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MISSOURI
PUBLIC SERVICE COMMISSION
Mr. Cecil I. Wright
Executive Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Case No. TW-97-333

Dear Mr. Wright:

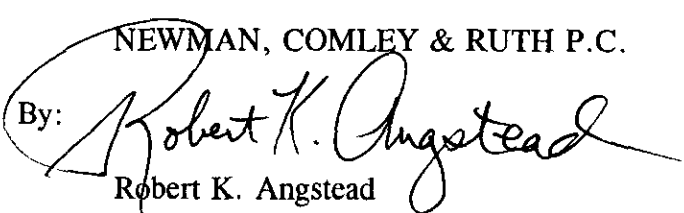
Enclosed for filing in the above-referenced case please find the original and fourteen copies of the Initial Brief of CompTel-Mo. Copies of the brief have been hand delivered or sent via facsimile to all parties of record.

Thank you very much for your attention.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:


Robert K. Angstead

MWC:ab
Enclosure

cc: Office of Public Counsel
All parties of record

FILED

AUG 8 1997

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation into)
the Provision of Community Optional) TW-97-333
Service in Missouri)

INITIAL BRIEF OF COMPTel-MO

The Commission conducted hearings in this investigation commencing on June 23, 1997 and concluding on June 26, 1997 during which 12 witnesses were examined and at least 33 exhibits were received into evidence. COMPTel-MO offered the testimony of Mr. Michael J. Ensrud in support of its positions in this matter.

COMPTel-MO has been a party to several cases involving Community Optional Service (COS) and has repeatedly advocated that, in its present form, COS should be eliminated as a service offering in this state. The questions posed by parties and the Commission alike at hearing indicate that the merits of the present COS offering are seriously in doubt, and the question of whether the current version of COS should continue in this state is a timely one. Consequently, COMPTel-MO's brief concentrates its attention on its familiar argument that COS should be eliminated in its present form in favor of a service which is consonant with the changing competitive market.

I. DESCRIPTION OF COMMUNITY OPTIONAL SERVICE AND RELATED SERVICES

Mr. Ensrud explained in his direct testimony that COS is a service which, for a flat monthly fee, a subscriber can call all parties located in a designated exchange at no additional

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charge beyond the monthly charge. Those who subscribe to COS can also receive calls from all parties in the designated exchange. To qualify for COS an exchange must meet a set criteria. (Ensrud Direct, Ex. 11, page 4).

The community seeking COS must petition the Commission to obtain the service. Therefore, the community submitting the petition is sometimes identified as the "petitioning" exchange, community, city or location. The community seeking COS must identify the community to which it seeks to place an unlimited number of calls but pay only a flat-rate monthly charge. The community targeted by the petitioning community is identified as the "targeted" exchange, community, city or location.

It should be pointed out that there are other services offered by local exchange telephone companies that are similar to COS in the respect that a select few customers in an exchange have the ability to call other designated locations at something other than "normal" toll rates. The rate for these other services can be either a monthly flat fee with unlimited calling, or a monthly fee paid for predesignated "blocks of time". Those who utilize these services generally do pay less. The services carry the labels of OCA (Outstate Calling Area), MCA (Metropolitan Calling Area) and EAS (Extended Area Service), and they can be classified as "quasi-local services." (Ensrud Direct, Ex. 11, page 5)

Although there are technical differences between COS and these other quasi-local services,¹ they all take traffic that was once considered as toll (and priced as such), and by

¹ For instance, COS requires a "one" to be dialed as a prelude to a ten digit number. Other forms of this type of quasi-local service only require the dialing of seven (7) digits. Some EAS routes purportedly have separate and distinct facilities to carry traffic while other quasi-local services utilize toll facilities to provide the service in question. (Ensrud Direct, Ex. 11, page 6)

operation of the definition in a tariff or some other document transform that traffic into something that is neither "toll" nor "local" in the historical sense. COS is a good example of this hybrid. From all outward appearances, COS functions like a toll service but is not priced like toll. The flat rate charged for COS gives it the semblance of a local service. Thus, COS and the other services named above can be justifiably labeled, for lack of better descriptions, as "quasi-local" services. (Ensrud Direct, Ex. 11, page 6)

COS presumes that a "community of interest" exists between the petitioning and target exchanges sufficient to warrant a different and "more affordable" rate for the toll service. COS must be accompanied by the corollary presumption that the flat rated service will be used in the spirit of that community of interest. COS is not used in this way, however. The fact that only 12% of all the potential customers who have an opportunity to utilize COS actually do avail themselves of the optional service speaks volumes about the degree of "community of interest" that actually exists (Schoonmaker Direct, Ex. 6, page 12).

If a true "community of interest" existed, far more interaction (i.e., higher amounts of subscription to COS) would occur between the two affected communities than what is actually occurring today. Ample evidence exists in the record in this case revealing that the prerequisite "community of interest" is nonexistent. Without a "community of interest," no justification exists for COS since its entire purpose is to create telecommunication service between two communities that have the interactivity generally associated with a single community. With a mere 12% "take" ratio, COS has characteristics similar to a toll service rather than a local service.

Even when viewing existing COS on an exchange basis, COMPTel-MO questions the

equity of 12% of the customers in an exchange enjoying subsidized rates for what is essentially toll calling to a specific distant exchange while the remaining 88% of the customers in the exchange are required to subsidize that calling. In reality, however, the subsidy comes from a broader base. A more appropriate analysis reveals that a select few (only one half of 1% of all access lines in the state and only 1% of the total state-wide customer base) (Bourneuf Rebuttal, Ex. 24, pages 2-3) enjoy the subsidy of flat-rated toll service to a specified exchange. Therefore, 99.5% of the total state-wide customer base (and 99% of the outstate customer base) is required to pay for all sorts of telecommunication services in order to generate the subsidy necessary for COS. This is a perverse application of the concept of "community of interest." In addition, the age of the Internet has also introduced an unintended use of COS. COS is utilized to access communities, states and even countries that have none of the common interests which prompted the petition for COS in the first instance. (Tr.123; 228-236) Internet usage of COS cannot be disregarded in this investigation.

Testimony exists in the record in this case indicating that the use of COS in conjunction with Internet service is a misapplication of COS (Bourneuf Surrebuttal, Ex. 25, pages 24-25). Testimony also exists revealing that some customers subscribe to COS primarily as a means to acquire access to Internet service (Godfrey Surrebuttal, Ex. 5, pages 6-8) (Hearing Transcript page 236). Assuming access to Internet service is eliminated as a valid application of COS, the aforementioned "take" ratio of 12% where the service is available (and 1% state-wide) is likely to drop to even lower levels. The fact that the prerequisite "community of interest" is missing from the current usage of COS is greatly strengthened with the elimination of the inappropriate Internet usage. Similarly, the facts that justify the concept that a select few benefit from COS

at the expense of the vast majority of all customers in Missouri are even more pronounced since the current usage levels and "take" ratios are inflated to reflect inappropriate Internet usage.

II. COS MUST BE ELIMINATED.

Principally, two groups would be harmed by further expanding COS and COS-like services: 1) The rate payers who are compelled to pay more because COS services are subsidized; and 2) the interexchange carriers who lose traffic in the conversion process and thereafter face competition against a subsidized service rather than a cost based service.

a. *Effect on Ratepayers.*

The evidence in the record conclusively establishes that COS does not cover the cost of underlying access. It is a highly subsidized service. (Tr. 116-117; Taylor Direct, Ex. 26, pages 3-8, page 14 - lines 4 through 8) Much is made of the fact that these services are "optional". What has been ignored is that COS and the quasi local services are subsidized. It is unfair to have an optional service which, if exercised, means a "revenue shortfall" that must be made up from another source. The pricing method used for COS causes customers who generate little or no traffic between the petitioning exchange and the targeted exchange to subsidize those who generate large volumes of calling between the designated exchanges. In some cases, those who generate the subsidy reside in one of the affected exchanges but have found no economic viability in exercising the option available to them. In many cases, those who pay the subsidy reside in neither of the affected locations. (Ensrud Direct, Ex. 11, page 8).

Only a select few benefit from COS. Large toll users pay less, but those customers who use toll only infrequently are being required to pay for the conversion of large toll users to a monthly flat-rated service. In the past, surcharges have been implemented to collect the revenue

short fall that results from the establishment of COS routes. While the customers who utilized COS did pay part of the total cost of the service, the rates charged for COS were insufficient to recapture the total revenue requirement caused by the implementation of COS. Principles of fairness would strongly suggest that ratepayers who do not benefit from such a conversion should not be asked to pay for its cost. (Ensrud Direct, Ex. 11, page 8). At a minimum, those customers being asked to pay for COS should have the opportunity to use the toll service for which they are being asked to pay. Further, affected customers should have a voice regarding whether a COS route is even established.

b. *Effect on Interexchange Carriers.*

There has been little attention given to the effect COS has upon interexchange carriers which rely upon the markets where COS is generally offered. Traffic being converted to COS or other quasi-local services either is, today, or once was toll traffic. Even though carriers like the ones who are members of COMPTel-MO render service in these markets by use of "dialers", they have attracted a small portion of the intraLATA market to their services. COS diverts traditional toll traffic between affected exchanges from carriers to the Primary Toll Carriers (PTC). In sum, COS is anti-competitive, and the prospect of a carrier reclaiming those customers is unlikely for a simple reason: carriers pay access charges in both exchanges (in other words, pay the "cost" of supplying the service) and COS customers pay a price below cost for the service.

A carrier will pay access charges on each minute of traffic between the two exchanges if it offers an alternative to COS. If the toll call originates and terminates over the switched network, the carrier will pay the LEC access at both ends of the call. On average, access can

cost 45% of the revenue generated by the toll call. If customers can obtain a flat rated service, or a block of time, that is priced below the cost of access, the carrier's alternative service (which depends upon access and pays for access) is overpriced and unmarketable.

It is anti-competitive to allow LECs the latitude of using the COS classification to recapture intraLATA toll traffic that they lost to carriers in open competition. That is essentially what happens when a LEC institutes a new COS route where an existing toll route is in place. Any and all traffic on that route that a carrier has won away from the LEC is taken from the carrier and given to the Primary Toll Carrier ("PTC"). It is especially anti-competitive when the serving LEC and the PTC are the same entity. In essence, a LEC "recaptures" toll traffic by re-classifying such traffic as COS traffic. COMPTel-MO suggests that in order to promote competition, the Commission should ensure that traffic be allowed to flow from one provider to another via open and fair competition rather than allowing traffic to be confiscated through this scheme of reclassification.

In the interest of competition, COS should be eliminated where there is no true "community of interest." Under such circumstances "normal" toll services are the appropriate substitute. Normal toll services will allow any and all providers of intraLATA toll to compete on a relatively equal footing for the traffic in question. The elimination of COS will prevent existing carrier traffic, which was won in open competition, from being confiscated by being reclassified as COS traffic.

III. COMPTel-MO's PROPOSAL FOR COS IN MISSOURI

A. *A Proposal Equitable to the Ratepayer.*

COMPTel-MO does not object to all forms of "quasi-local" service and proposes that a

toll route can be eliminated in the pursuit of a COS type plan upon the satisfaction of the following criteria:

- 1) Over half of the subscribers in the exchange should economically benefit by the conversion.

As Mr. Ensrud testified,

[if] the calling to a designated exchange were such that over half the subscribers generated monthly tolls greater than the cost of the proposed monthly COS flat-rated service, then a true "community of interest" would be served. Over half of the subscribers of the petitioning community would, indeed, benefit under this criteria.

(Ensrud Direct, Ex. 11, page 6)

- 2) The monthly flat rate for the service must be sufficient to cover the underlying cost of that service.

Mr. Ensrud testified about this criterion that

[t]he monthly charge, however, need not achieve revenue neutrality. No other parties should be required to subsidize the service of others unless there are compelling reasons to do so. Another way of viewing the situation is that if toll rates are considered sufficient for the general populous making dispersed interexchange calls, there should be no "special circumstance" that justifies calling between the petitioning exchange and the targeted exchange receiving subsidy.

(Ensrud Direct, Ex. 11, Page 7)

This "whole exchange" conversion proposal also depends upon a plan of implementation of approximately 5 steps which Mr. Ensrud set out on pages 9 and 10 of his direct testimony and is reprinted here for easy reference:

- 1) A study would be performed in which the total cost (cost of actual conversion plus the loss of toll revenue) is calculated.
- 2) The total cost for the exchange is divided by the number of customers in the exchange to calculate the per customer charge to reconfigure toll traffic to quasi-local traffic. This charge is unique for the exchange

effected.

