BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the community optional service tariffs of Chariton Valley Telephone Corporation, et al., (seven other companies).	)))	CASE NO. TR-91-9 CASE NO. TR-91-134

APPEARANCES: Craig S. Johnson, Attorney at Law, Stockard, Andereck, Hauck, Sharp & Evans, 301 East McCarty Street, P. O. Box 1280, Jefferson City, Missouri 65102-1280, for Chariton Valley Telephone Corporation, Choctaw Telephone Company, Green Hills Telephone Corporation, KLM Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company and Wheeling Telephone Company.

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

Hearing Examiner: C. Gene Fee

On June 13, 1990, Chariton Valley Telephone Corporation (Chariton Valley) filed tariffs proposing to revise its existing community optional service (COS) tariff to include language describing the intercompany compensation arrangement applicable to COS traffic and revenues when more than one company combines to provide the service. Those tariffs were docketed as Case No. TR-91-9 and by order dated July 10, 1990, were suspended until November 10, 1990. By order issued August 24, 1990, the tariffs were further suspended until May 10, 1991.

Similar tariffs were filed on August 15, 1990, by Mid-Missouri Telephone Company, Choctaw Telephone Company, Wheeling Telephone Company, MoKan Dial, Inc., Green Hills Telephone Corporation and KLM Telephone Company. On August 20, 1990, Northeast Missouri Rural Telephone Company filed a similar tariff including language describing the intercompany compensation arrangement. By an order dated September 12, 1990, in Case No. TO-90-232, the Commission suspended the additional COS tariffs and by order dated October 12, 1990, the Commission created docket No. TR-91-134 for the consideration of the COS tariffs filed by all of the involved companies (hereinafter sometimes referred to collectively as Chariton Valley, et al.)

Timely applications to intervene were granted on behalf of Missouri Telephone Company, Eastern Missouri Telephone Company, Fidelity Telephone Company, Contel of Missouri, Inc., Contel System of Missouri, Inc., The Kansas State Telephone Company, d/b/a Contel of Eastern Missouri, and GTE North, Incorporated (sometimes collectively referred to herein as Missouri Telephone, et al.); Southwestern Bell Telephone Company (SWB); and United Telephone Company of Missouri (United); ALLTEL Missouri, Inc., Citizens Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, and Stoutland Telephone Company (sometimes collectively referred to herein as ALLTEL, et al.).

A hearing was held on February 6, 1991, at which time those parties, as well as the Commission Staff and the Office of the Public Counsel appeared. Briefs and reply briefs have been filed by all parties in completion of the instant record.

Findings of Fact

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

For a complete understanding of the instant controversy it may be desirable to describe its development through a series of prior related dockets. That development is described in numerous citations in the briefs and testimony of the witnesses in this matter, including that of Chariton Valley, et al.

COS was adopted by the Commission as a third generation extraexchange calling program in the Report and Order in Case No. TO-87-131 issued December 29, 1989. COS was to be rendered between exchanges having a community of interest, and at less than toll rates in effect between those exchanges. Since some COS routes would be from a requesting exchange served by one company to a target exchange served by another, it is necessary to have a plan for a division of the revenue between those two companies and any other company participating in rendering the service on that route. In Case No. TO-87-131, the Commission established the rates for COS, which were to be charged by the local exchange carriers serving the requesting exchange, but declined to establish an intercompany compensation plan. Case No. TO-90-232 was established with that as one of its purposes.

In Case No. TO-90-232 three plans were proposed by parties including one known as the Missouri Plan proposed by Chariton Valley, et al., and other small secondary carriers. Under the Missouri Plan the primary toll carriers would tariff COS as discounted toll and retain COS revenues. The primary toll carriers would have continued to pay access charges to secondary carriers, although at a reduced rate. A true-up of access charges would have occurred following the first year of operation.

The Commission chose to adopt the Revenue Sharing Plan (RSP) proposed by ALLTEL et al., and numerous other small and large secondary carriers and primary toll carriers. Under the RSP the local exchange carrier for the petitioning exchange could tariff COS as either a local or a separate COS tariff. Minutes of COS use were to be removed from compensation calculations under the primary toll carrier plan, and each local exchange carrier participating in the route would share equally in the revenues generated. A calculation was to be made for supplemental compensation to adjust for net gains and losses.

