methodology or mechanism for accurately recognizing intrastate versus interstate traffic, at least borders, if not crossing the border into, fraudulent conduct. This Commission refuses to be intimidated by the alleged possibility of such fraudulent activity or by the conscious avoidance of State regulation in Missouri by OCCs, into establishing access charge rate levels which are otherwise unjust and unreasonable. The threat of arbitrage does not require parity as an access charge rate level methodology.

VIII. Analysis of IntraLATA Competition.

As noted above, Staff's proposal with respect to intraLATA toll services contains a recommendation that the Commission restrict intraLATA toll competition. This recommendation presents difficulties since the Commission authorized the resale of WATS in the Company's last rate proceeding, Case No. TR-82-199. This record reflects that WATS resellers are operating in this State, although the nature and extent of the involved communication services within Missouri are unknown. The Company's testimony indicates that 21 interexchange carriers are operating in Missouri although it is unknown how many are operating intrastate, whether intraLATA or interLATA. Through its advertisements, GTE Sprint appears to be holding itself out to operate between intraLATA points within Missouri although it asserts it does not solicit intrastate business.

In its brief, Staff appears to have retreated somewhat from this position and recommends that the Commission establish generic dockets for the purpose of determining whether intraLATA competition is in the public interest. Staff proposes an investigatory docket to address intrastate competition by OCCs, and an additional investigatory docket addressing resale of telecommunications services.

Staff maintains that intraLATA competition will eventually require the deaveraging of toll rates, which could be adverse to universal service. Therefore, Staff proposes that toll providers be required to show affirmatively that intraLATA competition is in the public interest and that, until such time, certificated monopoly service should continue to be the rule in Missouri. Staff further suggests that the Commission might desire to issue a show cause order to OCCs operating in Missouri without PSC certification, and impose a freeze on any additional firms or persons engaging in WATS resale other than those currently in business.

Alternatively, Staff suggests that even if intraLATA competition is not prohibited or restricted, the mere existence of competition is not an argument against Staff's pooling proposals. Staff notes that Bell's budget projects insignificant intraLATA toll competition in the short-term. Staff further points to the fact that, to date, the existence of Bell's largest OCC competitor has shown no significant effect on Missouri intrastate toll markets. Finally, the Staff argues that competition is likely to grow in the interLATA market, while there is a distinct possibility that intraLATA toll service will remain primarily a monopoly market.

The Public Counsel opposes the restriction of intraLATA toll competition on both legal and policy grounds. Public Counsel argues that prior to the institution of any such restriction, notice should be given to existing WATS resellers. Further, the Public Counsel believes that the costs and benefits of intraLATA competition should be addressed prior to imposing a restriction or prohibition on such services. Public Counsel recommends that the Commission institute reporting requirements to allow Commission monitoring of toll competition.

The Company argues that regardless of any legal impediments the Commission cannot, as a practical matter, restrict intraLATA competition. This is because an OCC with an ENFIA-A connection is not able to trace the origin of the calls that it carries. (See analysis of arbitrage hereinabove). Also the Company asserts that since a reseller's intrastate WATS line may be used to complete interstate calls, a similar problem exists with respect to tracing the origin of purported interstate calls. Company further argues that AT&T Communications and OCCs could become WATS resellers for the purposes of operating intraLATA, and that AT&T Communications could subscribe to ENFIA-A connections for the purpose of offering intraLATA services. In light of these alleged problems, the Company recommends that the facility-based carriers and resellers should be required to register with the Commission and to report the type of service provided, the geographical area within which such service is available, the number of subscribers served, the volume of traffic and any other relevant information which the Commission deems appropriate.

Having considered the evidence and arguments outlined above, the Commission is persuaded by the Company and the Public Counsel's argument that a blanket restriction against intraLATA competition is inappropriate at this time. Although the record reflects that WATS resellers and OCCs are likely to be operating in what will become intraLATA toll markets, the extent of such operations are unknown at this time. Thus, there is insufficient evidence to determine any precise estimate of future competition in the intraLATA toll market. Since only one large city exists within each LATA, it would be reasonable to expect that the intraLATA toll market will not become an active competitive market. Southwestern Bell apparently does not expect significant intraLATA toll competition during 1984 as is evidenced by its budget projections. Finally, the Commission notes that there exists no WATS reseller nor OCC which has secured a certificate from this Commission authorizing Missouri intrastate operations.

The Company asserts that it must be prepared to meet competition. However, its proposal to establish statewide intraLATA toll rates for intraLATA toll service set at existing toll levels would not significantly improve its position to meet such competition during 1984 over Staff's proposal. Thus, at least during 1984 the threat of intraLATA competition in and of itself is not a sufficient argument to warrant the rejection of Staff's pooling proposals, which will be more fully addressed below.

Finally, since the provision of toll service from point to point within the State of Missouri is subject to the Commission's jurisdiction, the Commission finds that all toll providers operating within this State are subject to Commission regulation. While the Commission will not adopt a policy of prohibiting intraLATA competition, it is not opening intraLATA telecommunications markets to free entry, either. Thus, the Commission expects all WATS resellers and OCCs, and ATTCOM at least as to intraLATA toll service, to seek certification from this Commission before engaging in intrastate telecommunications services. The Commission's General Counsel shall notify all OCCs and WATS resellers known or reasonably believed to be doing intrastate business in Missouri of the Commission's policy in this regard, and advise them to seek such certification from this Commission. The provision of such services in Missouri with authority of this Commission could subject carriers to liability for statutory fines and penalties under the provisions of Sections 386.570 and 386.600, RSMo 1978.

