

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 9th
day of June, 1995.

In the matter of establishing rule-)	
makings for local competition and)	<u>Case No. TO-95-396</u>
intraLATA presubscription.)	
In the matter of the restructuring)	
of transport rates of local exchange)	<u>Case No. TO-94-374</u>
telecommunications companies.)	
In the matter of the investigation)	
into competition in local exchange)	<u>Case No. TO-93-124</u>
services.)	

ORDER ESTABLISHING DOCKET AND INITIAL SCHEDULE,
AND ORDER CLOSING DOCKET NO. TO-93-124 AND TO-94-374

TABLE

Order Closing TO-93-124	Page No. 1
Order Closing TO-94-374	Page No. 3
Order Establishing Docket TO-95-396	Page No. 5

ORDER CLOSING TO-93-124

On October 13, 1992, the Commission issued an Order Establishing Docket and Notice of Proceedings in the case captioned, In the matter of the investigation into competition in local exchange services, Case No. TO-93-124. This order stated that the Commission Staff (Staff) investigation of local exchange private line services in Case No. TA-92-145, indicated that there was confusion and disagreement as to the

following issues: the definition of local exchange private line service, what constitutes a private telecommunications system, whether connecting a customer premise to an interexchange telecommunications company's point of presence in the same exchange constituted local exchange private line service, and the arrangement of reselling private line services. The Commission went on to state that it was of the opinion, therefore, that a docket should be established to further investigate the issues raised in the aforementioned report.

This docket concluded on November 23, 1993, when a document captioned Conclusions of Investigation was filed by the Staff of the Public Service Commission. Staff stated that all parties had the opportunity to provide input into the draft document and to sign the conclusions. This document was not offered unanimously and as to those parties who did join in offering this document the resolution appeared to be that the parties had "agreed to disagree". That filing stated that:

The result of these discussions was that definitive answers could not be ascertained for each question. After much deliberation, the parties recommend that the Commission not attempt to answer these questions in the abstract. The answers may vary depending upon the specific facts of a given situation.

The signatories to this particular document went on to each outline their respective positions on the various issues in this docket. On November 1, 1993, a separate document captioned Concluding Comments and Recommendation of Southwestern Bell was filed. Thereafter, several participants to this docket filed responses to SWBT's recommendation.

Finally, on March 16, 1994, the Commission issued a Notice in this docket stating that the last filing in this case had occurred on January 10, 1994, and all parties were notified that absent any motion to the contrary the docket would be closed thirty (30) days from the date of

the Notice. On March 30, 1994, in response to the Commission's Notice, SWBT filed its Response in which it recommended the Commission conduct a rulemaking to define the terms switched, private line service, local calling scope, local exchange telecommunications service, basic local telecommunications service and interexchange telecommunications service. In its pleading SWBT suggests that although the parties have come to some basic agreement as to which type/class of company may provide which type of service this consensus is meaningless unless and until the parties agree on the definitions of the underlying terms.

The Commission has reviewed the accomplishments of the Commission Staff and of all other parties to this docket and finds that the participants have achieved their objective in this docket or, in the alternative, have agreed that as to some points nothing further may be accomplished. Therefore, the Commission finds that it would be appropriate to close this docket. The issue concerning possible rulemakings to define terms will be dealt with in Case No. TO-95-396.

ORDER CLOSING TO-94-374

On July 1, 1994, the Commission issued an Order Establishing Docket, Comment Dates and Technical Conferences for Case No. TO-94-374, In the matter of the restructuring of transport rates of local exchange telecommunications companies. The Commission created this docket in response to the access workshop which was held by the Commission on March 11, 1994. The purpose of this docket was "To allow for a full discussion of the issues involved in local transport restructuring, Once a full discussion of the issues has been accomplished, the Commission will then decide whether or not a rule should be proposed and if one is proposed, what it should require." Numerous telecommunications companies, associations and other entities participated in this docket and exchanged

comments, questions, reply comments and responses. Technical conferences were convened for the participants to this docket on September 30, and again on October 14, 1994. The activities of this docket culminated in a unanimous filing on November 10, 1994, which was captioned "Results of the Technical Conferences Report to the Commission, Case No. TO-94-374". Within that document the participants requested an opportunity to each make a five-minute presentation of their respective views to the Commissioners in lieu of a formal hearing. In response to the request of the participants of this docket, the Commission commenced a hearing on January 30, 1995, for the purpose of receiving the comments of the various participants on the record and to allow the Commissioners to inquire about the proposals offered.

