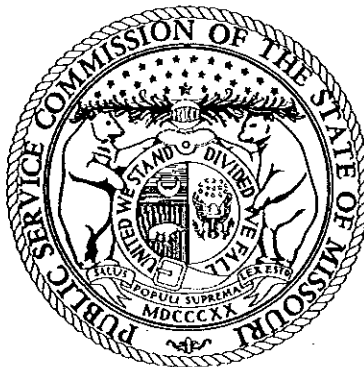


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of TCG St. Louis )  
for a Certificate of Service Authority to Provide )  
Basic Local Telecommunications Services in Those )  
Portions of St. Louis LATA No. 520 Served by )  
Southwestern Bell Telephone Company. )  
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**Case No. TA-96-345**

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**REPORT AND ORDER**

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**Issue Date:** February 3, 1998

**Effective Date:** February 13, 1998

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

In the Matter of the Application of TCG St. Louis     )  
for a Certificate of Service Authority to Provide     )  
Basic Local Telecommunications Services in Those     ) Case No. TA-96-345  
Portions of St. Louis LATA No. 520 Served by     )  
Southwestern Bell Telephone Company.             )  
   )

**APPEARANCES**

Paul H. Gardner, Goller, Gardner & Feather, P.C., 131 East High Street,  
Jefferson City, Missouri 65101,

and

Douglas W. Trabaris, Senior Regulatory Counsel, Teleport Communications  
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James C. Stroo, Associate General Counsel, GTE Midwest Incorporated,  
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Leland B. Curtis, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South  
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Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel,  
Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the  
Public Counsel and the public.

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

**REGULATORY LAW JUDGE:**     Amy E. Randles.

**REPORT AND ORDER**

**Procedural History**

TCG St. Louis (TCG or Company) applied to the Commission on  
April 18, 1996, for a certificate of service authority to provide basic  
local telecommunications service in Missouri. The following entities  
intervened:

MCI Telecommunications Corporation (MCI);  
Southwestern Bell Telephone Company (SWBT);  
The Small Telephone Company Group (STCG);  
Bourbeuse Telephone Company (Bourbeuse);  
Fidelity Telephone Company (Fidelity);  
GTE Midwest Incorporated (GTE);  
United Telephone Company of Missouri d/b/a Sprint (Sprint); and  
AT&T Communications of the Southwest, Inc. (AT&T).

Sprint filed a motion on November 20, 1997, to withdraw. The Commission will grant Sprint's motion to withdraw.

On February 11, the Commission granted TCG the requested certificate of service authority, subject to certain conditions, to become effective when TCG's tariff became effective. The certificate covers those portions of St. Louis LATA No. 520 that are served by SWBT.<sup>1</sup> The Commission also classified TCG as a competitive telecommunications company and waived the application of certain statutes and rules with respect to the basic local service that TCG would offer.

The Commission temporarily waived the requirement set forth 4 CSR 240-2.060(4)(H), which mandates the filing of a 45-day tariff, until TCG had entered into a Commission-approved interconnection agreement that enabled it to provide basic local exchange services. TCG was required to file tariff sheets for approval no later than 30 days after the Commission approved the required interconnection agreement.

TCG executed an interconnection and resale agreement with SWBT, which was approved by the Commission on December 2 in Case No. TO-98-154. On October 2 and 3, the Company filed tariff sheets reflecting the rates, rules and regulations it will use and the services it will offer. P.S.C. Tariff No. 2 (9800213) describes TCG's local service offerings, and

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<sup>1</sup> TCG requested a certificate to provide basic local service in areas served by GTE in a separate case. This application was granted on December 18 in Case No. TA-97-446.

P.S.C. Tariff No. 3 (9800263) describes the Company's access services. TCG filed substitute sheets to P.S.C. Tariff No. 2 on October 27 and extended the effective date to November 8. TCG filed substitute sheets to P.S.C. Tariff No. 3 on October 21, October 27 and October 29, and extended the effective date to coincide with the effective date of P.S.C. Tariff No. 2 on November 8.

On October 30, the Staff of the Commission (Staff) filed a Memorandum recommending approval of P.S.C. Tariff No. 2 and P.S.C. Tariff No. 3. In its Memorandum, Staff explained that TCG's interim number portability service would be available for a \$3.00 monthly charge to the connecting local exchange company. Staff stated that it was not aware of other competitive local exchange carriers in Missouri who have a tariffed rate for this service. On November 5, intervenor MCI filed a motion to suspend or reject TCG's P.S.C. Tariff No. 2 on the grounds that the tariff proposed a \$3.00 monthly charge to connecting local exchange companies for interim number portability. On the same day, TCG filed a substitute tariff sheet to P.S.C. Tariff No. 2, stating in its cover letter that the purpose of the substitution was to withdraw the charges TCG proposed for interim number portability service. On November 6, the Commission suspended the effective date of TCG's tariffs (No. 2 and No. 3) to March 9, 1998, to permit the Commission time to review TCG's method for calculating switched access and its proposed charge for interim number portability service. MCI withdrew its motion to suspend the tariff on November 6, 1997, and the Staff filed another Recommendation on November 26 in response to TCG's substitute tariff sheet filing of November 5. According to Staff's November 26 Recommendation, the substitute sheet removed the \$3.00 per month charge for interim number portability service.

On December 29, the Commission conducted a hearing to consider the remaining issues related to TCG's method of calculating switched access. TCG, GTE, MCI, the Office of the Public Counsel (OPC) and the Staff appeared at the hearing. SWBT and STCG were excused. TCG, Staff and OPC supported TCG's tariffs. Neither GTE nor MCI opposed the tariffs.

## **Discussion**

The issue before the Commission is whether TCG's proposed method of calculating access charges complies with the Commission's order granting TCG's certificate of service authority and whether TCG's access charges contain elements which are not cost-based.

### **1. 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. The positions and arguments of all of the parties have been considered by the Commission in making this decision. The failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

In its October 30 Memorandum, Staff explained that P.S.C. Tariff No. 2 covers TCG's proposed offering of basic local service to business customers only. Staff explained that TCG would offer single-line business service with enhanced features such as Call Forwarding Variable, Three-Way Calling, Call Waiting, Speed Calling, Call Forward Busy and Call Forward Don't Answer. Staff further explained that TCG would offer its customers Direct Inward Dial (DID) and Direct Outward Dial (DOD) and combinations of

DID and DOD service, as well as Centrex service. P.S.C. Tariff No. 2 covers not only message telecommunications services, but also operator services, directory assistance service, vanity telephone numbers, and emergency (911 and E-911) service where available. Customers could also request blocking of 900 number calls, collect and third-number billed calls, 1+ and 0+ calls, and international calls. TCG does not propose to offer Lifeline and Linkup services, but would offer dual party relay service.

With respect to P.S.C. Tariff No. 3, Staff stated that the tariff contains terms, conditions and rates for both dedicated access (private line or special access) and switched access. Staff stated that it had compared TCG's access rates to those of SWBT. Staff mentioned that TCG's method of calculating switched access is premised on the method proposed by SWBT in Case No. TR-95-342. Staff noted further that there are rate elements utilized by SWBT which would not be utilized by TCG and vice versa, such as the carrier common line charges of SWBT, and the end office charges of TCG. Staff stated that it had made certain assumptions in comparing SWBT's and TCG's switched access charges and that, based on those assumptions, Staff concluded that TCG's proposed access rates are no greater than those of SWBT.

In its October 30 Recommendation, the Staff pointed out that "TCG's method of calculating switched access is premised on a manner similar to the method proposed by SWBT in Case No. TR-95-342. Specifically, TCG's method contemplates flat rate pricing of transport and entrance facilities in instances where SWBT's charges are based on actual MOUs." At the hearing, Staff witness William Voight clarified that TCG's tariff differs from the tariff proposed by SWBT in Case No. TR-95-342

because it does not contain a residual interconnection charge (RIC). According to Voight, the RIC is a rate element that was contained within SWBT's tariff proposal in Case No. TR-95-342. The RIC proposed by SWBT was not based on its cost, and that was the reason for its rejection, according to Voight. No evidence was presented by the other parties on this issue. The Commission has reviewed the pleadings and evidence filed in this case and the order rejecting SWBT's proposed tariff in Case No. TR-95-342, and finds that TCG's proposed P.S.C. Tariff No. 3 does not contain a non-cost-based RIC similar to the RIC proposed by SWBT in Case No. TR-95-342.