IX. Proposed Shift of NTS Costs to End User: Economic and Regulatory Rationale.

The access charge proposals of Southwestern Bell, AT&T Communications, GTE Sprint and a number of the independents, recommending parity with the proposed federal access charge rate structures and rate levels, is premised upon certain alleged economic principles which must be carefully assessed. First, it is asserted that the costs of the local loop connecting an end user customer with the telephone company's central office (referred to by parity advocates, at least, as "access line costs") are incurred by virtue of a customer's choice to subscribe to access of the network, and therefore are "customer specific". Once the customer has access to the network through the local loop, the Company's monthly cost of providing that access is totally independent of any usage the customer places on the access line, it is argued. Thus, it is asserted, it is in the act of becoming and remaining a subscriber that the customer causes the system to incur those local loop costs. The costs of providing access to the system should be borne by the person who makes the purchasing decision that causes those costs to be incurred, in lump sum monthly charges, according to the advocates of parity. Access costs, it is argued, are not caused by toll or any other service, but only by access itself, since even the elimination of all toll calling would not cause access costs to be reduced.

Further, it is said, since the cost of the local loop does not vary whether the customer utilizes the local loop twenty-four (24) hours of every day, or not at all, the costs associated with access to the network are non-traffic-sensitive (NTS). These NTS costs of access can be separately identified and segregated without arbitrary allocations. Since the economically proper price for any service is marginal cost (i.e., what it would cost society to supply an additional unit of that service or what cost society would avoid if consumers took one less unit of the service), the economically proper price for access to the telephone network is the marginal cost of the local loop access line.

Since these NTS local loop costs do not vary with usage, it is alleged by the parity advocates that it is economically improper to recover those costs in charges for usage (i.e., through usage sensitive toll rates). However, it is asserted, so long as the toll market was not vigorously competitive and there were few bypass options for customers and carriers to choose from, it was possible to allocate certain access line costs to toll and to recover such costs in toll rates rather than in local exchange rates. Thus, it is argued, the inclusion of NTS local loop costs in usage sensitive toll rates have held toll rates at levels far in excess of their marginal cost, in order to use the toll profits thereby derived to maintain local exchange rates at levels substantially below marginal costs. Once the industry was opened to competition, however, this system of internal subsidization was undermined, it is said. Large interexchange customers are seeking, and finding, ways of circumventing this alleged monopoly-subsidy system, such as constructing their own systems or buying the services of competitive interexchange carriers. Therefore, the parity advocates allege that the historic subsidy from interexchange to local exchange service is both economically inefficient and unsustainable under open competition.

This is the rationale which underlies the FCC's determination that, during the next six (6) years, all NTS local loop costs assigned to the interstate jurisdiction under the Separations process should be shifted from usage sensitive toll rates, to the end user customer in the form of a flat rate end user common line charge (EUCLC). Southwestern Bell asserts that it is not the FCC's decision which is driving the pricing changes proposed by SWB in this case, but that such changes are being required by market forces which have resulted from the introduction of competition into the telecommunications industry.

In Staff Witness Ileo's opinion, the FCC's access plan which allocates virtually all NTS costs on the local subscriber has little sound economic basis, encourages bypass, threatens the financial integrity of the local exchange network and jeopardizes the goal of affordable universal service.

Dr. Ileo, as well as Public Counsel's witness, Dr. Wilson, believes that the NTS costs of the local loop are partially usage sensitive since the configuration of the local network is partially a function of the pattern and the nature of usage. Therefore, Dr. Ileo argues that if one accepts the proposition that NTS costs should be recovered on a flat rate basis, then if loop costs are partially usage sensitive they need not be recovered strictly on a flat rate basis. Additionally, Dr. Ileo believes that the NTS/TS bifurcation is based on engineering concepts for the purposes of allocating costs which have some elements of arbitrariness and little economic basis. Dr. Ileo believes that allocation methods based on engineering concepts are to some extent arbitrary, although some may be preferable to others. Dr. Ileo suggests that the "minimum plant" concept or the "zero intercept" method which are used for electric and gas plant allocations, might be preferable to the NTS/TS method used in the telephone industry.

It is Dr. Ileo's belief that whether or not local loop cost is properly categorized as non-traffic-sensitive, from an economic perspective, loop costs arise from a joint demand for local and long-distance service and therefore should be allocated to these various services. This is the method which has been used in the past where NTS costs have been allocated to interstate toll service, intrastate toll service and local service, even though the allocation factors are questionable. Dr. Ileo states that the FCC continues with the NTS/TS bifurcation while at the same time shifting NTS costs to local service, resulting in a further arbitrary allocation.

Dr. Ileo argues alternatively that, assuming loop costs are NTS, no economic theory mandates that non-usage-sensitive costs be recovered through flat rates. Rather, he asserts that flat rates are used in regulated industries not so much to allow recovery of fixed costs, but for the purpose of stabilizing revenues. Thus, there are different methods of pricing the joint costs of various services which are aimed at lowering the overall cost of the system. Such differing pricing mechanisms are discriminatory from an economic perspective only if unjustified under "Ramsey pricing" theory or the "Stand Alone" test. Ramsey pricing theory is based on long-run marginal costs and elasticity standards, such that the most elastic service is priced closest to marginal cost. The Stand Alone test eliminates allocations which result in a total cost to a customer or group of customers being greater than would occur if such customer were served by an alternate or independent source.

