

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

In the Matter of an Investigation of the            )  
Actual Costs Incurred in Providing                )  
Exchange Access Service and the Access            )  
Rates to be Charged by Competitive Local        )  
Exchange Telecommunications                        )  
Companies in the State of Missouri.                )

Case No. TR-2001-65

**REPLY BRIEF OF  
ALLTEL MISSOURI, INC.**

ALLTEL Missouri, Inc. (“ALLTEL”), pursuant to the Missouri Public Service Commission’s *Order Directing Filing*<sup>1</sup> entered in this matter on December 2, 2002, respectfully submits its Reply Brief in this matter.

**I. Introduction.**

In addressing the narrow public policy issue related to CLEC access charges for which this investigatory proceeding was established, ALLTEL’s Initial Brief demonstrated that the record evidence clearly supports a determination by the Commission that the interim CLEC access rate cap adopted in Case No. TO-99-596 is appropriate and in the public interest, and should be adopted on a permanent basis. Such adoption should be subject to the proviso that a totally facilities-based CLEC may be permitted to raise its switched access rates above the cap, upon a showing that its costs of providing switched access are higher than the rates allowed under the cap. As noted in ALLTEL’s Initial Brief, there appears to be general consensus among most of the parties in support of that position, and a review of the Initial Briefs filed in this matter confirms that assertion. This Reply Brief will address other parties’ arguments regarding (1) the adoption of particular costing methodologies and purported policy determinations that

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<sup>1</sup> *Order Directing Filing*, Case No. TR-2001-65, December 2, 2002, at 1.

can be formulated as a result; (2) statutory analysis addressing Commission jurisdictional issues; and (3) resulting Commission action contemplated in this or future dockets. The fact that this Reply Brief may not address all of the arguments raised by the other parties on these or other issues, does not indicate agreement with those arguments, only that ALLTEL believes its Initial Brief adequately addressed those arguments. ALLTEL stands by the specific positions taken in its Initial Brief.

## **II. Cost Methodologies.**

In this proceeding, ALLTEL submitted a forecasted annual allocated cost study for intrastate access, wherein all costs are based on FCC Parts 36 and 69 rules consistent with its interstate analysis. The study is based on ALLTEL's specific cost data. While Staff would suggest that its “. . . cost study [which developed stand-alone cost estimates, two different average (fully allocated) cost estimates, and total service long run incremental costs (TSLRIC)] presents a range of results that makes use of the strengths of each type of cost estimate without having to rely upon a single cost estimate with its own single set of strengths and weaknesses,”<sup>2</sup> the initial briefs of many of the parties underscore the crucial and varied criticisms to Staff witness Johnson's approach and his methodologies employed in this proceeding. As noted by the Missouri Independent Telephone Company Group (“MITG”), “All participating LECs have pointed out that the process used by BJA to calculate their costs per minute fail to reflect each LEC's actual costs.”<sup>3</sup> In touting the benefits of its range of costing concepts, the Staff suggests that the “. . . use of these different cost estimates will allow the Commission to use a methodology that best estimates a minimum rate, a methodology that best estimates a

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<sup>2</sup> Initial Brief of the Staff of the Missouri Public Service Commission at 6.

<sup>3</sup> Initial Brief of MITG at 7.

maximum rate, and a methodology that determines the reasonableness of existing or proposed rates.”<sup>4</sup> Indeed, Staff equates its fully allocated (average total) cost study to that being “useful in evaluating the relative *reasonableness* of existing or proposed rates above the minimum and below the maximum.”<sup>5</sup>

Not only are the fully-allocated cost estimates useful in evaluating the reasonableness of rate levels, but they are also “useful because they are conceptually similar to the fully allocated embedded cost studies which have historically been relied upon by the FCC and some state commissions in setting prices” and can be “directly compared with the embedded cost studies which have been offered by the small incumbent LECs.”<sup>6</sup>

Nevertheless, the only competent and substantial evidence in the record of this proceeding addressing ALLTEL Missouri, Inc.’s Missouri intrastate access costs, is the ALLTEL cost study received into evidence as Exhibit 45 HC. As noted by the Office of the Public Counsel, “This case cannot produce a template for the PSC to use for each company and each situation involving access rates or any other rates.”<sup>7</sup> ALLTEL would agree with MITG that no “apples to apples” analysis of existing access cost comparisons for all LECs can be found in the current record.

That [“apples to apples” comparison] does not exist here. Instead, there is a confusing mix of different types of cost studies done by different companies and consultants, using different assumptions, different measures of costs, and different methods of preparation of the cost study. This mix does not give the Commission what it needed as a starting point for an orderly process to determine what access rate levels are consistent with the public interest. As a result, there is little, if anything the Commission can do with the evidence presented in this matter.<sup>8</sup>

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<sup>4</sup> Staff Initial Brief at 6.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> Initial Brief of the Office of the Public Counsel at 13.

<sup>8</sup> Initial Brief of MITG at 2.

### III. Commission Jurisdictional Issues.

In briefing the legal issues concerning the Commission's jurisdiction over switched access rates in light of the different statutory treatment of CLECs, price-cap regulated ILECs, and rate of return regulated ILECs, the underlying premise for all parties' analysis (save AT&T) is that the Commission should not, and cannot, take any specific action in this case to modify access rates. In summary fashion, the following statements of OPC capture the general conclusions of the parties to the issues presented:

If access rates are to be modified, then the PSC must follow the procedures for changing rates and cannot issue a blanket order to adjust rates for each local exchange company. There are specific statutory procedures for changing switched access rates for price cap companies under Section 392.245, RSMo 2000 and other statutory considerations. For rate of return companies, the changes to switched access rates must be part of a rate case where all relevant factors are considered. Company specific, complete and current data is essential if ratemaking and rate restructuring decisions are to be lawfully made.<sup>9</sup>

While Staff suggested that price-cap regulation questions are “. . . not clearly answered in the Missouri statutes,”<sup>10</sup> their analysis would appear to support the same conclusion reached by most of the other parties:

Even if the Commission were to conclude that a price cap regulated company's access rates were unjust and unreasonable, the exemption from 392.240 appears to preclude the Commission from establishing a new cost based rate. No other provision in the statutes appears to guide the commission on how to establish new rates once the Commission determines that the current rates are unjust and unreasonable. **One may conclude that by exempting 392.240.1 from price cap regulation, that the Commission is precluded from reducing a price cap regulated company's rates.** (Staff Brief at 25)(emphasis added).

Although the Staff offers alternative analysis which would favor Commission authority in this area, it ultimately suggests that the “Commission's authority may remain unclear

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<sup>9</sup> Initial Brief of OPC at 3.

<sup>10</sup> Staff Initial Brief at 23.

until the Legislature clarifies its intent or until the statute is interpreted after a challenge in state court.”<sup>11</sup>

The only other party that appears to suggest the Commission has such authority involving price-cap companies is, not surprisingly, AT&T. In its zeal to advance its agenda of “radical changes that must occur in order to fix Missouri’s access woes,”<sup>12</sup> AT&T offers novel statutory construction that would expand Commission jurisdiction over price-cap companies, because to do otherwise, AT&T alleges, would “impede the remedial purposes for which the Commission was created.”<sup>13</sup> For example, AT&T asserts, “By enacting Section 392.245, the legislature did not intend for the Commission to lose its power to enforce Section 392.200. . . . In pursuit of its purposes under Section 392.185, the Commission has the lawful discretion to examine a rate once justified as a maximum allowable rate, and ensuring that it is just and reasonable under other lawful standards.”<sup>14</sup>

Ironically, AT&T did not share such an “expansive” view of the Commission’s remedial powers when OPC tried to “pierce the veil of competitive status” enjoyed by AT&T, in another proceeding. In Case No. TT-2002-129, *In the Matter of AT&T Communications of the Southwest, Inc.’s Proposed Tariff To Establish a Monthly Instate Connection Fee and Surcharge*, the OPC filed its motion to suspend and reject the proposed tariff of AT&T, suggesting, *inter alia*, that under Section 392.185, the Commission has broad power to protect consumers even if the telecommunications provider is a competitive company and is providing a competitive service.

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<sup>11</sup> *Id.* at 27.

<sup>12</sup> Initial Post Hearing Brief of AT&T Communications of the Southwest, Inc. at 55.

<sup>13</sup> *Id.* at 15-16.

<sup>14</sup> *Id.* at 15.

What was AT&T's response? "As a competitive company, all rates charged by AT&T are presumed to be just and reasonable from a regulatory standpoint. This is because consumers decide whether AT&T's rates are just and reasonable, not regulators. . . . OPC is asking the Commission to ignore the competitive market and return to the days of rate base/rate of return regulation. . . . Clearly, OPC's standard of reasonableness is a thinly veiled attempt to return AT&T to rate base/rate of return regulation."<sup>15</sup>

Indeed, like the waiver of Section 392.240(1) afforded price-cap companies (as discussed in Staff's analysis, *supra*), AT&T embraced its waiver of that particular section as authority to halt OPC's inquiry into the reasonableness of its rates.

AT&T firmly believes the Commission has no authority to undertake such an investigation regarding the validity of AT&T's rates. In granting AT&T competitive status, the Commission waived Section 392.240(1) which "authorizes the Commission, after hearing, to set just and reasonable rates with due regard, among other things, to a reasonable return upon the property actually used in public service. . . ."<sup>16</sup>

Accordingly, the Commission should reject AT&T's "thinly veiled attempt" to negate the plain language of the price cap statutes in order to further its true agenda in this proceeding.

#### **IV. Commission Course of Action.**

As stated in its Initial Brief, ALLTEL respectfully suggests that the Commission need not take any action with respect to switched access as a result of this case. While AT&T would urge the Commission to take sweeping steps to further the FCC's "Competition Trilogy" (for which there is no competent and substantial evidence in the record), most parties advocate that the Commission simply find that the interim CLEC

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<sup>15</sup> AT&T Communications of the Southwest, Inc's Post Hearing Brief (NP), Case No. TT-2002-129, November 13, 2001, at 2-3.

<sup>16</sup> *Id.* at 3.

access rate cap that was adopted in Case No. TO-99-596 is appropriate and in the public interest, and should be adopted on a permanent basis, subject to the proviso discussed above. Should the Commission wish to review switched access rates in the future, such review should be done in the context of ILEC-specific proceedings or other generic proceedings, consistent with the Commission's statutory authority as set forth in ALLTEL's Initial Brief and as discussed herein.

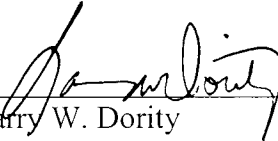
Respectfully submitted,

  
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 24th day of January, 2003.

  
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