The primary author of the RSP was Robert C. Schoonmaker who testified on behalf of ALLTEL and others in the instant proceeding. In testimony originally offered in support of the RSP Schoonmaker suggested contracts between the various telephone companies as the best method to implement the plan. Schoonmaker assumed there would be an industry-wide effort to develop a standard contract and suggested that two companies would sign one contract containing an appendix that would list all of the COS routes that it applied to. In the Report and Order adopting the RSP, the only tariffs that were ordered to be filed were those of companies with pending COS routes to reflect implementing service on those routes.

In response to the order adopting the RSP, Chariton Valley, et al., filed tariffs which included a description of the intercompany compensation plan. By order dated May 4, 1990, in Case Nos. TO-87-131 and TO-90-232, the Commission rejected the tariff sheets containing the intercompany compensation plan because their inclusion was inappropriate since Chariton Valley was protected the same as the other companies by the Commission order in Case No. TO-90-232 and the proposed language merely made the Company's tariff more complicated. In response to Chariton Valley's motion, the Commission refused to grant a hearing to consider the rejected tariff sheets and refused to grant a rehearing of its May 4, 1990 order.

By order issued November 30, 1990, in Case No. TO-90-232 the Commission approved a nonunanimous stipulation and agreement in modification of the RSP to its present form. Chariton Valley, et al., were parties to the stipulation and

agreement. Although the Commission's order of November 30, 1990, modified the existing RSP, the order did not direct the filing of any tariffs. All of the foregoing orders were unappealed and are final.

The instant case was commenced by the filing of tariffs with the provision similar to those rejected by the Commission's order of May 4, 1990, issued in Case Nos. TO-87-131 and TO-90-232. The only substantive issue in the instant case is whether or not the intercompany compensation plan should be contained in the Company's tariffs as advocated by Chariton Valley, et al., or in separate contracts as advocated by all of the intervenors, the Commission Staff, and the Public Counsel.

The witness for Chariton Valley, et al., offered three primary reasons why the RSP should be tariffed. The initial reason given is the potential for a portion of a company's revenue requirement being lost or unrecoverable if the intercompany compensation arrangement is not spelled out in the tariff. It is contended by Chariton Valley, et al.'s witness that the RSP required that the usage rated access of the secondary carrier providing service to the petitioning exchange would have to be replaced by one three sources: (1) a flat-rated revenue from the end user for the COS service, (2) a flat-rated surcharge on all local ratepayers for the revenue neutrality provision, and (3) flat-rated intercompany long term support in cases where the primary toll carriers show a net gain and the secondary carriers show a net loss of revenues. It is believed by the tariffing companies that it is important to include the actual RSP in the tariff because the companies are providing a Commission ordered flat-rated interexchange service as a separately tariffed service offering.

In the Commission's opinion the potential for lost or unrecoverable revenue requirement does not exist and the contention should be rejected. As pointed out by other witnesses in the case this Commission has prescribed the RSP and the companies that provide COS do not have any option to use any other type of intercompany compensation arrangement. This would be true even if the intercompany compensation arrangement was not specified in either a tariff or a contract. The order

prescribing the RSP binds all parties to this proceeding unless modified by the Commission.

The weight of Chariton Valley, et al.'s argument is also diminished by the testimony of a number of witnesses in establishing that intercompany compensation arrangements are common to many services requiring the participation of more than one company, however, intercompany compensation arrangements have not been previously tariffed. Some examples given by the witnesses of such compensation arrangements were intercompany compensation in the provision of extended area service, the Metropolitan Optional Service Plan, the provision of directory assistance by one company for another, and the intercompany compensation arrangements in the joint provision of private line service under the Missouri primary toll carrier plan. One of the most significant intercompany compensation agreements was the former separations and settlement arrangement for the division of toll revenues. Although much larger sums of money were exchanged under those arrangements than contemplated by the RSP, the settlements and separations arrangement was never contained in a company tariff, but was confined to external agreements. Therefore, a tariff is unnecessary to ensure the appropriate division of revenue from the provision of COS.

