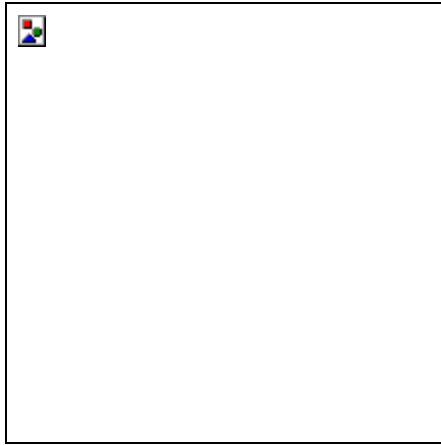


BEFORE THE PUBLIC SERVICE COMMISSION



OF THE STATE OF MISSOURI

In the Matter of the Request of AT&T)
Communications of the Southwest, Inc., to) Case No. TO-99-615
Terminate Carrier of Last Resort Obligation.)

REPORT AND ORDER

Issue Date: August 15, 2000

Effective Date: August 25, 2000

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OF THE STATE OF MISSOURI**

In the Matter of the Request of AT&T)
Communications of the Southwest, Inc., to) **Case No. TO-99-615**
Terminate Carrier of Last Resort Obligation.)

APPEARANCES

Paul S. DeFord, Attorney at Law, Lathrop & Gage, 2345 Grand Boulevard, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

James M. Fischer and **Larry W. Dority**, Attorneys at Law, Fischer & Dority, P.C., 101 Madison Street, Suite 400, Jefferson City, Missouri 65101, for GTE Midwest Incorporated, and GTE Communications Corporation.

Leo J. Bub, Senior Counsel, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Craig S. Johnson, **Rob Trowbridge** and **Joe Page**, Attorneys at Law, Andereck, Evans, Milne, Peace & Johnson, 305 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for the Missouri Independent Telephone Group.

W.R. England, III, Attorney at Law, and **Brian T. McCartney**, Attorney at Law, Brydon, Swarengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for the Small Telephone Company Group.

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.

William K. Haas, 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: Kevin A. Thompson, Deputy Chief.

REPORT AND ORDER

Procedural History

On June 29, 1999, AT&T Communications of the Southwest, Inc. (AT&T), filed its application requesting that the Commission terminate its obligation under Section 392.460, RSMo 1994, the so-called "Carrier of Last Resort (COLR)" obligation, which requires AT&T to provide basic interexchange telecommunications services to any party requesting such services in any exchange in the state of Missouri.

On July 12, 1999, the Commission issued its Order and Notice, establishing August 11, 1999, as the deadline for applications to intervene herein. On July 13, 1999, the Staff of the Missouri Public Service Commission (Staff) filed its request for an evidentiary hearing. The Commission issued its Order and Notice on July 12, 1999, setting August 11, 1999, as the deadline for applications to intervene or to participate without intervention and for requests for a hearing. ^[1]

On July 9, 1999, the Mid-Missouri Group of Local Exchange Companies (MMG), consisting of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Mo-Kan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, filed an application to intervene and request for hearing. Also on that day, the Office of the Public Counsel (OPC) filed a request for hearing.

On July 13, the Staff of the Missouri Public Service Commission filed its request for hearing. On July 14, 1999, the Small Telephone Company Group (STCG), consisting of ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Mark Twain Rural Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company, filed an application to intervene and request for hearing.

On July 21, 1999, ALLTEL Missouri, Inc., moved to withdraw its application to intervene. On July 23, 1999, Southwestern Bell Telephone Company (SWBT) filed an application to intervene. On August 10, 1999, GTE Midwest Incorporated (GTE Midwest) and GTE Communications Corporation (GTECC; jointly GTE) filed a joint application to participate without intervention.

On November 23, the Commission granted intervention to the MMG, STCG, excepting ALLTEL, which had withdrawn its application to intervene, and SWBT; and granted participation without intervention to GTE. The Commission also set a prehearing conference for December 6, 1999, a deadline for a proposed procedural schedule, and resolved a discovery dispute which had arisen in September.

On December 6, 1999, the prehearing conference was held as planned. Also that day, Staff filed a proposed procedural schedule as well as a motion urging that it be adopted. On December 8, 1999, the Commission adopted the procedural schedule proposed by the parties. On December 10, 1999, SWBT moved for a protective order; the Commission adopted its standard protective order on December 15. On December 29, 1999, MMG notified the Commission and all parties that it would henceforth be known as the Missouri Independent Telephone Group (MITG).

Pursuant to the procedural schedule, AT&T filed Direct Testimony on January 10, 2000. Rebuttal Testimony was filed on February 10, 2000, and Surrebuttal Testimony on March 3, 2000. The parties filed a List of Issues, List of Witnesses and Order of Cross Examination on March 6, 2000. The parties, except SWBT, filed Position Statements on March 13, 2000. On March 14, the STCG moved to be excused from the hearing. On March 16, GTE advised that it was taking no position, adducing no evidence and waiving opening statement.

The Commission held an evidentiary hearing on March 20, 2000. All parties were represented at the evidentiary hearing, except the STCG, which was excused by the presiding officer. On March 21, 2000, the Commission issued its Order Adopting Briefing Schedule, allowing 30 days from the filing of the transcript for initial briefs and 15 days thereafter for reply briefs. On April 7, the Commission advised the parties by notice that, as the transcript was filed on April 4, 2000, the initial briefs would be due on or before May 4, 2000, and reply briefs on or before May 19, 2000. Initial briefs were timely filed by AT&T, SWBT, MITG, Staff, and Public Counsel; reply briefs were timely filed by AT&T, SWBT, GTE, and MITG. Public Counsel concurred in the briefs filed by MITG.

Discussion

AT&T seeks herein an order of the Commission terminating its COLR obligation under Section 392.460, RSMo 1994. Section 392.460 provides:

No telecommunications company authorized by the commission to provide or offer basic local or basic interexchange telecommunications service within the state of Missouri on January 1, 1984, shall abandon such service until and unless it shall demonstrate, and the commission finds, after notice and hearing, that such abandonment will not deprive any customers of basic local or basic interexchange telecommunications service or access thereto and is not otherwise contrary to the public interest.

"Basic interexchange telecommunications service," in turn, is defined at Section 386.020(3), RSMo Supp. 1999:

"Basic interexchange telecommunications service", includes, at a minimum, two-way switched voice service between points in different local calling scopes as determined by the commission and shall include other services as determined by the commission by rule upon periodic review and update.

Pursuant to the Commission's Order Adopting Procedural Schedule, the parties jointly developed a list of contested issues to be resolved by the Commission and filed position statements in which each party set out its position with respect to each of these issues:

1. Will termination of AT&T's carrier of last resort obligation (COLR) deprive any customers of basic interexchange telecommunications service or access thereto?

All of the parties agreed that termination of AT&T's COLR obligation will not, in and of itself, deprive any customer of access to basic interexchange telecommunications service. MITG, however, suggested that AT&T be allowed to exit exchanges without relief from the COLR obligation. Public Counsel argued that the Commission cannot resolve this issue because AT&T has not identified any particular exchange which it wishes to exit. SWBT and STCG took no position on this issue.

2. Is termination of AT&T's carrier of last resort obligation otherwise contrary to the public interest?

AT&T and Staff asserted that termination of the COLR obligation was not otherwise contrary to the public interest. Public Counsel and MITG argued that termination of the COLR obligation is contrary to the public interest because that obligation ensures that basic interexchange telecommunications service will always be

available in every exchange of the state. SWBT and STCG took no position on this issue.

3. Should the Commission impose conditions upon AT&T's exit from an exchange?

All of the parties except AT&T and SWBT took the position that the Commission should impose conditions on AT&T's exit from an exchange. SWBT took no position; AT&T argued that any conditions would be both unnecessary and anticompetitive.