Although the participants were not unanimous in their proposals as to what might take place in the future, the one position which did enjoy unanimous support was the recommendation that the adoption of a local transport restructuring rule was unnecessary. Each of the participants to this docket had an opportunity to present its position to the Commission on the record and in doing so each one confirmed the inadvisability for a local transport rule at this time. However, each participant then went on to offer differing proposals as to the steps the Commission should follow in the future. The proposals of the participants could generally be placed in one of three categories. Category No. 1 suggested the Commission should proceed no further and should await legislative developments from both the Congress and the state legislature. Category No. 2 suggested, quite to the contrary, that the Commission should boldly go forth and take some action on its own initiative irrespective of the various legislative packages which may be pending nationally or on the state level. Category No. 3 seemed to suggest that both Categories No. 1 and 2 were incorrect. The

parties, it seems, have identified the very quandary which the Commission must face every day.

The Commission has reviewed the comments which were placed on the record at the above-referenced hearing and the results of the technical conferences as filed on November 10, 1994. The Commission finds that the telecommunications community through its associations, industries, companies and various other representatives has unanimously come to the conclusion that a rule for local transport is not warranted at this time. The Commission finds that the goals of this docket have been completed and the Commission further finds that a rule for local transport is not warranted at this time. The Commission will close this docket.

ORDER ESTABLISHING DOCKET

The Commission has pursued the above-referenced cases to what has come to be their natural conclusion. As the telecommunications industry moves toward greater competition, the industry must explore ways to give customers maximum choices and ensure that companies which are seeking to provide services are offered a fair opportunity to do so.

The Commission will continue to investigate avenues which offer opportunities for the inducement of competition. The Commission believes that competition in the local loop is inevitable in Missouri, and indeed, is supportive of that result. The Commission seeks to encourage competition consistent with its statutory constraints while it continues to address the public interest issues which are inherent and intertwined with the introduction of local competition.

The Commission and the industry are well aware of the recommendations of the Report to Governor Mel Carnahan as issued by the Commission On Informational Technology on January 15, 1995. (Hereafter, the CIT report.) Although the Commission remains bound by the statutory

framework regarding certification of services, service areas, telecommunication companies and other inherent legislative prohibitions against local competition it may exercise some degree of regulatory flexibility. In order for the Commission to be as prepared as possible it must now begin the next phase of preparations for the future of telecommunications in Missouri.

Therefore, in order to prepare for local competition the Commission finds it appropriate to commence an investigation as to appropriate regulatory opportunities for establishment of increased competition and the essential safeguards which are necessary to ensure fair competition and protection of the public interest. The Commission believes that some of the items which may require some type of safeguard include, but are not limited to, the following:

Among these are questions as to whether overhead costs should be shifted to the category of those costs which are charged to a carrier wishing to terminate traffic with the local exchange.

Are the boundaries between local and long-distance markets necessary as a product of regulation or are they artificially restrictive? Would a competitive entrant into local competition be restricted by these boundaries?

Is there a danger which needs to be addressed regarding new entrants who may restrict services in a bundled or vertical fashion in such a way as to create a new form of reconcentration and thus, a recreation of an anti-competitive environment?

If costs were to be distinguished between the "line side" and the "trunk side" how would such a distinction be drawn?

What costs shall be shifted to the rather captive interconnection carriers and how shall they be determined?

What shall the treatment be for common carrier line charges and residential interconnection charges?

Should there be rate floors and rate ceilings and if so, how shall they be established?

Should there be a fixed minimum contribution level for all rates?

Should interim access rates be established at mirrored interstate levels?

Should a statewide average access rate be established?