Many of the other parties to this case are telephone carriers bound by the prescription of the RSP in the same manner as Chariton Valley, et al. More specifically, United Telephone has pointed out in its brief that it operates as a secondary carrier on many COS routes, and in such cases it is in the same position as the smaller companies. Since the Commission has approved the elements of the RSP United has no belief that the existence of tariff language is necessary to guarantee or protect its interests on those COS routes where it serves as a secondary carrier. For all of these reasons the Commission is of the opinion and finds that inclusion of the terms of the RSP in the company's tariff is unnecessary to protect the serving carrier's revenue streams.

Another reason offered for inclusion of the RSP in tariffs is largely legal in nature and concerns the common existence of termination clauses in contracts. It

is contended by the Chariton Valley, et al., witness that if a contract is terminated the long-term support for the small secondary carriers would also be terminated, requiring the carrier to seek revenue neutrality from some other source or rate relief from the Commission. The Commission finds that testimony of witnesses as well as the recitations in the briefs of other parties adequately refutes this contention. The elimination of a unilateral termination provision from a contract is a simple problem of draftsmanship. In addition, even if parties attempted to enter into contracts providing for a termination of some of the RSP provisions those contracts would not be effective to thwart the Commission's regulatory authority and would not alter the fact that the Commission has prescribed the RSP which is binding on all concerned even though there may be contractual provisions to the contrary.

The third reason offered by Chariton Valley, et al.'s witness is that since two or more companies are providing the service it is only reasonable to have the parameters for the offering predetermined, rather than having to negotiate each difference at the time the difference takes place. It is contended that tariffing the RSP has the advantage of being both cost effective and easier to apply. In the Commission's opinion this argument is not persuasive toward a decision to tariff the RSP, especially in view of the overwhelming evidence to the contrary offered by other parties to this case. The Commission Staff witness described how the inclusion of the RSP in tariffs would needlessly complicate the tariffs of the various companies. As established by the Staff's testimony, all proposed tariffs, no matter how ministerial or mundane, are subject to thorough review by the Staff if they are to be recommended to become effective. If Chariton Valley, et al.'s tariffs are allowed to be approved those tariffs will affect any other carrier which jointly provides COS on any route involved, and those carriers will be compelled to participate in the review process. As an example of this required review, the Staff pointed out that, although the RSP has been revised by order of the Commission, the tariffs proposed in this case have not been altered to reflect the mandated changes. If all of those exchange carriers had tariffs reflecting the RSP, its revision would result in a succession of

tariff filings all of which would have to be reviewed in a brief period of time to determine if there were differing interpretations of the same revised RSP. The Commission agrees with the Staff that the extensive review process required would be a misallocation of limited resources especially in light of the fact that it would be caused by unnecessary tariffs.

Witnesses for the intervenors also described how tariffing the RSP would tax their resources as well. The RSP contains a provision for updating the level of support payments between companies after three months. It is contended that it is unlikely that a company could obtain necessary data to make that adjustment, make the appropriate calculations, and file a tariff on thirty days notice for it to become effective at the beginning of the fourth month as required by the RSP. It is believed that the time required by this process would more than likely result in some aspects of retroactivity which would cloud the tariff's legality. Another perceived administrative burden is a necessity to frequently revise tariff filings when new COS routes are implemented which affect the intercompany compensation arrangements. If these changes were to be tariffed, then not only will the Commission Staff have to be involved but a large number of companies will have to monitor each tariff filing. The Commission is in agreement with the intervenors and believes that those changes would be much easier to accomplish by amending a contract than by filing revised tariffs. That would be the case because tariff changes offered to reflect changes in the RSP would affect not only those carriers involved in providing COS on specific routes, but also a large number of other carriers in the State. Even if a company is not jointly providing COS on a route today with a particular carrier, it could enter into such an arrangement in the future as new COS routes are added. Under those circumstances a company entering into its first arrangement with another company would be affected by the existing tariff.

Contrary to the contention of Chariton Valley, et al., tariffing the RSP would not be in conformance with custom and usage. Indeed, similar intercompany compensation arrangements have traditionally not been the subject of a tariff. Many

of the intervenors have described the function of a tariff. The purpose of a tariff is to contain a description of the services offered by a company and the conditions under which it will extend those services to prospective customers. One of those conditions is always the rate for the service. By applying for the service the prospective customer has consented to take the service under the conditions prescribed, including the rate to be charged. The intercompany compensation arrangement at issue here does not affect the rate for the service rendered by the serving carrier to its customers in the originating exchanges. To the contrary, the method of dividing the revenues has no effect on the nature of the service provided to the customer, nor on the rate paid. In providing COS there is no utility and customer relationship between the carriers jointly providing the service. In a number of the examples cited by Chariton Valley, et al., there is a relationship between the provider of a service and the receiver of a service which makes the example a proper subject of a tariff filing, unlike the provisions at issue.