Dr. Ileo points to the inconsistencies contained in the FCC's access plan. On the one hand, the FCC apparently subscribes to the theory that NTS costs should be recovered on a flat rate basis. Yet, the FCC is recovering some of these NTS costs on a minutes of use basis from interexchange carriers on an interim basis. Further, the FCC apparently believes that average pricing leads to bypass, unfair competition and cream skimming. However, its pooling measures continue national averages. Thus, bypass and cream skimming may continue while at the same time many local subscribers may leave the system rather than accept the burden of virtually all NTS costs.

Dr. Ileo recommends that the Commission not blindly follow the FCC plan; that it independently address NTS and TS costs and how they should be allocated to interexchange carriers and local customers; and that the Commission consider addressing competition as it arises with new pricing and service options through the application of Ramsey and Stand Alone pricing. Dr. Ileo apparently believes that SPF and SLU allocations are outmoded and should be discarded. Dr. Ileo recommends that the Commission regard "access" as access to the local network to enable interexchange carriers to provide toll service and access to the local network for the purpose of local customers obtaining local service.

Public Counsel also urges the Commission to reject the FCC plan to transfer NTS costs to the local users. Public Counsel argues that access lines are not customer specific, as argued by the Company, since they are part of the integrated telephone network. The two-way feature of communication services places a demand on the called party's loop by the other party. Thus, the Public Counsel argues that the loop of a particular customer has value to other customers. Public Counsel further argues that there is no requirement that fixed costs be recovered on a flat rate basis. For example, the pricing of electricity is recovered in such a manner that fixed costs are recovered on a usage sensitive basis.

In fact, Dr. Alfred Kahn, testifying on behalf of Southwestern Bell in this proceeding, suggested that another possibility for recovering NTS local loop costs would be to include them in usage charges to big users, but on a tapered or declining block basis, so that the charges for usage gradually reduce to levels closer to marginal cost as the volume of usage increases. Southwestern Bell, in its reply brief, states that it does not advocate or endorse this alternative suggestion of Dr. Kahn, for the allegedly "purely practical" reason that the Company's proposed flat rate assessment of those NTS local loop costs better satisfies the prerequisites of economic efficiency and administrative feasibility.

The Commission, having considered the various arguments of the parties, is persuaded, and finds, that the cost of a local loop can arise from a demand for local and/or long-distance service. Therefore, local loop costs should properly be recovered through contributions from at least three services: local exchange, carrier access and toll. The local loop has no value to any customer unless other customers are connected. The loop is in place to satisfy customers' demands for both long-distance and local service. This Commission finds and concludes that the local loop now gives a telephone subscriber access to an integrated telephone network which includes local exchange capabilities, and interstate and intrastate long distance (toll) capabilities as well. Since both local exchange service and toll service make use of the local loop, both services should contribute to the cost of the local loop. The Commission also notes that the use of the general term "access" instead of the term "local loop" has added considerable confusion to the record of the access charge issue.

The existence of interexchange carriers and competitive toll service does not change this result. If the interLATA toll carrier wants to be able to transport toll calls originating from, or terminating in, the local exchange of a local telephone company, it must either interconnect with that local exchange (through "access services") or construct a direct access connection to the originating or terminating party. Such a connection requires replication of part or all of the local exchange network, as to any existing customer or group of customers of any telephone company. If the interLATA toll carrier can gain access to a customer for less cost than would be required for the interLATA carrier to construct its own access to that customer, it is clearly in the best interest of the interLATA toll carrier to do so. The end user customer's local loop has value to the interLATA toll carrier if it provides the customer with access to the facilities of that interLATA toll carrier so that the carrier can generate revenues by transporting the customer's toll call. To announce that economic efficiency requires that interLATA toll carriers be provided with absolutely free access to the local loops of local exchange telephone customers is patently absurd. Thus, the interexchange carriers should pay for their use of the local network in providing toll services, just as local exchange service should pay for its use of the local loop.

The Commission is persuaded upon the record herein that traditional cost allocations are becoming obsolete, and that the deaveraging of intrastate costs would become necessary if intrastate competition develops and expands. It does not follow, however, that interexchange carriers should pay nothing for their use of the local loop in the provision of toll service to their customers. As just stated, an interexchange carrier could not duplicate its use of the local network at zero cost.

Therefore, the cost of the local loop to the interexchange carrier is equal to the cost of such duplication.

The Commission finds that the FCC's plan of shifting local loop costs to local exchange service threatens the goal of universal service and is less likely to effectively address uneconomic bypass than other regulatory possibilities, eg. flat rate or declining block carrier charges, etc. In addition, the Commission is not persuaded that local loop costs must be recovered through flat rates, regardless of whether they are considered NTS. Although the Company makes the argument that NTS costs must be recovered from the local exchange customer on a flat rate basis, it admits in its reply brief that its rationale is not based on the NTS/TS costs dichotomy. Rather, it is concerned that large toll users who are charged loop costs through usage sensitive rates can avoid these costs because of competition. Therefore, the Company believes that loop costs must be recovered in a manner that does not discourage extensive usage of the network. As noted previously, Dr. Kahn testified that there are methods other than flat end user charges to accomplish this purpose, such as declining block charges for interexchange usage. The Company stated that it does not endorse Dr. Kahn's suggestion, but only on practical grounds. Thus, the Commission questions the extent of the Company's commitment at this point to the shift of all local loop costs to local exchange service. The Commission is perfectly willing to continue to evaluate this issue in future cases, and to investigate the alternative methods of recovering NTS costs from interexchange carriers through the Carrier's Common Line Charge, including usage sensitive or flat rate bases, and the possibility of using declining blocks.

The Commission finds that the FCC plan, which is intended to shift virtually all costs associated with the local loop to local exchange customers, is contrary to public policy in that it threatens the goal of universal service. Therefore, the Commission rejects the imposition of a similar plan for intrastate Missouri telecommunications services; and finds further that local loop costs should be recovered by local service rates, toll service rates and carrier access charges, and thus should be contributed to by interexchange carriers.

The Commission is aware that legislation is currently pending before the Congress of the United States which would modify or rescind the FCC's decision to shift all NTS local loop costs to end user customers. Even without such legislation, however, this Commission cannot accept or approve such an NTS cost shift in Missouri.

However, the Commission is also mindful of the pressures which increasing competition in the telecommunications industry will bring to bear upon Missouri intrastate toll and access charge pricing. The Commission deems it appropriate to maintain the status quo as closely as possible during a transition period, while the issues discussed in this Report and Order are further investigated and evaluated on a continuing basis. Therefore, the Commission determines that the Staff's proposed access charge rate level methodology is an appropriate interim measure for establishing reasonable access charges and intraLATA toll settlements in the short term, while the Commission monitors the development (if any) of toll competition and bypass potential in Missouri and monitors the actions of the Congress and the FCC in relation to these issues.

The Commission further observes that the arguments of administrative efficiency advanced in support of parity access charge rate levels have been eliminated by the Federal Communications Commission. Since the FCC has suspended the federal access charge tariffs until April 3, 1984, this Commission could only speculate as to exactly what tariffs or rate level methodology would ultimately provide "parity" with the federal tariffs. This Commission could approve "parity" tariffs (if it otherwise thought them appropriate) only to see the "parity" disappear a few months later if the FCC required significant changes in the proposed federal ECA tariff.

X. Decision of the Commission as to Access Charge Structure, Rate Level Methodology, and Toll Settlements.

A. Parity. Since the Commission has rejected the rationale underlying the FCC plan, it is also compelled to reject parity as an access charge rate level methodology. It addition, the parity argument has lost any persuasiveness as to the need for administrative uniformity, given the FCC's October 18, 1983 suspension of the federal proposed access tariffs. The Company's arguments concerning bypass and arbitrage also do not compel parity rate levels.

B. End User Common Line Charge (EUCLC). The Commission, because of its rejection of the federal access plan, finds that there should be no intrastate End User Common Line Charge in Missouri. This is because the term "End User Common Line Charge" connotes the shifting of toll costs to local exchange service. In addition, the term is conceptually synonymous with a charge imposed on local service subscribers for toll "access" as a distinct service or rate element, which concept the Commission has rejected. Charges imposed on local service customers shall be charges for local and toll service and not for "access".

C. Carrier Access Charges. With respect to the Company's proposed access charge rate structure (other than the EUCLC), there is little disagreement among the parties. Therefore, the Commission finds that the Company's access charge tariffs shall be structured as proposed by the Company, as to the proposed elements of Carrier's Carrier Charges and Carrier Common Line Charges, except that those tariffs shall not apply to radio common carriers. (See Section XIII., below). The Commission is approving the structure of the access tariffs on an interim basis because divestiture requires that access charges be in place on January 1, 1984. The Commission deems the structure of these access charge tariffs to be experimental in nature and will monitor these tariffs to determine their efficacy.

Concerning General's proposal to charge access charges for interexchange carrier usage beginning when the call is "handed off" to the interexchange carrier, even if the call is not completed, the Commission would like to consider this idea in more detail in the future. Although the proposal may ultimately prove meritorious, the Commission finds that there is not sufficient evidence before it upon the instant record to persuade it to adopt same.

Regarding the objections of GTE Sprint to certain Ordering Options in SWB's proposed access services tariffs, (see Sections II. A. c. and V. L., above) the Commission finds that the Ordering Options in question are supported by the record, are just and reasonable, and should be approved.

The Commission, in approving SWB's proposed access charge structure (except for the EUCLC) also approves Company's unopposed proposal to continue to prohibit carriers from ordering facilities from the Private Line Tariff in connection with their provision of MTS (toll) type services. (See Section II. A. c., above).

D. Pooling. Having considered the various pooling proposals submitted by the parties, and the arguments of record against pooling, the Commission finds that the statewide pooling plans proposed by the Staff should be adopted subject to certain modifications.

The Company objects to mandatory pooling of access charges on the following grounds: Pooling is inconsistent with parity of rate levels; pooling is economically unsound, unfair and unnecessary; the Commission lacks legal authority to order mandatory pooling; and doubt as to whether a pooling arrangement could be implemented by January 1, 1984. Since pooling allows all companies to recover their costs in full, the Company argues that pooling is an incentive for inefficiency. The Company further maintains that cost averaging leads to uneconomic bypass and cream skimming. The Company asserts that pooling requires low cost companies to subsidize high cost companies. The Company also states that doubts exist as to whether a pooling plan could be implemented by January 1, 1984. In support of this proposition, Company cites the lack of practical details as to implementation guidelines and the difficulties of determining costs for which pool participants would be reimbursed since there are no "strict" procedures for separating interLATA and intraLATA costs.