4. If the Commission grants AT&T relief from its obligation as carrier of last resort for interLATA service in this case, is AT&T required to seek Commission approval to abandon interLATA service in any specific exchange pursuant to Section 392.460, RSMo, with notice and hearing, prior to actually exiting that exchange?

AT&T and Staff argued that no additional procedures are necessary for AT&T to exit an exchange. Public Counsel and MITG, in opposition, asserted that notice and an opportunity for hearing are necessary prior to AT&T actually exiting an exchange. SWBT and STCG took no position on this issue.

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. 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.

The Parties:

All of the parties herein, except the Commission's Staff and the Office of the Public Counsel, are telecommunications carriers, certificated by this Commission to provide telecommunications services in the state of Missouri.

The Staff of the Commission is represented by the Commission's General Counsel, an employee of the Commission authorized by statute to "represent and appear for the Commission in all actions and proceedings involving this or any other law [involving the Commission.]" Section 386.071, RSMo 1994. [2]

The Public Counsel is appointed by the Director of the Missouri Department of Economic Development and is authorized to "represent and protect the interests of the

public in any proceeding before or appeal from the public service commission [.]” Sections 386.700 and 386.710.

The Carrier of Last Resort (COLR) Obligation:

AT&T was the only entity licensed by the Commission to provide basic interexchange telecommunications service in the state of Missouri on January 1, 1984. Thus, pursuant to Section 392.460 AT&T is not permitted to “abandon such service . . . unless it shall demonstrate, and the commission finds, after notice and hearing, that such abandonment shall not deprive any customers of . . . basic interexchange telecommunications service or access thereto and is not otherwise contrary to the public interest.”

Interexchange telecommunications service is commonly known as “long distance” service. The record shows that more than 500 carriers are presently certificated to provide interexchange telecommunications service in Missouri. An informal survey by AT&T showed that thirteen of them offer originating service throughout the state: MCI Worldnet, Inc., Coast International Telecom, Frontier Communications Services, Inc., American Telecom, Incomnet Comm Corp., Excel Telecommunications, Dial & Save, Long Distance Wholesale Club, Qwest, Cable and Wireless, Westel, Inc., GTE Long Distance, and Sprint Long Distance. Likewise, evidence adduced in another Commission proceeding and presented again by AT&T here shows that between eight and 39 IXCs serve each of the various small incumbent local exchange companies in Missouri. Staff presented testimony showing that every exchange in Missouri has at least eleven 1+ dialed interLATA carriers and four 1+ dialed intraLATA carriers. Staff’s evidence also showed that a COLR carrier is unnecessary as long as there is at least one other provider in each exchange.

Conclusions of Law

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

The Missouri Public Service Commission has jurisdiction over the termination of the COLR obligation imposed by Section 386.460, RSMo 1994, by the clear terms of that statute.

The Legal Standard:

Pursuant to Section 392.460, AT&T is not permitted to “abandon such service . . . unless it shall demonstrate, and the commission finds, after notice and hearing, that such abandonment shall not deprive any customers of . . . basic

interexchange telecommunications service or access thereto and is not otherwise contrary to the public interest."

Access to, and Deprivation of, Basic IXC Service:

The Public Counsel opposes the relief sought herein by AT&T and contends that the Commission cannot, on the present record, make the required finding that no customer will thereby be deprived of basic IXC service, or of access thereto. This, in Public Counsel's view, follows inescapably from the fact that AT&T has never yet specified any particular exchange that it intends to exit. However, the Commission concludes that the Public Counsel is mistaken.

AT&T has shown that multiple IXCs are available in each and every exchange in Missouri. This is tantamount to a showing that every Missourian has multiple IXCs immediately available with which to do business. AT&T has, therefore, made the *prima facie* showing required by the statute and the opposing parties must adduce sufficient evidence to rebut that showing. Rebuttal requires that Public Counsel identify a customer who will lose either basic IXC service, or access thereto, if the relief sought by AT&T is granted. Merely to complain that AT&T has not specified any particular exchange is insufficient, because AT&T's proof goes to every exchange: If the customers in every exchange have ample access to, and service from, IXCs, how can the customers of any particular exchange be unserved? Public Counsel failed to answer this question.

MITG also opposes the relief sought herein by AT&T. MITG reads Section 392.460 as not imposing a COLR obligation at all. After all, points out MITG, the phrase "carrier of last resort" never occurs in Section 392.460. Rather, MITG reads the subject section as relating to AT&T's desire to cease business in the state of Missouri altogether. MITG suggests that, if AT&T's application is granted, AT&T will have no option but to abandon its Missouri operations.

The Commission does not read Section 392.460 in the same way that MITG reads it. The Commission concludes that the cited section does impose a COLR obligation on AT&T with respect to basic IXC service. The Commission further concludes that the phrase "abandon such service" refers to exiting any single exchange. Thus, if the relief sought herein by AT&T is granted, AT&T will be authorized to exit any Missouri exchange, subject only to whatever conditions the Commission may impose elsewhere in this order.

Otherwise Contrary to the Public Interest:

AT&T contends that the COLR obligation itself is "otherwise contrary to the

public interest" because, as it imposes unique obligations upon AT&T, it is necessarily anticompetitive. Furthermore, AT&T argues that the effect of the COLR obligation, requiring it to be ready and able to provide basic interexchange service in every Missouri exchange upon request, is unfairly burdensome.

Public Counsel argues that it is necessarily contrary to the public interest to relieve AT&T of its COLR obligation because that will deprive Missourians of a "safety net" that assures the continuation of basic interexchange service in every Missouri exchange despite market conditions.

The Commission has already determined, in Case No. TO-99-254, that a COLR obligation with respect to interexchange telecommunications services is anticompetitive and discriminatory. The Commission agrees with the Staff that, as multiple IXCs are operating in every Missouri exchange, the COLR obligation imposed on AT&T is no longer necessary. For these reasons, the Commission concludes that relieving AT&T of its COLR obligation promotes the public interest.

Conditions Imposed Upon AT&T's Actual Exit of an Exchange:

AT&T itself agrees, as did most of the parties herein, that it must give "reasonable notice" to its customers before exiting any exchange. The Commission concludes that no other or further procedure is necessary in the event that AT&T chooses to actually exit an exchange. The Commission specifically rejects the position of Public Counsel and MITG, that notice and a hearing is required whenever AT&T elects to exit a particular exchange.

The Commission will require only that AT&T provide 30-day notice to its customers in any exchange it proposes to exit. Likewise, AT&T must amend its tariffs to reflect the change in its service area. The tariff amendment will notify the Commission and the Public Counsel.

IT IS THEREFORE ORDERED:

1. That AT&T Communications of the Southwest, Inc., has shown that its exit from any Missouri exchange would not deprive any customers of basic interexchange telecommunications service, or access thereto, and that its exit is not otherwise contrary to the public interest. Therefore, AT&T Communications of the Southwest, Inc., is henceforth relieved of its obligations under Section 392.460, RSMo 1994, except as otherwise specified in Ordered Paragraph 2, below.

2. That AT&T Communications of the Southwest shall give a minimum of 30 days notice to its customers in any exchange it proposes to exit and shall submit appropriate proposed amended tariffs to the Missouri Public Service Commission.

3. That this Report and Order shall become effective on August 25, 2000.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 15th day of August, 2000.

¹The Commission also issued a Notice of Correction on July 21, 1999, to clarify that applications to intervene were due by August 11, 1999.

[2] Unless otherwise specified, all statutory references herein are to the Revised Statutes of Missouri (RSMo), revision of 1994.