

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

In the Matter of the Application for Approval)
of the Transfer of Control of Alltel Missouri, Inc.,)
and the Transfer of Alltel Communications, Inc.,) **Case No. TM-2006-0272**
Interexchange Service Customer Base)

OFFICE OF THE PUBLIC COUNSEL'S RESPONSE TO APPLICATION

The Office of the Public Counsel makes the following comments to the Missouri Public Service Commission in response to the Application for Approval of the Transfer of Control of Alltel Missouri, Inc., and the Transfer of Alltel Communications, Inc., Interexchange Service Customers.

Detrimental to the Public Interest Standard

The applicable case law under Section 392.300, RSMo 2000, provides that when the Commission considers the transfer of stock it shall approve the transfer unless the transfer would be detrimental to the public interest. *State ex rel. City of St. Louis v. Public Service. Commission*, 73 S.W.2d 393, 400 (Mo.banc 1934). The Commission’s Rule 4 CSR 240-3.535(1)(C) incorporates this standard by requiring applications to include “reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest.”

Public Counsel views this standard as meaning that the transaction should not be detrimental to the goals for telecommunications set out in Section 392.185, RSMo, including the provisions making the protection of the ratepayer and the public interest a paramount concern to the promotion of competition.

Section 392.185. The provisions of this chapter shall be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

Public Counsel asks the Commission to look at these legislative goals in the total context of the spin off transactions and weigh the effect of the requested transactions that may adversely affect the ratepayer and the public interest. The Commission should attach conditions to any approvals to ameliorate any adverse effect raised by Staff or Public Counsel.

Overview

At this time, the Office of the Public Counsel is not in a position to support the applications or represent to the Commission that the transaction is not detrimental to the public interest. Public Counsel believes additional discussion and information is needed

so shore up some holes in the application and in the context of the transaction to ensure the protection of the ratepayers and promote the public interest.

Here is an outline of Public Counsel's major concerns:

- sufficient assets (including facilities, personnel and finances) after the spin-off to continue to serve the local ratepayers and maintain a high level of services to the customers.
- a commitment to provide advanced services to their customers. Because the wireline company serves rural areas, the PSC should have a commitment as well as evidence of capital projects to demonstrate how it will provide those advanced services.
- Ensure that customers will have just and reasonable rates and, because it serves rural areas with limited calling scopes, affordable rates. Plans to expand local calling scopes to reduce toll calls or by offering toll plans that serve the communities of interest can be considered a means to address a commitment to just and reasonable rates.
- continuation of the prices, rates, terms and conditions in services now provided to the local customers.
- a commitment on the price cap status that continues the present status and timeline of Alltel's price cap election.
- Public Counsel believes that even the rebalancing without cost justification under Section 392.245, RSMo 2005 is not appropriate. The Company states that it will continue current rates, therefore, it should not seek rebalancing.
- Unless the company can clearly demonstrate the cost justification for rebalancing in the price cap statute, it should not be allowed to rebalance rates and increase basic local service rates by up to \$1.50 a month for each of four years after the initial rebalancing.
- Public Counsel contends that no rebalancing should be allowed unless the PSC opens an investigation case to determine the cost basis for rebalancing if the company seeks rebalancing.
- The Long Distance company should not impose any form of an instate access recovery surcharge.
- customer choice. Customers assigned to the carrier should have an opportunity to choose the IXC of their choice and make one change at no charge from the

assigned carrier if they found out they didn't like that service. The customer notice of their right to change providers should also state that there would be no charge after the transfer if the customer wanted to switch from the company 30 days after the transfer

The Company has made many assurances that no harm will befall the consumer due to this transaction. The Commission should insist upon evidence to demonstrate that the company has the ability to deliver on that promise. The Company has cooperated with the Office of the Public Counsel and with the Staff to provide whatever information they requested. Public Counsel applauds the Company for this cooperation. The Staff has been quick to share the information it gathered with Public Counsel to that both agencies had a common information base. The parties may very well stipulate to all, or part, of the piece parts of the case and to the ultimate question of whether or not the requested transactions are not detrimental to the public interest. However, at this time there are a few final items that need to be addressed.