For all of these reasons, the Commission is of the opinion and finds that Chariton Valley, et al., has fallen short of sustaining its burden that the proposed tariffs properly include the intercompany compensation arrangement. To the contrary, the Commission finds that the evidence adequately establishes that the intercompany compensation arrangement described in the revised RSP is more properly included in contracts between the carriers that cooperate in providing the service.

Conclusions

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

The brief of Chariton Valley, et al. raises four points pertinent to this proceeding. Those points will be addressed *seriatim*.

Point I is that "it is proper to take official notice of motions and orders in Case Nos. TO-87-131 and TO-90-232 for purposes of a complete record in this proceeding." At the outset of the proceeding counsel for Chariton Valley, et al., requested official notice of a number of Reports and Orders and procedural orders in

those dockets, as well as one motion for rehearing filed by Chariton Valley. At the time of the hearing counsel for Chariton Valley, et al. was unwilling or unable to state what the Commission was supposed to be aware of, or what fact the Commission is supposed to be aware of, as a result of official notice of the cited documents. Counsel for Chariton Valley, et al. is critical of the hearing officer's belief that official notice should only be taken of facts. In its written Motion For Official Notice/Complete Record Chariton Valley, et al. cites 4 CSR 240-2.130(1)(D) and 4 CSR 240-2.130(2) to support its proposal to take official notice of entire documents, for a purpose which it is alleged will become clear.

In the Commission's opinion Chariton Valley, et al.'s reliance on the cited rules is misplaced. 4 CSR 240-2.130(1)(D) provides as follows: "If any matter contained in a document on file as a public record with the Commission is offered in evidence, such document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and otherwise competent, relevant and material." (emphasis supplied).

4 CSR 240 2.130(2) provides in pertinent part as follows: "the Commission shall take official notice of all matters of which the courts shall take judicial notice." (emphasis supplied).

The term "judicial notice" is defined as follows:

> The act by which a court, in conducting a trial, or framing its decision, will, of its own motion, and without the production of evidence, recognize the existence and truth of certain facts, having a bearing on the controversy at bar, which, from their nature, are not properly the subject of testimony, or which are universally regarded as established by common notoriety, *e.g.*, the laws of the state, international law, historical events, the constitution and course of nature, main geographical features, etc. (citations omitted). The cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already know them. (citations omitted). (emphasis supplied). *Black's Law Dictionary* 986 (Fourth Edition 1951).

Judicial notice has also been defined as "the cognizance of certain facts which judges and jurors may properly take and act on without proof because they already know them." (emphasis supplied). 31 C. J. S. Evidence Section 6 (1964).

The Commission is of the opinion and concludes that the doctrine of judicial notice is limited to facts. The Commission is also of the opinion and concludes that the purpose of 4 CSR 240-2.130(1)(D) requires a movant for official notice to be more specific than the movant herein has been willing or able to be. For those reasons the Commission is of the opinion and concludes that the motion for official notice must be denied.

Even though it is improper to request official notice of entire documents, rather than facts contained in specified portions of those documents, the Commission notes that the general rule, which is followed in the State of Missouri, is that courts ordinarily do not in one case take judicial notice of their own records in other cases. *Knorp v. Thompson* 175 S.W.2d 889 (1943) and *Hess v. Hess* 183 S.W.2d 560 (Mo. App. 1944). Although there are exceptions to the general rule when the interests of justice require those exceptions, none are present here, since there are other avenues of establishing the same facts. Certain of the witnesses offered testimony concerning the contents of the requested documents. As such, that information is properly in the record. Other of the parties have logically cited those orders and decisions in the briefs which is perfectly permissible. As to official notice, the motion of Chariton Valley, et al. should be denied.

Point II is the contention that Missouri statutes require approval of tariffing the RSP. For support Chariton Valley, et al., cited the following portion of Section 392.220.2 RSMo.