The Commission notes that the Company is participating in the mandatory Carrier Common Line Charge pool and the voluntary Carrier's Carrier Charge pool at the federal level. Both of these pools are based on national averages. Averaging between companies has been the industry practice for many years, and the Commission is of the opinion that continued averaging for a brief transition period would not be detrimental to Southwestern Bell. This interim approach comes near to maintaining the status quo, and helps high cost companies in the transition as well. With respect to the alleged lack of details, Staff's method for separating interLATA and intraLATA costs was clarified during the rate level phase of these proceedings and the Commission is confident that the pooling plans as envisioned by Staff's proposal can be implemented by January 1, 1984.

With respect to intraLATA toll settlements, the Commission finds the SWB/ USITA Joint Report to be unacceptable because of its underlying premise that NTS costs are to be phased out of the pool and recovered through an End User Common Line Charge (EUCLC).

Southwestern Bell argues that the Staff's mandatory pooling proposals are unlawful, asserting that the Commission has no legal authority to mandate pooling among telephone utilities and asserting that mandatory pooling would result in the appropriation and confiscation of the Company's property without just compensation in violation of the Company's constitutional rights. The Commission finds and concludes, however, that it is indeed within its jurisdiction to mandate the pooling of access charges and of intraLATA toll revenues as proposed by the Staff in this case. Access charges are charges for the provision of joint services. The Commission has clear authority under Section 392.240.3, RSMo 1978, to establish through lines and to establish joint rates, tolls or charges for such through service. The Commission may also establish a system of division of the costs of physical connection or connections or of the joint rates, tolls or charges established by the Commission over such through lines, if the telephone corporations providing joint service do not agree upon such division.

In fact, the Company argues that this division of cost and revenue provision of Section 392.240.3 precludes the Commission's adoption of the Staff proposal on intraLATA toll settlements because the Southwestern Bell/USITA Joint Report constitutes an agreement among the seventeen (17) signatory companies as to the division of revenues and costs related to intraLATA toll service. The Company's argument is without merit. The adoption of the Company's proposal would require either that the Commission adopt the SWB/USITA Joint Report and then mandate that all non-signatory telephone companies also join in the pool agreed to by the seventeen (17) signatory companies; or require the establishment of a pool just among the seventeen (17) signatory parties as to joint and through service provided between such signatory companies, and the establishment of a separate and distinct pool for the remainder of all intraLATA toll revenues and expenses, which second pool would necessarily require the inclusion of all forty-eight (48) telephone companies doing business within the State. Either of these results would be absurd. Southwestern Bell and the other signatory parties to the Joint Report are not given ratemaking jurisdiction under Missouri law. The Public Service Commission has exclusive jurisdiction to establish public utility rates, and no public utility has a right to fix its own rates or to agree upon rates with its customers, or to charge and collect rates which have not been established by the PSC. May Department Stores Company v. Union Electric Company, 107 S.W.2d 41 (Mo. 1937). It is within the authority of this Commission to set rates which will supersede rates set by contract. See State ex rel. Washington University v. Public Service Commission, 308 Mo. 328, 272 S.W.971 (Mo. banc 1925), appeal dismissed, 275 U.S. 489, 48 S.Ct.32, 72 L.Ed. 388 (1927), and a line of cases cited by the Staff in its initial brief in this case, Page 72.

If all forty-eight (48) telephone companies doing business within the State of Missouri, all of whom are involved in the provision of joint and through service in this State, had entered into a division of revenues and cost agreement concerning intraLATA toll service, the Company's arguments would carry greater weight. However, under the Company's argument, it would be as reasonable for any two (2) of the forty-eight (48) telephone companies in Missouri to reach agreement on a toll settlement plan and then to insist that the Commission should require the other forty-six (46) companies to join in that plan. The Commission cannot accept that proposition, and rejects Southwestern Bell's legal arguments concerning both access charge pooling and the status of the SWB/USITA Joint Report under Section 392.240.3. The Commission observes again that the SWB/USITA Joint Report includes within its provisions an agreement to transfer state toll NTS costs to end user customers over a five (5) year period. The Commission has unequivocally rejected such a transfer of NTS costs to the end user hereinabove. Under Southwestern Bell's argument that the Commission is bound by the Joint Report under Section 392.240.3, this Commission would have to defer to the signatory companies on a critical principle of telecommunications ratemaking. Such a usurpation of the Commission's ratemaking jurisdicition is certainly not contemplated by Section 392.240.3.

The Commission also observes that there is no evidence indicating that Southwestern Bell has appealed, or expressed any desire to appeal, the mandatory pooling ordered by the Federal Communications Commission at the interstate jurisdiction.

The Commission adopts the Staff's statewide plan for intraLATA toll and interLATA access charges on an interim basis for a one-year period. In reaching this decision, the Commission has taken into consideration uncertainties that exist at the national level with regard to federal access tariffs and proposed Congressional actions, and the practical administrative necessity of having access tariffs in effect for all Missouri telephone companies on January 1, 1984. The Commission is approving the Company's proposed access structure as an experimental tariff recognizing that divestiture requires access tariffs be in place by January 1, 1984. For the sake of uniformity, the Commission believes it is desirable that there be a statewide access tariff implemented in Missouri which is the same for all telephone companies. In addition, Staff's plan will maintain the existing statewide toll system to the greatest extent possible during the transition period. The establishment of two pools begins the process of deaveraging rates and recognizes that the interLATA and intraLATA toll services represent different competitive markets. The plan facilitates the transition to a more competitive atmosphere, particularly for small high cost companies. The proposal utilizes separations principles which are familiar to the industry. Finally, Staff's plan remedies the inequities under previous settlements plans by equalizing the return among the companies.