In the February 11 order granting TCG's request for a certificate of service authority to provide basic local telecommunications service, the Commission made TCG's certification conditional. First, certification was expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1997. Certification was also conditioned upon TCG's agreement that, unless otherwise ordered by the Commission, its originating and terminating access rates would be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large incumbent local exchange carrier within the service areas in which TCG would seek to operate. The order emphasized that the parties had agreed that any increase in the switched access service rates above the maximum switched access service rates set forth in the agreement would have to be cost-justified pursuant to Sections 392.220, RSMo Supp. 1997, and 392.230, RSMo 1994, rather than Sections 392.500 and 392.510, RSMo 1994. The practical effect of this condition on the access tariff pending before the Commission is that TCG's access rates may not exceed SWBT's access rates under any circumstances, unless TCG justifies the higher rates as cost-based and obtains Commission approval.

The Staff Memorandum of October 30 did not clarify for the Commission that there would be no instances in which TCG's access service rates exceeded those of SWBT. However, at the hearing, TCG witness Carolyn Heath, a tariff analyst for TCG, explained TCG's method of ensuring that TCG's rates are sufficient to recover its costs. Staff witness Voight explained that, in order to compare TCG's flat rate method of pricing to SWBT's minute-of-use (MOU) method, assumptions were made about the MOUs that TCG was likely to experience. According to Voight, the assumption of 9,000 MOUs per month was based on industry standards. TCG and Staff supplied exhibits that explained how SWBT's and TCG's rates were compared in spite of their different methods of calculating access charges (Exhibits 1 and 2, respectively). Staff witness Voight testified that there were no circumstances, using TCG's present formula, under which TCG's access rates would exceed those of SWBT. He further testified that, in order for TCG to vary its method of calculating switched access, it would be required to file a tariff revision. Therefore, the Commission would have an opportunity to review TCG's proposed revisions prior to their effective date.

The Commission has reviewed the testimony and pleadings filed by the parties, as well as the testimony and exhibits presented at the December 29 hearing, and finds that TCG's method of calculating switched access rates ensures that its rates will be lower than SWBT's rates in all instances.

## **2. Conclusions of Law**

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



TCG's tariff is distinguishable from the SWBT tariff filed in Case No. TR-95-342 in that SWBT's tariff included a residual interconnection charge that was not cost-based. Such charges are unlawful under the federal Telecommunications Act of 1996. See 47 U.S.C. § 252(d). TCG's tariff includes no such charge. Therefore, the Commission concludes that TCG's proposed method of calculating switched access is lawful.

The Commission further concludes that the access charges proposed by TCG are based on a method which will ensure that TCG's access service rates are lower in all instances than SWBT's access rates. For this reason, TCG need not justify its proposed rates based on cost. The access services tariff proposed by TCG complies with the Commission's order of February 11 granting TCG a conditional certificate of service authority to provide basic local telecommunications services.

The Commission has applied the law to the facts found in this case and determined that the tariffs filed by TCG on October 2 and 3 should be approved to take effect on February 13, 1998.

**IT IS THEREFORE ORDERED:**

1. That the November 20, 1997, motion of United Telephone Company of Missouri d/b/a Sprint to withdraw is granted.

2. That the tariff sheets filed by TCG St. Louis on October 2 are approved as amended to become effective on February 13, 1998. The tariff sheets approved are:

P.S.C. Tariff No. 2

Original Title Page through Original Sheet No. 97

3. That the tariff sheets filed by TCG St. Louis on October 3 are approved as amended to become effective on February 13, 1998. The tariff sheets approved are:

P.S.C. Tariff No. 3

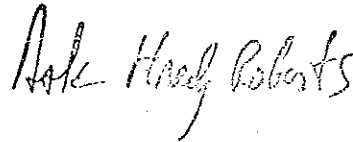
Original Title Sheet through Original Sheet No. 64

4. That the certificate of service authority to provide basic local and local exchange telecommunications service, issued on February 11, 1997, to TCG St. Louis shall become effective on February 13, 1998.

5. That this Report and Order shall become effective on February 13, 1998.

6. That this case shall be closed on February 14, 1998.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Crumpton, Drainer  
and Murray, CC., concur and  
certify compliance with the  
provisions of Section 536.080,  
RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 3rd day of February, 1998.