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September 11, 2000

FILED²

SEP 11 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Re: Ozark Telephone Company
Case No. TT-2001-117
Tariff File No. 200100203

Dear Mr. Roberts:

Enclosed for filing on behalf of Ozark Telephone Company, please find an original and eight (8) copies of a Motion for Reconsideration or, in the Alternative, Application for Rehearing in the above-captioned matter.

Please see that this filing is brought to the attention of the appropriate Commission personnel. Copies are today being sent to parties of record. I thank you in advance for your cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

BTM/da

Enclosure

cc: Parties of Record

FILED²

SEP 11 2000

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Access Tariff Filing
of Ozark Telephone Company

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)

Case No. TT-2001-117
Tariff File No. 200100203

MOTION FOR RECONSIDERATION,
OR IN THE ALTERNATIVE,
APPLICATION FOR REHEARING

COMES NOW Ozark Telephone Company ("Company") pursuant to § 386.500 RSMo 1994 and for its Motion for Reconsideration, or in the alternative, Application for Rehearing states to the Missouri Public Service Commission ("Commission") as follows:

1. On August 23, 2000, the Company submitted to the Commission a revised tariff sheet designed to remove the "interim, subject to refund" provision that currently exists in the Company's intrastate access tariff. This filing was made in good faith in an attempt to comply with the Commission's decision in Case No. TO-99-254 (PTC Plan) and Case No. TO-99-519 (IntraLATA Dialing Parity Plan).

2. Along with the revised tariff sheet, the Company filed prepared direct testimony and a motion for a protective order. The Company's cover letter explained that because some of the schedules attached to the direct testimony contained proprietary information and a protective order had not yet been issued, the Company was withholding the filing of the schedules. However, the Company did provide copies of these schedules to Public Counsel and the Commission's Staff under separate cover.¹

3. On August 31, 2000, the Commission issued its *Order Rejecting Tariffs and Denying Motion for Protective Order* ("the Order") in this case.

¹ It is perhaps significant to note that neither Staff nor Public Counsel has indicated any deficiencies in the Company's filing.

4. The Company is a "Small Telephone Company". The Company serves no more than twenty-five thousand subscriber access lines in Missouri and is therefore a "small telephone company" for the purposes described in Section 392.230 RSMo 1994.

5. The Commission's Minimum Filing Requirements Do Not Apply. The Company serves fewer than five thousand access lines; therefore, the Commission's minimum filing requirements for general rate increase requests do not apply to the Company. *See* 4 CSR 240-10.070(1).

6. General Rate Cases. The Commission's rules set forth the procedure for tariff filings which create a general rate case. These rules define a "general rate increase request" as "one where the company or utility files for an overall increase in revenues through a company-wide increase in rates for the utility service it provides, but shall not include requests for changes in rates made pursuant to an adjustment clause or other similar provisions contained in a utility's tariffs." 4 CSR 240-2.065(1); 4 CSR 240-10.070(2). A public utility company may institute a general rate case by submitting a tariff which constitutes a general rate increase request. 4 CSR 240-2.065(1); see also *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 28[2] (Mo. banc 1975).

MOTION FOR RECONSIDERATION

7. In this case, the Company is not actually seeking an "*overall increase in revenues*." Rather, the Company is simply seeking to *maintain the level of revenues* that it was receiving before the elimination of the PTC Plan. Nevertheless, the Company followed the general rate case procedure set forth in the Commission's rules. The Company simultaneously "filed" a tariff and direct testimony in support of the tariff. *See* 4 CSR 240-2.065(1). As explained above, the other minimum filing requirements for general rate increase do not apply because the Company serves fewer than five

thousand (5,000) access lines. 4 CSR 240-10.070(1). Thus, the Company has made the necessary filings for a general rate case in accordance with the Commission's rules.

8. The Company Did Not Request a Waiver. The Commission's *Order* states that the Company "requested a waiver of the filing requirements of a rate case." This is not accurate. Nowhere in the Company's filing did the Company request a waiver of the filing requirements for a rate case. Rather, the Company: (a) filed a revised tariff and direct testimony in support of the tariff pursuant to 4 CSR 240-2.065; and (b) sent notice to interexchange carriers pursuant to Section 392.230.5 RSMo. Moreover, the Company was prepared to submit confidential financial information which compared the Company's revenues before the elimination of the PTC Plan and after the elimination of the PTC Plan. The Company was also prepared to file confidential information about the Company's "earnings" situation or its "cost of service." Before submitting this confidential information, however, the Company properly sought a protective order.

9. The Commission's *Order* suggests that the purpose of requiring the Company to file a general rate case was to ensure that the Company's customers do not get overcharged. The Commission states, "Whether the Company's rates should be continued at the current levels can only be determined by an examination of all relevant factors in a general rate case." Although the Company does not believe that it is required to demonstrate that it is not overearning in order to be entitled to revenue neutrality as a result of the Commission's order eliminating the PTC Plan, it nevertheless was prepared to offer earnings information which considers "all relevant factors" upon which the Commission could make such a decision. But for the Commission's premature rejection of the Company's tariff filing and denial of the motion for protective order, the earnings information that the Commission believed critical would have been provided by the Company as a part of its filing.

