

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of February, 1998.

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-98-63</u>
)	
Ellington Telephone Company,)	
)	
Respondent.)	
)	

ORDER APPROVING STIPULATION AND AGREEMENT

On August 12, 1997, the Staff of the Missouri Public Service Commission (Staff) filed a Complaint against Ellington Telephone Company (Ellington). In its Complaint, the Staff alleged that Ellington failed to comply with a Commission modernization plan order, provided multi-party service to certain customers without an approved tariff in place, and discriminated against its single-party service customers by charging them for service while the remaining multi-party customers were receiving service for free. Notice of the Complaint was sent to Ellington, and on September 12, Ellington filed its Answer. The Commission scheduled a prehearing conference for October 21, which was canceled after the parties indicated that they had reached an agreement.

On October 31, the parties filed a Stipulation and Agreement (Agreement). Staff, Ellington and the Office of the Public Counsel (OPC) are signatories to the Agreement. The Commission may approve the Agreement

without having an on-the-record presentation because the due process requirements as set out in State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d, 494, 496 (Mo. App. 1989), have been met. The parties had an opportunity to request a hearing and have waived their rights in the Agreement.

Findings of Fact

The Missouri Public Service Commission, having considered all the evidence, makes the following findings of fact.

The Agreement represents a negotiated settlement which has the purpose of terminating the Complaint made by the Staff against Ellington. The Agreement is attached to this order as Attachment 1 and is incorporated herein by reference.

The Agreement indicates that Ellington failed to comply with the May 31 deadline for compliance with the Commission's modernization rule, 4 CSR 240-32.100. In Case No. TO-95-152, the Commission established a deadline of December 31, 1996, for Ellington to complete its conversion of all multiparty lines to single-party lines. The Commission subsequently extended the deadline to May 31, 1997. The Commission also ordered Ellington to amend its tariff to remove rates for multiparty service, effective May 31.

The Agreement states that Ellington amended its tariff effective May 31 to remove rates for multiparty line service. However, Ellington failed to complete the conversion of service from multiparty to single-party for 83 customers as of May 23. The Agreement also recognized that Ellington admitted that it continued to provide multiparty service to 84 customers as of June 1. Ellington further admitted that effective June 1, such customers received service for free until the date that they

were converted to single-line service. The Agreement is intended to resolve the Staff's complaint that Ellington violated the Commission's order in Case No. TO-95-152 and that Ellington violated Sections 392.480.1 and 392.200.2, RSMo 1994, by providing multiparty service at no charge to 84 customers from June 1 until at least July 18 while it was charging single party line customers and there was no approved tariff in effect for multiparty service. In the Agreement, Ellington agrees to pay \$9,600 (\$4,800 per count of the Staff Complaint) into the Public School Fund of the State of Missouri, pursuant to Section 386.570, RSMo 1994. The parties stated their belief that the amount of the penalty is commensurate with the severity of the violations admitted to by Ellington. The parties pointed out that Section 386.570, RSMo 1994, permits a penalty of \$100 per violation, and per day in the case of a continuing violation. However, the parties agreed that Ellington's violations were mitigated by the fact that the company chose an ambitious modernization plan that did not include the maximum seven-year modernization period permitted under 4 CSR 240-32.100. The parties agreed that Ellington's choice of a shorter time showed its efforts to quickly offer its customers better services.

On December 5, the Staff filed its Suggestions in Support of the Stipulation and Agreement (Suggestions). Staff indicated that it had investigated Ellington on October 2 and 3 to ensure that Ellington had complied with the Commission's order in Case No. TO-95-152. Staff member J.C. Stock visited Ellington and requested purges of the switch and the billing system to verify that Ellington no longer had any four-party customers. Staff attached the printouts listing the purges performed on Ellington's system to its Suggestions. Staff's Suggestions also stated that during his visit to Ellington, Mr. Stock observed the terrain in

Ellington's service area, and noted that Ellington is located in Reynolds County in southeast Missouri and is surrounded by four national forests. According to Staff, no other company in this state must serve an area with a population density as low as Ellington, which is only 3.74 customers per square mile. Mr. Stock took photographs of the heavily wooded territory to illustrate the physical difficulties Ellington encountered in attempting to modernize. These were attached to Staff's Suggestions as well. The Staff noted that Ellington used its own employees to perform the necessary construction, which was an economical choice, and that Ellington's customers were not unhappy with the company's delay in providing single-party service. Staff opined that Ellington's behavior did not indicate that Ellington was showing total disregard for a Commission order when it violated the Commission's order in Case No. TO-95-152, but also stated its belief that Ellington should pay a penalty for failure to comply with the order.

The Commission finds that the evidence supports the violations alleged in Staff's complaint. The Commission has considered the Agreement and finds the terms just and reasonable. The Commission appreciates the mitigating circumstances alleged by Ellington in its Answer and agreed to by Staff in its Suggestions in Support of the Agreement. Nevertheless, the Commission notes that Ellington was granted two extensions of time in which to complete conversion of its multiparty lines to single-line service. Moreover, the Commission has reviewed the case papers in Case No. TO-95-152 and notes that Ellington failed to comply with a separate deadline in that case involving provision of interLATA equal access. Ellington eventually complied with the equal access aspects of the Commission's order to modernize, but the Commission admonished Ellington in its March 28 Order

Concerning Motion for Extension that it was inappropriate for Ellington to violate a Commission-ordered deadline without requesting permission in advance of the deadline for an extension of time. Therefore, the Commission finds that it is appropriate for Ellington to pay the agreed upon penalties to resolve Staff's Complaint. With the understanding that the Agreement represents a negotiated settlement for the sole purpose of resolving and settling the current complaint case, the Commission accepts the Agreement as being a reasonable settlement of the issues. Settlement of issues between the parties is favored as an efficient means of resolving disputes.