The Commission recognizes that competition will be growing in the industry. Thus, Staff's pooling plan will be in effect for one year only. During the transition period, the Commission and the telecommunications industry must seek solutions to pricing in a competitive environment aimed at preventing uneconomic bypass and promoting universal service at affordable rates. Such solutions might encompass flat or declining block carrier access charges. Marginal cost and Stand Alone pricing should also be investigated.

The Commission believes that average rates cannot be sustained in a competitive environment. Thus, the Commission expects the independent companies and Staff to individually review the costs and rates of the independents to assure that they are compensatory. If it is desirable that these pools be preserved beyond one year, the companies or other parties must justify the extension of the pools to the Commission. For the purpose of monitoring the pools, the Commission shall institute a generic docket if requested by the Staff or any other party after the effective date of this order.

XI. Premium Access Charge.

Southwestern Bell proposes that Premium Access Charge be established as a portion of the Carrier Common Line Charge to apply to interLATA carriers who receive 1-plus dialing capability during the transition period to equal access for all carriers. The only carrier to which the Premium Access Charge would apply, as a practical matter, is AT&T Communications. Southwestern Bell supports the Premium Access Charge in order to preserve parity with the proposed federal ECA tariffs. The FCC has ordered that a Premium Access Charge be applied to AT&T because of the superiority of AT&T's access, until the implementation of "equal access" by September 1, 1986. The Premium Access Charge will actually be accomplished by charging OCCs for sixty-five percent (65%) of their minutes of use for purposes of the per minute Carrier Common Line Charge. Thus, the access "premium" will actually be a thirty-five percent (35%) access "discount" to the OCCs.

Continental proposes that AT&T and Southwestern Bell be assessed intrastate Premium Access Charges. General agrees that a Premium Access Charge should be applicable to AT&T, but opposes application of such a charge to exchange carriers for intraLATA toll services. The Staff also supports a Premium Access Charge to be applied to AT&T Communications.

GTE Sprint Communications Corporation maintains that the application of a Premium Access Charge during the transition to equal access is essential to promote the development of interexchange competition. GTE Sprint supports a Premium Access Charge to be applied to Southwestern Bell for its premium access in intraLATA toll services as well. AT&T Communications opposes the imposition of a Premium Access Charge on any interLATA carrier, asserting that any advantages in the type of access to be provided to AT&T Communications are fully offset by certain disadvantages, such as the inability of AT&T Communications to provide intraLATA service under its current serving arrangements. AT&T-C also asserts that the proposed level of the Premium Access Charge is arbitrary and overstated.

Equal access is required to be accomplished and available to all interexchange carriers by September 1, 1986. At the present time, however, the quality of interconnection received by the OCCs is inferior to that received by AT&T Communications. As previously stated, ninety percent (90%) of OCC interconnections with SWB in Missouri are ENFIA-A connections, which are line-side Class 5 office interconnections. Unlike the form of interconnection used by AT&T, ENFIA-A facilities are not toll grade. The principal difficulties experienced by OCCs under ENFIA-A connections include the lack of automatic number identification (ANI) discussed hereinabove in the discussion of arbitrage (see Section VII above); lack of answer supervision which prevents GTE Sprint and other OCCs from accurately determining the actual elapsed time of a conversation; excessive loss on OCC circuits, and noise. The ENFIA-A arrangement does not allow customers with rotary-dial telephones to obtain access to GTE Sprint's network, without conversion equipment. In addition, the OCC customer must dial a seven-digit number to gain access to the OCC, thereby receiving a second dial tone, and must then dial additional digits representing a personal identification number and the telephone number with which connection is sought. The necessity of dialing these extra digits and the lack of disconnect supervision results in unproductive use of OCC circuits and increases the set-up time for OCC calls.

Under SWB's proposed access services tariffs in this case, the current ENFIA-B and ENFIA-C offerings would be combined into a single package denominated as Feature Group B. ENFIA-B and ENFIA-C access are both inferior to the access that AT&T currently uses. Given the comparatively small volumes of OCC traffic relative to AT&T traffic at any given end office, ENFIA-B would require the OCC to use very small trunks that are inefficient, resulting in substantially higher costs to the OCC per unit of traffic delivered. ENFIA-B (or the direct trunking option under Feature Group B) will be available for originating traffic only from end offices having stored program control switches; but only sixty-eight percent (68%) of Southwestern Bell's customers today are served by stored program control switches capable of ENFIA-B origination. While that percentage will rise in 1984, a substantial number of Southwestern Bell customers will still not be served by such stored program control switches. Also, ANI is an optional, but not standard, feature under ENFIA-B. The same is true as to rotary-dial access.

As to ENFIA-C, ANI is unavailable and will not be available with Feature Group B tandem access. The same is true of a rotary-dial access. The particular switch which is used as a tandem access under ENFIA-C or Feature Group B-tandem results in degradation of OCC transmission and signaling.

After divestiture, AT&T Communications will retain the superior interconnection arrangement it currently uses, which will become known as Feature Group C. Feature Group C arrangements consist primarily of large, highly efficient toll grade trunks which link existing Class 4 offices to subtending Class 5 offices. Feature Group C is to be available exclusively to AT&T, and is to be phased out only as equal local access is phased in on an end office basis.

The Commission finds that a Premium Access Charge should be assessed against AT&T Communications, as an interim measure, because the quality of interconnection of the OCCs to the local exchange networks is inferior to the quality of interconnection available to AT&T Communications in Missouri. The Commission also finds, upon the evidence of record in this case, that the appropriate Premium Access Charge to be applied in this case is a thirty-five percent (35%) discount in the minutes of use on which the OCCs will be assessed Carrier Common Line Charges during the interim period.

The Commission finds that there is insufficient evidence of record to persuade it that a Premium Access Charge should be applied to Southwestern Bell Telephone Company, or to any other local exchange company, in this case.

XII. Universal Service Fund.

Continental, Allied and MoPIRG propose the establishment of a Missouri Universal Service Fund (USF). The purpose of an intrastate USF would be to minimize the impact of the shifting of NTS costs from users of the toll network to end users. The Staff submits that the establishment of an intrastate USF may be necessary in order to maintain universal service at reasonable rates throughout Missouri. AT&T Communications opposes the establishment of an intrastate USF, and Southwestern Bell opposes any intrastate USF by which its customers would be disadvantaged as a result of a transfer of revenues to other telephone companies. The FCC has created a federal USF as part of its access charge plan. No party has recommended the establishment of a Missouri Universal Service Fund prior to January 1, 1986, the date upon which the federal USF will commence.

The Commission will address the Universal Service Fund further in its Report and Order, Part II, in this case.

XIII. Radio Common Carriers (RCCs).

Mid-Missouri Mobilfone (Mobilfone) alleges that Southwestern Bell has not met its burden of proving that the Company's access charge proposals are just and reasonable as they relate to interconnection with radio common carriers. Mobilfone is a radio common carrier which provides mobile telephone and radio paging services to its patrons in various Missouri service areas pursuant to authority from, and under the jurisdiction of, this Commission.

Historically, RCCs have obtained interconnection with Southwestern Bell facilities pursuant to contract. Counsel for Southwestern Bell stated upon the record of this case that the Company now believes that such a contract requires the approval of this Commission. In the past, those interconnection contracts with RCCs have not been submitted to this Commission for approval, and the Commission is not aware of any enforcement proceeding initiated by it or by any other party to require the submission of such contracts for Commission scrutiny. In any event, notice was given by Southwestern Bell in December, 1982 to Mobilfone and to other Missouri RCCs of the Company's intention to cancel the existing interconnection contracts effective January 1, 1984, coincident with divestiture. Southwestern Bell has proposed in this case to begin charging RCCs access charges for access to the Company's local exchange customers effective January 1, 1984. Under Company's proposals, RCCs would subscribe to Feature Group E as a means of accessing Company's local exchange customers in the provision of their mobile and paging services. The result would be that RCCs would pay the same rate as similarly served interexchange carriers for accessing the local exchange customers of SWB.

Mid-Missouri Mobilfone submits that Southwestern Bell has not met its burden of proving that the six hundred percent (600%) to one thousand percent (1,000%) increase in RCC interconnection rates which would result from the application to RCCs of the proposed SWB access charges in this case, is just and reasonable. Mobilfone asserts that application of the access services tariff to RCCs would result in at least double recovery by SWB of certain interconnection costs, and would be discriminatory and arbitrary.

Neither the MFJ nor the FCC requires the application of access charges to the interconnection of RCCs with local exchange companies. Therefore, the Commission has the discretion not to apply the proposed access services tariff to RCC interconnection if SWB's proposal is not proven reasonable by the competent and substantial evidence upon the record of this case. Company's proposal to include RCCs under its access services tariff is consistent with its proposal to file "parity" access tariffs.

Under the Company's proposed tariffs, Southwestern Bell would bill both an RCC and an interexchange carrier in those instances where there is a carrier-to-RCC communication which occurs in the same central office. Southwestern Bell asserts that such a situation will not result in a double recovery of costs by Southwestern Bell, however, because of the manner in which the access charge rate levels were developed in this case. In developing access charge rates, the Company followed the FCC's Part 69 rules which provide for dividing the total revenue requirement for a given rate element by the estimated total minutes of use which are expected to occur, including carrier-to-carrier minutes of use. However, there is no evidence (and therefore Southwestern Bell has not proven) that these "carrier-to-carrier" minutes of use actually included any RCC calls.

Mobilfone also alleges that SWB's proposed application of access charges to RCCs is discriminatory and arbitrary. SWB does not propose any access charge to alarm companies, for example, for the telephones they use to terminate dialer-initiated calls originating from the local exchange carrier's subscribers. However, SWB does propose to charge access charges to RCCs for the telephones that the RCCs have to terminate messages originating from the local exchange carrier's subscribers. Telephone answering services would not be required to pay access charges for such calls, under the Company's proposal. In fact, announcement systems customers such as Time & Temperature, recorded weather forecasts, etc., would not come under SWB's proposed access services tariffs either. The justness and reasonableness of this distinction has not been proven to the Commission upon the record of this case. It has also not been made clear to the Commission that it is reasonable to treat a wire pair as non-traffic-sensitive local loop if used to connect to Mobilfone's business telephone, but treat the same wire pair as a traffic-sensitive interconnection trunk if connected to Mobilfone's switching equipment.

The Commission further finds that Southwestern Bell has failed to meet its burden of proving that the proposed level of interconnection rate increases to RCCs under Southwestern Bell's access services tariffs are just and reasonable. SWB's proposed access charges would result in interconnection cost increases to RCCs ranging from six hundred percent (600%) to one thousand percent (1,000%). Such extraordinary and potentially devastating rate increases to an individual class of customers must be accompanied by sound and convincing supporting evidence. SWB's proposal as to RCCs is not.

The Commission finds and concludes that Southwestern Bell Telephone Company has failed to meet its burden of proving that its proposed access services tariffs are just and reasonable insofar as they are proposed to apply to radio common carriers. As a result, the access services tariffs to be filed by Southwestern Bell in response to this Report and Order, Part I, shall not apply to radio common carriers. Instead, the Company should file tariffs which incorporate the terms of the existing interconnection agreement for RCC interconnection in Missouri; except that the rider to said contract which provides for a thirty-three percent (33%) discount on originated sent paid toll traffic shall not be included as to interLATA calls originated by RCCs.

The Commission also observes its incredulity at the fact that Southwestern Bell Telephone Company would propose the application of access charges to RCCs which would result in a six hundred percent (600%) to one thousand percent (1,000%) rate increase for interconnection services, without assuring timely and special notice to those RCCs of SWB's proposals. If that lack of special notice was purely unintentional, it was at the least highly unfortunate. The other RCCs doing business in Missouri should have timely intervened, and can only be grateful to the foresight of Mr. Bowles of Mid-Missouri Mobilfone for doing so.

Conclusions

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

Southwestern Bell Telephone Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo 1978, as is each of the forty-seven (47) independent telephone companies doing business in this State. The tariffs filed by the Company which are the subject matter of this proceeding were suspended pursuant to authority vested in this Commission by Section 392.230, RSMo 1978. The burden of proof to demonstrate that the proposed tariffs are just and reasonable is upon the Company.

The Commission, after notice and hearing, may order a change in any rate, charge or rental, and it may determine and prescribe the lawful rate, charge or rental, or regulations or practices affecting said rate, charge or rental thereafter to be observed. Section 392.230, RSMo 1978.

Based upon the findings herein, the Company and each independent shall file access services tariffs as hereinafter ordered. In addition, the Company shall administer the two mandatory statewide pools approved herein with respect to interLATA access charge revenues and intraLATA toll revenues.

It is, therefore,

ORDERED: 1. That the transfer of all NTS costs to local exchange customers as contemplated by the FCC in Docket No. 78-72 be, and it is hereby rejected and will not be adopted for intrastate Missouri communication services.

ORDERED: 2. That Southwestern Bell Telephone Company and all Missouri independent telephone companies be, and they are hereby ordered to file access services tariffs using the rate structure proposed by SWB in this case except as otherwise provided in this Report and Order or as further clarified below. Individual companies may file riders to alter said tariff to the extent necessary to modify language or service offerings not appropriate for those individual companies.

ORDERED: 3. That the structure of the access services tariff is an experimental tariff and shall be in effect on an interim basis for a one (1) year period.

ORDERED: 4. That the End User Common Line Charge element of the proposed access services tariff will not be adopted for Southwestern Bell or any independent telephone company for intrastate Missouri communications services.

ORDERED: 5. That for a one (1) year interim period, beginning January 1, 1984, two (2) mandatory pools shall be created in which all regulated Missouri telephone companies which provide local exchange service shall participate. The first pool will allow for a statewide access charge tariff for the collection of intrastate interLATA access charge revenues. The second pool will allow for the maintenance of statewide average intraLATA toll rates. The pools are to be structured and administered as set out in Exhibit #130 at Pages 2 & 3, which are hereby incorporated by reference herein.

ORDERED: 6. For the purposes of the pools herein authorized, average schedule companies may continue with average costs but said companies must develop actual cost data during 1984 for use after 1984.

ORDERED: 7. That the Commission's General Counsel shall immediately notify all OCCs and WATS resellers believed to be doing intrastate business in Missouri and advise them to file an application for certification with this Commission no later than January 31, 1984. Any OCC or WATS reseller doing such business in Missouri without Commission certification could face liability for statutory fines and penalties under the provisions of Sections 386.570 and 386.600, RSMo 1978.

ORDERED: 8. That if any party believes that AT&T Communications requires a certificate of convenience and necessity from this Commission in order to provide interLATA toll service within the State of Missouri on and after January 1, 1984, that party should file fifteen (15) copies of its legal suggestions in support of that belief with the Secretary of the Commission, and serve copies upon each party of record, on or before December 5, 1983.

ORDERED: 9. That the Company, Staff, Public Counsel and other interested parties be, and they are hereby directed to meet and confer, and submit a proposal designed to accomplish monitoring of bypass no later than one hundred twenty (120) days after the effective date of this Report and Order.

ORDERED: 10. That all independent telephone companies under the Commission's jurisdiction shall file tariffs structured in accordance with this Report and Order in Docket No. TR-84-62.

ORDERED: 11. That the access services tariff to be authorized in this proceeding shall not apply to radio common carriers. The Company shall file tariffs which incorporate the terms of the existing interconnection agreement for RCC interconnection in Missouri, except that the rider to said contract which provides for a thirty-three percent (33%) discount on originated sent paid toll traffic shall not be included as to interLATA calls originated by RCCs.

ORDERED: 12. That any party who believes that any matter necessary to implementation of this Report and Order, Part I, requires further guidance from the Commission, shall request same on or before December 2, 1983; or at the earliest possible date if the need for guidance arises after December 2, 1983.

ORDERED: 13. That the Secretary of the Commission shall serve a copy of this Report and Order, Part I, upon each independent telephone company doing business in Missouri.

ORDERED: 14. That this Report and Order shall become effective on the 1st day of January, 1984.

BY THE COMMISSION

Harvey G. Hubbs

Harvey G. Hubbs
Secretary

(S E A L)

Shapleigh, Chm., Musgrave, Mueller and Hendren, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo, 1978.

Dated at Jefferson City on this 22nd day of November, 1983.