> ...No telecommunication company shall refund or remit directly or indirectly any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are specified in its schedule filed and in effect.... (emphasis supplied).

It is the contention of Chariton Valley, et al. that the RSP as approved by the Commission's April 18, 1990 order in Case No. TO-90-232 requires the telephone company providing COS to share its customer revenue with the other companies providing facilities to complete the COS route. To support this contention the brief contains approximately twelve pages of reproduction of prefiled testimony and transcript pages of cross-examination. Although the brief is difficult to follow, the conclusion drawn from the lengthy reproduction is that since COS is a jointly provided service and there is no dispute that the RSP determines the aggregate of all rates charged customers for the COS service, Section 392.220 requires the tariffing for the RSP. The brief also cites the Commission's rule 4 CSR 240-30.010(1) which requires tariffing of all rates and charges of telephone corporations of whatever nature made for each kind of service rendered.

Chariton Valley, et al. also cites the following portion of Section 392.220.1, RSMo in support of its contention:

> Every telecommunications company shall print and file with the commission schedules showing the rates, rentals and charges for service of each and every kind by or over its facilities... between each point upon its facilities...and all points upon the line of any other telecommunications company whenever a through service or joint rate shall have been established... (emphasis supplied).

Since there is no dispute that COS is a through service it is argued the cited statutes require its tariffing. The further contention is made that since COS replaces toll, a through service previously tariffed, the intercompany compensation mechanism should be tariffed.

A common response contained in the briefs of the other parties is that Section 392.220 does not apply to the instant controversy; the statutes are cited incompletely and out of context; and that such a twisted application of the cited statutes is inconsistent with legislative intent of the entire act which must be considered as a whole.

The Commission concludes that this is the better reasoned view and the reliance by Chariton Valley, et al. of the cited statutes as a requirement for

tariffing the RSP is misplaced. The Commission agrees with the position presented by the majority of the parties to this case that Section 392.220, RSMo Supp. 1990 provides for the tariffing of services rendered to the public, and the RSP is completely different in that it does not describe a service provided to the public, and being a method of determining the sharing of the revenues paid by those customers need not be contained in the tariffs.

In the Commission's opinion Section 392.220 cited by Chariton Valley, et al. requires companies to charge the compensations specified in their tariffs and no other. The statute prohibits discrepancies in rates charged to persons for the same or similar services by way of any refund or rebate. The cited sections do not apply to compensation agreements entered into by telecommunications companies.

Section 392.240.3 demonstrates that the General Assembly understands the difference between the providing of a service and practices such as the division of revenues between companies combining to provide those services. Section 392.240.3 recites in pertinent part as follows:

> ...If such telegraph or telephone corporations do not agree upon the division between them of the cost of such physical connection or connections or the division of the joint rates, toll or charges established by the commission over such through lines, the commission shall have authority, after further hearing, to establish such division by supplemental order.

Being established by order of the Commission, as provided for in Section 392.240.3 the plan is not a company initiated proposal, is not a rate for a service, and is not proper for inclusion in tariffs. Such inclusion in the company's tariffs is clearly not required by Section 392.220, RSMo.

Point III in Chariton Valley, et al.'s brief is a consent to modifying the proposed tariffs to implement the revisions to the RSP. Since the findings and conclusions in this Report and Order determine that the RSP is an improper inclusion in the company tariffs, the concession for a modification is moot and need not be addressed further.

Point IV in the brief of Chariton Valley, et al. is a consent to reasonable modification of those portions of their proposed tariffs not directly related to the terms of the RSP. As stated in the brief the concerns expressed do not relate to the primary issue of whether the RSP should be tariffed. The willingness to modify the tariffs in areas not related to the tariffing of the RSP is conditioned upon the allowing of the tariffing of the RSP which we herein specifically decline to do. Since the proposed modification is not related to the issue presented in this matter, and is conditioned on an event which will not occur, the Commission is of the opinion that it would be improper to direct those modifications.