Conclusions of Law

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

The Commission has jurisdiction over this matter pursuant to Chapters 386 and 392, RSMo 1994 (as amended in 1997). The Commission is authorized to accept negotiated settlements to resolve contested cases by Section 536.060, RSMo Supp. 1997. The standard for Commission approval of the Agreement is whether it is in the public interest. The Commission determines that the Agreement is in the public interest and it should be approved.

Based upon its findings the Commission has determined that the General Counsel shall be authorized to seek the agreed upon penalties for Ellington's failure to comply with prior Commission orders and failure to comply with the Commission's statutes and regulations, pursuant to Section 386.570, RSMo 1994.

IT IS THEREFORE ORDERED:

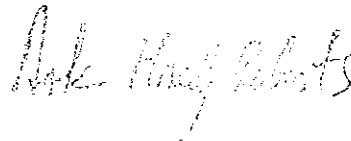
1. That the Stipulation and Agreement attached to this order as Attachment 1 and filed in this case on October 31, 1997, is approved and adopted for the settlement of the Complaint filed by the Staff of the Missouri Public Service Commission against Ellington Telephone Company on August 12, 1997.

2. That Ellington Telephone Company will comply with all the provisions set out in the attached Stipulation and Agreement.

3. That the General Counsel of the Commission is authorized to seek penalties against Ellington Telephone Company as agreed upon in the Stipulation and Agreement, pursuant to Section 386.570, RSMo 1994.

4. That this order shall become effective on February 13, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer
and Murray, CC., concur.

Randles, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

OCT 31 1997

MISSOURI
PUBLIC SERVICE COMMISSION

The Staff of the Missouri Public Service)
Commission,)

Complainant,)

vs.)

Ellington Telephone Company,)

Respondent.)

Case No. TC-98-63

STIPULATION AND AGREEMENT

I. Procedural History

On August 12, 1997, the Staff of the Missouri Public Service Commission ("Staff") filed a Complaint against Ellington Telephone Company ("Ellington" or "Company"). In its Complaint, the Staff stated that Ellington had failed to abide by the terms of the Commission's December 22, 1994 Order in Case No. TO-95-152 and had violated Sections 392.480.1 and 392.200.1 RSMo. (1994). The Staff stated, in Count I of its complaint, that Ellington did not provide individual line service to its customers by May 31, 1997 (the original stipulated deadline was December 31, 1996 but the Company filed two Motions for Extension of Time). Additionally, in Count II of its complaint, the Staff stated that Ellington had provided basic local service to some of its customers without a tariff in effect for that service and had discriminatorily priced services because some customers were paying for single-line basic local service while other customers were not paying for basic local service at all.

On August 13, 1997, the Commission issued its Notice of Complaint allowing Ellington thirty days after notification to respond to the Staff's complaint. Ellington responded on

September 12, 1997. In its answer, Ellington admitted the facts as stated in the Staff's complaint and, in answer to Count I, stated that Ellington did not comply with the Commission's Order because of the extraordinary demands on Ellington's resources required by modernization. Additionally, in answer to Count II of the Staff's complaint, Ellington admitted that there was no tariffed rate in effect for multiparty service though customers continued to receive that service (although these customers were not charged for service). Ellington denied that it violated the statutory rate discrimination prohibition.

On September 17, 1997, the Commission issued its Order Scheduling Prehearing Conference in which it directed the parties to participate in a prehearing conference on October 21, 1997 and file a proposed procedural schedule no later than October 31, 1997. The parties met prior to this prehearing conference and reached an agreement on the issues in the Staff's complaint.

II. The parties have reached the following stipulation and agreement:

Ellington agrees to pay \$9,600.00 (\$4,800.00 per count of the Staff's complaint) into the public school fund of the State of Missouri, pursuant to §386.570, RSMo. (1994). The parties believe the amount of this penalty is commensurate with the severity of the violations admitted to by Ellington. Although §386.570 permits a penalty of \$100.00 per individual violation, and per day in the case of a continuing violation, the parties agree that Ellington's violations were mitigated by the fact that the company chose an ambitious modernization plan that did not include the maximum seven-year modernization period permitted under 4 CSR 240-32.100. The Company chose a shorter time and the parties agree that this attempt shows the Company's efforts to quickly offer its customers better services.

III. General Matters

This Stipulation and Agreement has resulted from extensive negotiations among the signatory parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in any other proceeding on any matter.

In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein, their respective rights, pursuant to §536.080.1, RSMo. (1994), to present testimony, cross-examine witnesses, and present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo. (1994); and their respective rights to seek rehearing pursuant to Section 386.500, RSMo. (1994), and to seek judicial review pursuant to Section 386.510, RSMo. (1994). The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the Applicant's application made herein.

The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any such memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of

Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement whether or not the Commission approves and adopts this Stipulation and Agreement. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

WHEREFORE, the undersigned parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Stipulation and Agreement.

Respectfully submitted,

Trip England by Carol Keith

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**ATTORNEY FOR THE OFFICE
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 31st day of October, 1997.

Carol Keith