10. The Commission's *Order* states that the term "general rate case" has "a specific, commonly understood meaning," and the Commission's *Order* concludes that "[t]he Company's filing in not a general rate case." It is not only "commonly understood," but it is the law of this state that a general rate case may be initiated either by the filing of a revised tariff by the utility or by a complaint by the Commission or by other interested parties. *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 28[2] (Mo. banc 1975). In this case, the Company filed a revised tariff even though all the Company sought to do was to make permanent an interim rate that had previously been approved. Surely, the Commission did not intend for the Company to seek further increases in its rates, especially if the Company did not want to pursue further increases.

11. Procedure for Tariff Filings Which Create Cases. Earlier this year, the Commission revised its rules regarding rate filings. A tariff filing seeking a general rate increase must comply with the minimum filing requirements of the rules and must be accompanied by direct testimony. 4 CSR 240-2.065(1). In this case, a tariff was filed (with more than thirty days' notice) and direct testimony was filed in support of the tariff filing. The minimum filing requirements do not apply because the Company serves fewer than 5,000 access lines. *See* 4 CSR 240-10.070(1).

12. Thus, to initiate a general rate case, Missouri case law and the Commission's rules simply require a tariff filing and testimony in support of the tariff filing for those companies serving fewer than 5,000 access lines. (Companies serving more than 5,000 access lines must also comply with the Commission's minimum filing requirements.) In this case, the Company's filing has all of the attributes of a general rate case filing even though the Company is not actually seeking to file "for an overall increase in revenues through a company-wide increase in rates." The Commission's *Order* does not identify what additional information it requires for a "rate case" filing.

13. For the reasons above, the Company respectfully requests the Commission to reconsider its August 31 *Order* and issue an order reinstating the Company's tariff filing, issuing a protective order, and if necessary, clarifying what, if any, additional information is required under Missouri law and the Commission's rules.

APPLICATION FOR REHEARING

14. Alternatively, and in accordance with Section 386.500, RSMo (1994) and 4 CSR 240-2.160, if the Commission declines to reconsider its August 31, 2000 *Order* issued in this case, then the Company respectfully requests rehearing. For the reasons stated herein, the Commission's *Order*, and certain findings and conclusions contained therein, are unlawful, unjust, unreasonable, arbitrary, capricious, involve an abuse of discretion, are unsupported by competent and substantial evidence upon the whole record in the following respects:

15. Rejecting Tariffs. The Commission does not have the authority to summarily "reject" a tariff filing, and it cites no authority in support of its purported "rejection" of the Company's tariffs. The Company made the filing pursuant to the Commissions' rules and Section 392.230.5 RSMo which establishes the procedure to follow "whenever a small company seeks to implement any new individual or joint rate, rental or charge . . ." In this case, while the Company is not seeking to change any rates currently in effect, the Company is seeking to change the status of its carrier common line rate from "interim subject to refund" to permanent. Accordingly, the Company filed a tariff on August 23, 2000 with an effective date of October 1, 2000 (more than thirty days hence), and the Company sent notice to interexchange carriers of the filing. The tariff filing is in the proper form as required by the statutes and the Commission's rules. Nowhere in Section 392.230 is the Commission

provided with the authority to summarily reject such a lawful tariff filing. Instead, the Commission is given the authority to suspend the tariff (for no more than 150 days) and investigate the tariff's propriety. No such investigation was conducted in this case. In fact, had the Commission accepted the tariff filing and granted the protective order, the Commission would have received all of the information necessary to make the finding which it believed was necessary before implementing the revenue neutral tariff filings.

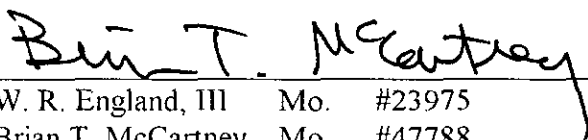
16. Rate cases. The Commission does not have the lawful authority to order a company to file a general rate case. The *Jackson County* case *supra* involved the reverse situation. In *Jackson County*, the Commission granted the utility company a rate increase and ordered the company not to file another request for a rate increase for two years. However, the utility company found itself in a position where it needed a rate increase before the end of the two year period. The *Jackson County* court held that the Commission did not have to adhere to the two year moratorium but could entertain the rate increase request because of changed circumstances. Thus, the Commission cannot unilaterally foreclose a utility from filing a rate increase. Similarly, the Commission cannot unilaterally dictate that a utility file a rate case. *Jackson County* explains that the Commission's vehicle to examine the reasonableness of a utility's existing rates is through a complaint case.

17. The Commission's finding that Company requested a waiver of the filing requirements of a rate case is inaccurate and unsupported by the record. The Company did not request such a waiver. In fact, the Company has filed everything that would normally be required of a company making a general rate increase filing pursuant to the Commission's rules. The Commission's summary rejection of the tariffs is arbitrary, capricious, an abuse of discretion, and unreasonable. The Company complied with the law and the Commission's rules regarding the filing of a rate case and,

but for the lack of a protective order, would have provided the desired earnings information.

WHEREFORE, the Company respectfully requests that the Commission reconsider its August 31, 2000 *Order Rejecting Tariffs and Denying Motion for Protective Order* in this case issue an order: (1) reinstating the Company's tariffs; (2) issuing a protective order; and (3) clarifying what, if any, additional information is required under Missouri law and the Commission's rules; or in the alternative, (4) granting the Company rehearing with regards to the issues raised in this pleading.

Respectfully submitted,



W. R. England, III Mo. #23975

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed, United States Mail, postage prepaid, this 17 day of September, 2000, to:

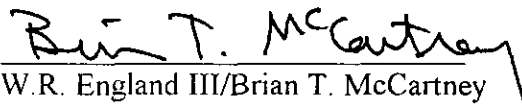
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