A final contention must be addressed which was raised for the first time in the reply brief of Chariton Valley, et al. The belated contention is that the tariffs at issue are in effect by operation of law pursuant to the terms of Section 392.230.5, RSMo Supp. 1990. It is contended that the Commission has followed a procedure of initial suspension of one hundred twenty days, and a second suspension of six months, as provided by Section 392.230.3. That section is claimed to be inapplicable because each of the involved companies is a small telephone company with less than twenty-five thousand access lines; COS is a new joint service; the rates are a new rate; and the RSP is a regulation or practice which affects consumer rates, rentals or charges.

Chariton Valley, et al. alleges that the tariffs are automatically approved if the Commission has failed to act within one hundred fifty days of their filing. Since the tariffs were filed on May 3, 1990, by Chariton Valley, and all of the tariffs at issue were filed on or before August 15, 1990, the tariffs at issue are claimed to have became effective on January 15, 1991.

On March 15, 1991, the intervenors filed a joint motion seeking permission to respond to the new argument first raised in the reply brief. It is contended that the movants will be prejudiced if they are not permitted to respond to this new argument. The Commission concludes that that argument is well taken and accepts the intervenors' March 15, 1991 motion.

The first of two points raised in the motion is that Chariton Valley, et al.'s conduct belies their contention in this proceeding. It is pointed out that, if timely raised, the argument might have obviated the filing of testimony, an evidentiary hearing and the filing of briefs for the saving of time and money for everyone, including Chariton Valley, et al. It is contended by the intervenors that if Chariton Valley, et al. truly believed their recent contention, it should have been raised at the time the Commission issued its second suspension order, or at the very least, on January 15, 1991, the contended date of the tariffs' effectiveness.

The second point relied on by the intervenors is that there is no evidence in this record on which to base the applicability of the statute since there is no evidence indicating that Chariton Valley, et al., are small telephone companies, or that the notice required under the statute has been given.

On March 18, 1991, the Commission Staff filed its Response To Argument First Raised In Reply Brief. It is the initial contention of the Staff that Section 392.230.5 was intended to provide an expedited general rate case procedure for smaller local exchange companies because it is possible for the Commission to audit their earning situations and to grant rate relief on much less than the time required for larger companies. It is contended that the tariffs of Chariton Valley, et al. do not constitute general rate case filings and are not contemplated by Section 392.230.5.

The Staff also shares the intervenors' contention that there is no pleading or evidence to show that Chariton Valley, et al. are small telephone companies, or that the required statutory notice has been tendered.

Section 392.230, Supp. 1990 recites in pertinent part as follows:

> 4. For the purposes of this section, a "**small telephone company**" is defined as a local exchange telecommunications company which serves no more than twenty-five thousand subscriber access lines in the state of Missouri.
>
> 5. Whenever a small telephone company seeks to implement any new individual or joint rate, rental or charge, or any individual or joint regulation or practice affecting any rate, rental or charge, it shall file same with the commission and notify its

> customers of such charge at least thirty days in advance of the date on which the new rate, rental, charge, regulation or practice is proposed to become effective....

Upon a reading of that statute the Commission concludes that the position of the Staff and the intervenors is correct in that the statute does not apply to the tariffs at issue herein. As previously stated, the suspended tariffs do not involve either a new rate or a new service. To the contrary, they are merely a description of a method under which the carriers providing the service will divide the revenues which are prescribed in other previously filed tariffs which are in effect. Even assuming that the cited statute applies to the instant situation, the requisite notice has not been given, nor is there any information on which to base a finding that any of the involved companies is a "small telephone company" as defined in the statute. The Commission concludes that Chariton Valley, et al.'s reliance on the cited statute is misplaced and is not dispositive of any issue presented herein.

Since the Commission has found that the evidence presented by Chariton Valley, et al. is inadequate to sustain its burden of proof that the tariffs are reasonable and proper, there is no competent or substantial evidence on which to base an approval of those tariffs.

Since we have concluded that there is no legal requirement that the tariffs at issue be accepted, the tariffs should be rejected in the face of the overwhelming evidence of the absence of any historical precedents for such filings and the administrative burden and confusion which may result from such matter not customarily contained in tariffs.

IT IS THEREFORE ORDERED:

1. That all tariffs herein suspended concerning the provision of community optional service be, and are, disapproved.

2. That this Report and Order shall become effective on May 9, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch, and McClure, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo 1986.
Perkins, C., Not Participating.

Dated at Jefferson City, Missouri, on this 26th day of April, 1991.