In the final report filed by the participants to Case No. TO-94-374, a section entitled, IV. Local Competition (under a response to question 3) set out a number of issues which the Commission might consider in preparation for local competition. Among these issues were the following:

- ▶ Maintenance or elimination of franchise restrictions,
- ▶ Elimination of LEC control of conduits and rights of way,
- ▶ Number portability,
- ▶ Unbundling of the LEC network,
- ▶ Interconnection with unbundled elements,
- ▶ Efficient pricing rules for LEC's,
- ▶ Issues regarding imputation,
- ▶ User and resale restrictions,
- ▶ Provision of unbundled elements using open standards, and
- ▶ Removal of interLATA restrictions on GTE and SWBT.

The question was also raised as to how one might determine that a service or function is competitive and how will competition impact the development of modern networks.

In addition, there are issues regarding the Universal Service Fund. Questions have been raised as to whether there is the need for a state fund for universal service and, if so, how such a fund might be determined, funded and distributed. The threshold question as to this issue might be what is the objective of such a fund and who should administer the fund.

Lastly, the Commission is determined to provide as broad a base for consumer choice as is statutorily possible. Accordingly, the Commission will ask the parties to address when and how intraLATA presubscription should be accomplished and whether a rulemaking is necessary to implement the service and, if so, how such a rule should look. We invite the participants to this docket to address whether

presubscription should commence prior to the LEC having access to the interLATA long-distance market.

As previously indicated, the issues set out herein are meant neither to be inclusive nor exclusive but rather as an indication of the types of issues which concern the Commission. The goal of the Commission is to provide an environment which is conducive to competition without abandoning the safeguards which are necessary for the ratepayers as well as for the benefit and fairness to the existing telecommunications companies. However, the Commission, too, is bound by the statutes which have remained virtually unchanged since the passage of H.B. 360, in 1987. Although the Commission exercises some degree of regulatory flexibility it cannot simply authorize competition sua sponte. The technological capabilities and the societal demands have grown exponentially in the eight years since the passage of H.B. 360. And, traditionally, free enterprise has by its very nature often kept ahead of legislative actions.

The Commission finds its previous dockets regarding the investigation into various topics have been productive, have maintained open lines of communication between the Commission and the companies which it regulates and in doing so these dockets have brought the Commission to a point where additional matters need to be addressed. These previous dockets have also enabled the Commission to more accurately assess the needs of both the utilities and the ratepayers.

Therefore, the Commission will establish a docket for the investigation into increased competition and the essential safeguards which are necessary to ensure fair competition and protection of the public interest. The Commission will establish an appropriate initial procedural schedule for this docket. To ensure extensive dissemination of this order the Commission will direct the Records Department to send a copy of this

order to every certificated local exchange company and every certificated interexchange carrier in the state of Missouri. In addition, the Commission will direct the Information Office to send a copy of this order to all members of the General Assembly, to the office of the Governor, to the Director of the Department of Economic Development and to all newspapers in the state as listed in the Newspaper Directory of current Official Manual of the State of Missouri.

IT IS THEREFORE ORDERED:

1. That Case No. TO-93-124 will be closed.
2. That Case No. TO-94-374 will be closed.
3. That this docket is hereby established to address the investigation into and establishment of opportunities to establish increased competition and the essential safeguards which are necessary to ensure fair competition and protection of the public interest.
4. That Staff shall file a report with the Commission not later than June 30, 1995, regarding the Staff's recommendation of means by which and conditions under which intraLATA presubscription should be introduced or established in Missouri. If it is determined that a rulemaking is legally required then Staff shall file a proposed rule for Commission consideration with the report.
5. That any entity wishing to participate in this docket shall file an entry of appearance not later than June 30, 1995.
6. That proposals for issues to be addressed in this docket shall be filed with the entry of appearance required herein.
7. That upon closure of the deadline referenced in Paragraph No. 4 the Commission will issue an order identifying the participants to this docket, issues to be addressed and establishing a procedural schedule.

8. That the Records Department and the Information Office shall issue notice as directed herein.

9. That this order shall become effective on the date hereof.

BY THE COMMISSION


David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur.