

BEFORE THE PUBLIC SERVICE COMMISSION



OF THE STATE OF MISSOURI

In the Matter of the Notice of Election of ALLTEL)
Missouri, Inc., to be Price-Cap-Regulated under)
Section 392.245, RSMo 2000.)

Case No. IO-2002-1083

SECOND REPORT AND ORDER

Issue Date: October 5, 2004

Effective Date: October 15, 2004

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Notice of Election of ALLTEL)
Missouri, Inc., to be Price-Cap-Regulated under)
Section 392.245, RSMo 2000) **Case No. IO-2002-1083**

APPEARANCES

Larry W. Dority, FISCHER & DORITY, P.C., 101 Madison Street, Suite 400, Jefferson City, Missouri 65101, for ALLTEL Missouri, Inc.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 2230, 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: **Lewis Mills, Deputy Chief Regulatory Law Judge**

REPORT AND ORDER

Syllabus: This order finds that ALLTEL Missouri, Inc.'s notice of election to become a price cap-regulated carrier under Section 392.245.2, RSMo 2000, ^[1] is invalid.

Preface

After the Commission issued its Report and Order on July 20, 2004, ALLTEL filed an application for rehearing, pointing out what it believed were flaws in the Commission's

decision. The Commission granted the application for rehearing, and now issues this Second Report and Order. In this order, the Commission reaches the same result as the July 20 order, but more fully develops its reasoning.

Procedural History

On May 20, 2002, ALLTEL Missouri, Inc., notified the Commission that it was electing to be regulated under the “price cap” provisions of Section 392.245.2. The Staff of the Missouri Public Service Commission filed a motion requesting that the Commission reject ALLTEL’s price cap election. A prehearing conference was held on July 1, 2002. Thereafter, the parties jointly requested that this proceeding be suspended until similar issues were decided in two other pending Commission cases.^[2]

The Commission decided the *BPS Telephone Company* case based on specific facts^[3] and dismissed the *Investigation* case. On January 21, 2004, the Commission adopted a procedural schedule in this matter. On February 20, 2004, the parties filed a Stipulation of Facts. The parties later submitted Initial Briefs and Reply Briefs. No request for hearing was made.

Discussion

Because the parties stipulated to the facts of this case, the only issue for Commission determination is whether Missouri State Discount Telephone and Universal Telecom, Inc., are providing basic local telecommunications service in ALLTEL’s service area.

Findings of Fact

The parties stipulated to the facts and agreed that “the Commission may take official notice of Commission rules, tariffs, orders, and any other information contained in a document on file as a public record with the Commission.”^[4] 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. Thus 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 Commission takes official notice of its official case files, tariffs, and orders cited herein.

ALLTEL is a small incumbent local exchange company serving approximately 69,000 access lines in Missouri.^[5] ALLTEL provided written notice to the Commission of its intent to be regulated under the price cap statute^[6] on May 17, 2002.^[7]

On October 12, 2001, Universal filed an application for a certificate of service authority to provide basic local telecommunications service. Universal requested authority

to operate in small ILEC exchanges including ALLTEL. Universal specifically stated in its Application that it “shall, throughout the service area of the small incumbent local exchange telecommunication company, offer all telecommunications services which the Commission determines are essential for purposes of qualifying for State Universal Services Fund support”^[8] and that it intended “to offer and provide all forms of basic local telecommunications services on a prepaid basis, including: (1) Basic Residential Exchange Services (Local Exchange Flat Rate, operator access, etc.); and (2) Residential custom and Class Features (call waiting, caller ID, call forwarding, etc.)”^[9]

In its order granting the certificate of service authority, the Commission specifically found that “Universal Telecom stated in its verified application that it will offer each of the telecommunications services defined by the Commission as essential to qualify for state universal service fund support as found in 4 CSR 240-31.010(5), in any area served by a small ILEC. . . .Therefore, the Commission finds that Universal Telecom will offer all telecommunications services, which the Commission has determined are essential for purposes of qualifying for state universal service fund support, throughout the service area of the small ILEC.”^[10] Furthermore, the Commission specifically granted the certificate only on the condition^[11] that:

If the service areas in which Universal Telecom seeks to compete is serviced by a small ILEC, Universal Telecom will offer services essential to qualify for state universal service fund support . . .and comply with the Commission rules and regulations for tariffs, service standards, reports, and other information filings as the Commission requires of the incumbent with which the Applicant seeks to compete, pursuant to Section 392.451, RSMo.^[12]

At the time ALLTEL notified the Commission of its election to be price-cap regulated, Universal provided telecommunications service to customers within the ALLTEL service area pursuant to its lawfully approved tariff.^[13] Universal has a Commission-approved Interconnection Agreement with ALLTEL.^[14] The Interconnection Agreement between Universal and ALLTEL does not contain a provision similar to the one determined to be a non-compete clause in the *BPS Telephone Company* case.^[15]

On November 29, 2000, MSDT filed an application for a certificate of service

authority to provide basic local telecommunications service. MSDT stated that it would “provide all forms of basic local telecommunications service, including all options and features provided by all incumbent providers”^[16] In the same case, the parties^[17] filed a Unanimous Stipulation and Agreement in which MSDT committed to “comply with section 392.451 and provide the ‘essential local telecommunications services’ listed in 4 CSR 240-31.010(5).”^[18] In its order granting MSDT a certificate, the Commission approved the Stipulation and Agreement, noted that MSDT agreed to provide all the essential services in

4 CSR 240-31.010(5), and found that MSDT met “the statutory requirements for [the] provision of basic local telecommunications services and has agreed to abide by those requirements in the future.”^[19] Also, in the order granting MSDT a certificate, the Commission specifically made MSDT’s certificate subject to “the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order.”^[20]

At the time ALLTEL notified the Commission of its election to be price-cap regulated, MSDT provided telecommunications service to customers within the ALLTEL service area pursuant to its lawfully approved tariff.^[21] MSDT has a Commission-approved Interconnection Agreement with ALLTEL.^[22] The Interconnection Agreement between MSDT and ALLTEL does not contain a provision similar to the one determined to be a non-compete clause in the *BPS Telephone Company* case.^[23]

ALLTEL provides two-way switched voice service within a local calling scope as determined by the Commission including all the basic local services set out in Section 386.020 (4).^[24]

MSDT and Universal each provide two-way switched voice service within a local calling scope as determined by the Commission comprised of the following services:^[25]

- (a) Multiparty, single line, including installation, touchtone dialing and any applicable mileage or zone charges.
- (b) Access to local emergency services including, but not limited to, 911 service established by local authorities.
- (c) Standard intercept service.
- (d) One standard white pages directory listing.

Neither MSDT nor Universal provide the following services:^[26]

- (a) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual-party relay service for the hearing impaired or speech impaired.
- (b) Access to basic local operator services.

- (c) Access to basic local directory assistance.
- (d) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission.
- (e) Equal access in the sense of dialing parity and presubscription among interexchange telecommunications companies for calling within and between local access and transport areas (a.k.a. intraLATA and interLATA presubscription).

The type of service offered by MSDT and Universal is often referred to as "prepaid" service. This term is derived from the fact that in order to receive service, the customer must pay in advance in full for the month of service. In addition, consumers of "prepaid" service usually are limited to basic local services and have no access to toll or fee services. MSDT and Universal's customers are limited in this manner. [27]

MSDT requires a one-time activation fee of \$30.00 and the monthly recurring charge of \$50.00 per month plus applicable taxes and fees. [28] Universal requires a one-time activation fee of \$40.00 and the monthly recurring charge of \$49.00 per month plus applicable taxes and fees. [29] For comparable residential service, ALLTEL charges a monthly recurring charge of \$7.35 or \$7.85, depending on the rate group, plus applicable taxes and fees. [30]

Conclusions of Law

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

ALLTEL is a telecommunications company [31] and public utility. [32] ALLTEL is also an incumbent local exchange telecommunications company [33] and a small local exchange telecommunications company. [34] The Commission has jurisdiction over the services, activities, and rates of ALLTEL under Chapters 386 and 392.

The Commission is authorized to "ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price-cap regulation." [35] Section 392.245.2 sets out the procedure for small incumbent local exchange companies to elect to be regulated pursuant to the price cap statute and states, in pertinent part, that:

A small incumbent local exchange telecommunications company may

elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area

An "alternative local exchange telecommunications company" is defined as "a local exchange telecommunications company certified by the commission to provide basic or nonbasic local telecommunications service . . . in a specific geographic area."^[36] MSDT was certificated to provide basic local telecommunications service in Case No. TA-2001-334, effective March 26, 2001. Universal Telecom was certificated to provide basic local telecommunications service in Case No. TA-2002-183, effective March 31, 2001. Both MSDT and Universal's tariffs specify that those companies will provide service in ALLTEL's service area.^[37] MSDT and Universal are alternative local exchange telecommunications companies.^[38]

ALLTEL has provided written notice of its election to be regulated pursuant to the price cap statute on May 17, 2002. Thus ALLTEL has shown all the required elements of Section 392.245.2 except that MSDT and Universal are *providing* basic local telecommunications service. Even though MSDT and Universal provide two-way switched voice service within a local calling scope and provide four of the services listed in Section 386.020(4), they are not providing basic local service in a manner as intended by the legislature that authorizes ALLTEL to elect price-cap regulation under Section 392.245.

Although the Commission has granted both MSDT and Universal certificates of service to provide basic local service in ALLTEL geographic service area, neither MSDT nor Universal is providing that service in ALLTEL's area in accordance with its certificate. In their applications seeking certification, both MSDT and Universal committed to provide those services required to qualify for state universal service fund support. The orders granting the certificates to MSDT and Universal noted those commitments, and thus MSDT and Universal are required by the terms of their certificates to provide all the essential services as set out in the Commission's rules:

- (6) Essential local telecommunications services. – Two (2)-way switched voice residential service within a local calling scope as determined by the commission,

comprised of the following services and their recurring charges:

- (A) Single line residential service, including Touch-Tone dialing, and any applicable mileage or zone charges;
- (B) Access to local emergency services including, but not limited to, 911 service established by local authorities;
- (C) Access to basic local operator services;
- (D) Access to basic local directory assistance;
- (E) Standard intercept service;
- (F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC);
- (G) One (1) standard white pages directory listing; and
- (H) Toll blocking or toll control for qualifying low-income customers.

When it granted certificates to MSDT and Universal, the Commission was aware that this grant might allow the small ILECs to invoke the price cap statute election. It is for that reason that the Commission demanded that the ALEC offer *all* of the “essential telecommunications services” as defined by the rule. Therefore, the Commission expressly made its grant of service authority to MSDT and Universal in the small ILEC territories subject to the condition that each would offer all the essential telecommunications services for universal service purposes. Because neither MSDT nor Universal is providing all of those services, they are not providing basic local services in accordance with the certificates granted by the Commission. Therefore, those companies do not meet the requirements set out in Section 392.245 as being “certificated to provide basic local telecommunications service and . . . providing such service.”^[39]

ALLTEL argues that the price cap statute^[40] and the definition of basic local services^[41] are clear and no interpretation of legislative intent is needed. ALLTEL’s position is that the Staff of the Missouri Public Service Commission and the Office of the Public Counsel are “proposing a standard not consistent with the plain reading of the price cap statute and the standard definition of ‘basic local telecommunications service’”^[42] as found in Section 386.020(4). That statute defines basic local service as being comprised of “any” of a number of services.

In addition, ALLTEL argues that the Commission has previously found the presence of a reseller of basic local services to be sufficient for price cap election for a large ILEC in the *Southwestern Bell* case.^[43] ALLTEL believes that to find differently for a small ILEC would be discriminatory treatment.

"It is a basic rule of statutory construction that words should be given their plain and ordinary meaning whenever possible. Courts look elsewhere for interpretation only when the meaning is ambiguous or would lead to an illogical result defeating the purpose of the legislature."^[44] Section 392.245 contains no reference to competition. The legislature has mandated, however, that every provision in Chapter 392, whether ambiguous or not, be construed with certain principles in mind.^[45] Section 392.185 states:

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.

The nine provisions of Section 392.185 are mandatory and necessarily must guide the Commission in the construction and application of the price cap statute. Section 392.185 (6) states that one public policy to be implemented through the construction of Chapter 392 is to "[a]llow 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." Another is "flexible regulation of competitive telecommunications companies and competitive telecommunications services."^[46] Price-cap regulation, a transitional status between

traditional rate-of-return regulation and deregulated competition, permits ratemaking without the traditional oversight and regulation of the Commission. This is the principal benefit that the legislature intended to confer on qualifying carriers through the price cap statute.

The Commission has examined the price cap statute in the context of the principles set out by the legislature and the entire deregulation scheme put forth in Chapter 392 to implement the federal Telecommunications Act of 1996.^[47] It is clear from the statutes that the legislature intended to promote competition while maintaining protection for the ratepayers by allowing competition to substitute for regulation.

The legislature did not intend the presence of a provider of only a few basic local services to trigger price-cap regulation. When taken in the context of the entire Chapter 392, competition is a necessary element for the change in regulation to a lesser degree of oversight. For instance, in order to receive a certificate to provide basic local services, Section 392.451.1 requires a competitive company to show that it will “offer *all* telecommunications services which the commission has determined are essential for purposes of qualifying for state universal service fund support.”^[48] The Commission has defined these essential services in two of its rules.^[49]

The Commission is also supported in this interpretation by the statutory distinction between “providing basic local” and “the resale of basic local” found in the certification statutes.^[50] Those statutes provide the standards for granting a “certificate of local exchange service authority *to provide* basic local telecommunications service *or for the resale* of basic local telecommunications service.”^[51]

The Commission previously rejected this second argument in the *Southwestern Bell* price cap case.^[52] *Southwestern Bell* was the first large incumbent local exchange carrier to request price cap status. The *Southwestern Bell* case was appealed to the Circuit Court of Cole County. The Circuit Court affirmed the Commission’s decision to grant price cap status but agreed that “it is a possible interpretation” that resellers can be distinguished from facilities-based providers.^[53]

Furthermore, a distinction on the facts can be made between the current case and

the large ILEC cases. The facts of the *Southwestern Bell* case may be distinguished because the alternative carrier in that case was providing different basic local services including equal access to interexchange services. Also, the focus of the findings in that order is on whether effective competition must exist. In this case, the Commission is not finding that “effective competition” must exist before a company becomes price-cap regulated. Instead, the Commission is finding that MSDT and Universal Telecom do not “provide basic local service” as the statute intends and, therefore, ALLTEL does not meet the statutory requirements to be price-cap regulated.

The other large ILEC cases that the Commission has determined can also be distinguished. In the Sprint price cap case,^[54] the alternative carrier was a facilities-based provider. In the only other large ILEC price cap case,^[55] no party alleged that the alternative carrier was not providing service.

MSDT and Universal provide only a few basic local services. MSDT and Universal are not providing all the essential services and minimum service features required in the Commission rules. They do not provide such basic services as access to local operator services, directory assistance, equal access to interexchange carriers, or assistance programs for economically disadvantaged or disabled customers. At rates that are more than five times the cost of similar residential service from ALLTEL and very restricted, the services offered by MSDT and Universal are in no way a substitute or competitive service to ALLTEL’s customers.

The Commission concludes that to allow ALLTEL to elect price cap status under these circumstances, where prepaid providers offer such minimal services at such a high cost, “would lead to an illogical result defeating the purpose of the legislature”^[56] and would not be “consistent with the public interest.”^[57] The Commission concludes that MSDT and Universal are not providing basic local telecommunications services in a manner that would allow ALLTEL to elect price cap status. The Commission further concludes that ALLTEL’s price cap election is invalid, and that ALLTEL maintains its status as a traditional rate-of-return regulated company.

Conclusion

The parties have stipulated to the facts and the only issue for Commission decision is whether the alternative local exchange carriers are providing basic local telecommunication service. The legislature stated that Chapter 392 “shall be construed” so that “full and fair competition . . . [may] substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest.”^[58] The types of services that MSDT and Universal provide are not what the legislature intended as basic local services necessary to invoke a lesser degree of regulation for small incumbent local exchange carriers. Furthermore, neither MSDT nor Universal is providing all the services it committed to provide in its application seeking certificates, nor is it complying with the conditions placed on the grant of service authority by the Commission. Therefore, neither is providing the service for which it was granted a basic local certificate. For these reasons, the Commission determines that ALLTEL is not eligible for price cap status and that its price cap election is invalid.

IT IS THEREFORE ORDERED:

1. That ALLTEL Missouri, Inc., is ineligible to elect price cap status.
2. That the Staff of the Commission shall conduct an investigation into the services provided by Missouri State Discount Telephone, and file a report on that investigation together with a recommendation as to whether the certificate should be canceled.
3. That the Staff of the Commission shall conduct an investigation into the services provided by and Universal Telecom, Inc., and file a report on that investigation together with a recommendation as to whether the certificate should be canceled.
4. That any motion not ruled on is denied and that any objection not ruled on is overruled.
5. That this Report and Order shall become effective on October 15, 2004.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Gaw, Ch., Clayton and Appling, CC., concur;
Murray and Davis, CC., dissent with dissenting
opinion attached;
and certify compliance with the provisions of
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 5th day of October, 2004.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Notice of Election of)
 ALLTEL Missouri, Inc., to be Price-Cap-)
 Regulated under Section 392.245,) **Case No. IO-2002-1083**
 RSMo 2000.)

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY AND COMMISSIONER JEFF DAVIS

Although the majority has used a more persuasive legal argument in its Second Report and Order denying ALLTEL's eligibility to elect price cap status, we still find that the plain meaning of the price cap statute (§392.245.2) controls.

The majority reasons that neither Missouri State Discount Telephone nor Universal Telecom, Inc. is offering basic local telecommunications services. This conclusion is drawn from the language in the orders granting the certificates to provide basic local service that seemed to condition the certificates upon the provision of all of the services that the Commission has deemed essential to qualify for state universal service fund support, as found in 4 CSR 240-31.010(5).

Both Missouri State Discount and Universal, however, are operating under tariffs approved by this Commission *after* the certificates to provide basic local service were granted. Those tariffs clearly state that certain of the services listed in 4 CSR 240-31.010(5) are not offered. By its approval of the tariffs, the Commission has allowed the companies to offer basic local service consisting of fewer services than the complete list contained in its rule related to the state universal service fund. Therefore, even if the Commission's definition of basic local service were controlling, it is unclear what that definition is. We continue to believe, however, that the definition of basic local telecommunications service *for purposes of the price cap statute* must be the statutory definition of §386.020(4).

Therefore, we dissent from the majority's finding that ALLTEL is ineligible to elect

price cap status.

Respectfully submitted,

Connie Murray, Commissioner

Jeff Davis, Commissioner

Dated at Jefferson City, Missouri,
on this 5th day of October, 2004.

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- [1] All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted.
- [2] *In the matter of BPS Telephone Company's Election to be Regulated Under Price-cap regulation as Provided in Section 392.245, RSMo 2000, Case No. IO-2003-0012, and In the Matter of the Investigation of the Status of Prepaid Local Service Providers As Alternative Local Exchange Competitors Under Section 392.245, RSMo., Case No. CO-2002-1078.*
- [3] The Commission decided that BPS was not a price cap company, but based its decision on the non-compete clause in the BPS-MSDT interconnection agreement and did not decide the issue of whether a reseller was providing basic local service.
- [4] *Joint Response to Order Granting Extension of Time*, filed February 20, 2004, Attachment 1 (referred to hereafter as "Stipulation of Facts"), para. 13.
- [5] Stipulation of Facts, para 1.
- [6] Section 392.245, RSMo.
- [7] *Notice of Election To Be Price-cap Regulated*, filed May 17, 2002; See also, Stipulation of Facts, para. 2.
- [8] Application for Certificate of Service Authority to Provide Basic Local Exchange Telecommunications Service in Small Incumbent Local Exchanges and for Competitive Classification, Case No. TA-2002-183, filed October 12, 2001, para. IV.1.a.
- [9] *Id.*, para. IV.2.
- [10] Order Granting Certificate to Provide Basic Local Telecommunications Services, Case No. TA-2002-183, issued March 21, 2002, p. 4.
- [11] *Id.*, Ordered para. 1.
- [12] *Id.*, p. 6.
- [13] Universal Telecom, Inc., P.S.C. Mo. Tariff No. 1.
- [14] *Order Approving Interconnection Agreement*, Case. No. TO-2001-360, effective February 1, 2001;

See *also*, Stipulation of Facts, para. 5.

[15] Case No. IO-2003-0012; see *also*, Stipulation of Facts, para. 5.

[16] Application for Certificate of Service Authority for Competitive Classification, Case No. TA-2001-334, filed Nov. 29, 2000, para. 4.

[17] MSDT, the Office of the Public Counsel, the Staff of the Commission, the Missouri Independent Telephone Group, and the Small Telephone Company Group. The last two parties consist of substantially all of the small telephone companies in Missouri.

[18] Unanimous Stipulation and Agreement, Case No. TA-2001-334, filed Feb. 28 2001, para. 1.

[19] Order Granting Certificate, Case No. TA-2001-334, para. D.

[20] *Id.*, Ordered para. 2.

[21] Missouri State Discount Telephone, P.S.C. No. 1.

[22] Order Approving Interconnection Agreement, Case. No. TO-2000-469, effective May 2, 2000; See *also*, Stipulation of Facts, para. 10.

[23] Case No. IO-2003-0012; Stipulation of Facts, para. 10.

[24] ALLTEL Missouri, Inc., P.S.C. Missouri No. 2.

[25] Stipulation of Facts, para. 7 and 12.

[26] *Id.*

[27] Missouri State Discount Telephone, P.S.C. No. 1, Original Sheet No. 17; Universal Telecom, Inc., P.S.C. Mo. Tariff No. 1, Original Sheet No. 18.

[28] Missouri State Discount Telephone, P.S.C. No. 1, Original Sheet 17.

[29] Universal Telecom, Inc., P.S.C. Mo. Tariff No. 1, Original Sheet 18.

[30] ALLTEL Missouri, Inc., P.S.C. Missouri No. 2, Section 25, Second Revised Sheet 2.

[31] Section 386.020(51).

[32] Section 386.020(42).

[33] Section 386.020(22).

[34] Section 386.020(30).

[35] Section 392.245.1.

[36] Section 386.020(1), RSMo.

[37] See, Missouri State Discount Telephone, P.S.C. No. 1, and Universal Telecom, Inc., P.S.C. Mo. Tariff No. 1.

[38] Section 386.020(1).

[39] The Commission will order its Staff, in separate cases, to investigate whether MSDT and Universal are complying with the terms of the orders granting them certificates and to file a recommendation as to whether their certificates should be canceled.

- [40] Section 392.245.2, RSMo.
- [41] Section 386.020(4), RSMo.
- [42] Initial Brief of ALLTEL Missouri, Inc., filed March 26, 2004, p. 14.
- [43] *In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price-cap regulation Under Section 392.245 RSMo (1996)*, Case No. TO-97-397.
- [44] *State ex rel. Maryland Heights Fire Protection Dist. v. Campbell*, 736 S.W.2d 383, 386-387 (Mo. banc 1987). (citations omitted).
- [45] Section 392.185, RSMo.
- [46] Section 392.185(5).
- [47] 47 U.S.C. §254, et seq.
- [48] (emphasis added).
- [49] 4 CSR 240-31.010(6) and 4 CSR 240-32.100.
- [50] Section 392.450 and 392.451.
- [51] Section 392.450. (emphasis added).
- [52] *In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price-cap regulation Under Section 392.245 RSMo (1996)*, Case No. TO-97-397.
- [53] *State of Missouri ex rel. Public Counsel v. Public Service Commission, et al.*, Case No. CV197-1795CC, Revised Findings of Fact and Conclusions of Law and Judgment (issued August 6, 1998).
- [54] *In the Matter of the Petition of Sprint Missouri, Inc. Regarding Price-cap regulation Under RSMo Section 392.245 (1996)*, Case No. TO-99-359.
- [55] *In the Matter of the Petition of GTE Midwest Incorporated Regarding Price-cap regulation Under RSMo Section 392.245 (1996)*, Case No. TO-99-294.
- [56] *State ex rel. Maryland Heights Fire Protection Dist.*, supra.
- [57] Section 392.185(6), RSMo.
- [58] *Id.*