Quality of Service

A key factor upon which Public Counsel will hinge its position on the public interest is that the high quality service Alltel now provides will continue unchanged and without loss in quality and in a manner transparent to the customer. Staff witness Michael Johnson has investigated service quality performance and Public Counsel has reviewed consumer complaints in Missouri and in other states where Alltel provides local service. Alltel appears to provide quality service, including billing service and customer service and internal complaint process so that complaints do not fester or rise to the level that consumers feel compelled to seek redress to regulators.

Public Counsel is concerned with one area of service: held orders. Customers are waiting an inordinate time to have service installed. This is a public safety issue as well

as a customer service issue. The trend in held orders moving upward which indicates a problem that should be addressed. From the records, it is difficult to determine whether this is concentrated in one or a few exchanges or represents a trend system wide. The PSC should require monitoring of this item for at least 4 quarters to see improvement or have an explanation for the increasing hold order trend.

Two primary factors to address service quality are (1) the number of employees who will continue to provide services and (2) the capital expenditures or amount budgeted for capital projects. Important factors include the mix of the type and number of employees by job title and function.

Personnel

The Company intends to leave its employees and management in place. Public Counsel does not have a problem with this factor.

Capital Expenditures Or Amount Budgeted For Capital Projects

To adequately evaluate the public interest impact on service quality and the provision of advanced services, it has an opportunity to review specific capital expenditure plan information on Missouri

Lawful and Reasonable Rates

1) Local Basic Rates

Public Counsel supports the Company's plan to continue the current rates Public Counsel would oppose any rebalancing of local basic rates. In Case Nos. TR-2002-251; IT-2003-0170 and in Case Nos. IT-2004-0134 and IT-2004-0135, Public Counsel contends that Sprint unlawfully rebalanced local rates under Section 392.245.9, RSMo. Prior to allowing a rebalancing, the PSC must conduct

an investigation into the incremental costs of local basic service and intrastate switched access service and to make certain findings on the relationship of these costs to the prices of these services. Under the statutory plan, if the PSC's investigation reveals that the cost of local service is equal to or more than its average price and that the cost of switched access service is less than its price, then there is statutory cost justification for rebalancing. (Section 392.245.9, RSMo).

2) Long Distance Instate Access Recovery Surcharges

Public Counsel challenges the access recovery surcharge because the charges are unlawful and unreasonable and violate Section 392.200., RSMo 2000 as unjust and unreasonable and discriminatory rates. The cases fail to provide adequate, competent and substantial evidence the disparate treatment of residential, low-volume toll, and rural customers and the exemption of business and local customers is justified and reasonable. Since the Company will assume the long distance operations performed by Alltel Communications and the rate structure, Public Counsel no surcharge should be imposed.

Capital Structure

It appears that the transaction and the resulting capital structure has a design to maximize shareholder value. In itself, that is not detrimental to the public interest unless as a result of the resulting capital structure is placed at risk and is unable to provide adequate and high quality local service immediately after the transaction and in the long run. Sprint Nextel will have significant cash reserves and the Company appears to have significant cash flow to cover its debt and to continue to provide the same level of

service.

Provision of Advanced Services for Rural exchanges

The Company as the local service provider serves rural areas in Missouri. A major concern is that rural areas have parity of service with urban areas, including deployment of advanced services and reasonable and affordable local calling scopes.

The Company makes many assurances of the local focus. However, Public Counsel would have more comfort and security in these assurances if they were accompanied by specific capital expenditure plans (designated HC or Proprietary) that would give the Commission a clear picture of how these “assurances” will be carried out and what can the Commission and the customer expect in the provision of advanced and broadband services at parity with Missouri’s suburban and urban areas.

Public Counsel would suggest that after the transaction, any customers who change to a different provider during a reasonable period after notice be granted a waiver of the PIC charge for changing long distance providers. That seems a reasonable accommodation of the customers and is consistent with practice when IXC’s are acquired or merged.

Conclusion

Public Counsel is willing to further explore and discuss these issues and any other issues raised by the parties. It is also willing to continue to discuss resolution of Public Counsel’s concerns and do so in a timely manner. Above all, Public Counsel believes that the Commission should have relevant and material information about the transaction and the consequences of the transaction as proposed or can reasonably expect to

transpire. It is only then that the Commission can ensure that the transaction is not “detrimental to the public interest.”

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, emailed and/or hand delivered this 8th day of March, 2006 to the attorneys of record.

/s/ Michael F. Dandino