- 3) If 50% or more of the customer base for the effected exchange would experience lower rates by conversion from toll charges to quasi-local, then conversion should be allowed.
- 4) If less than 50% of the customers benefit from the conversion, then there would be no incentive to convert.
- 5) If both exchanges receiving quasi-local service perceive that they benefit, then both can be involved in the process. In other words, if both affected exchanges do benefit, then the total cost can be recaptured by surcharges to both exchanges. On the other hand, if only one exchange meets the criteria, then that exchange should have the option of paying for one way or two way quasi-local service.

(Ensrud Direct, Ex. 11, pages 9-10)

The exchange wide conversion plan is far superior to the existing COS in Missouri. Considering simple equitable principles alone, it surpasses COS in that the parties who are paying for the service are the ones to benefit from it. There is an opportunity for those who pay for the service to utilize the service. Exchange wide conversion also boasts of the democratic concept of majority rule.

COMPTEL-MO's proposal also solves the problem of lack of sufficient revenue from the customers utilizing the service. It bears repeating that customers in an exchange made part of a COS offering may receive absolutely no benefit from COS yet will be required by tariff to pay more to make up revenue short falls brought about by the conversion. Under COMPTEL-MO's proposal, the exchange would pay the total cost that results from the establishment of quasi-local routes.

The foremost advantage of COMPTEL-MO's proposal to the ratepayer is that it properly matches those who decide to establish a quasi-local route with those who will pay for the

service. Exchange-wide conversion considers the revenue impact on all customers in the exchange and does what is best for the majority in any particular exchange. By using Mr. Ensrud's proposed methodology, a true "community of interest" would be served. Under the present system, each customer possesses the choice to establish the service, but that choice effects the billings of other customers who have no say on the issue of whether they should pay for the service provided to others.

B. *A Proposal Equitable to the Interexchange Carrier*

In order to end the anti-competitive effects that COS in any form will have upon interexchange carriers, the Commission should take two actions. First, the Commission should require the pricing of all services to reflect underlying costs. Second, the Commission should allow carriers to be able to utilize COS and other alternatives to traditional toll as components of the carrier's network. In other words, the Commission should allow the resale of COS.

With respect to the pricing of the service, the Commission should impose the same imputation requirements on COS that the Commission imposes upon other toll services. Access cost should cost a carrier less than any end-to-end switched service since access is but a component of any switched service.

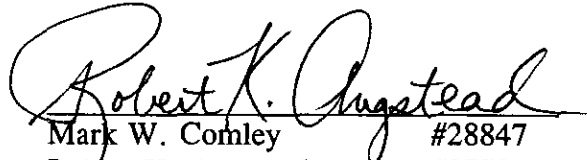
COMPTEL-MO members can only purchase access on a per minute basis. COS establishes interexchange service on a flat rated basis. It is a mismatch of costing principles to sell one interexchange service on a flat rated basis to end users but sell carriers a roughly equivalent but lesser service on a usage sensitive (per minute) basis. Such action is also discriminatory and anti-competitive. If the services were in actuality based upon their cost, the degree of anti-competitive effect would diminish.

Furthermore, the Commission should allow resale of this service by carriers. If any quasi-local service (whether COS, MCA EAS or OCA) were priced to pay for itself, then neither the LECs nor the Commission should have a problem with carriers utilizing the service in question, as an alternative to access and /or in conjunction with other services. Resale would nearly eliminate the anti-competitive aspects of the present service because carriers could incorporate the LECs' existing quasi-local services as a means to originate and terminate interexchange calls under the same rates and conditions that are offered by the LECs. If the Commission ruled carriers could acquire and utilize quasi-local service to originate and terminate our traffic, many of the current discriminatory aspects of the existing structure would be eliminated.

CONCLUSION

COMPTel-MO submits that COS in its present form is no longer viable as a service offering in this state and that, as a result of its investigation of COS in this docket, the Commission is justified in implementing a comprehensive overhaul of the service. A reasonable solution to the problems caused by COS is the exchange-wide conversion model proposed in this brief and the supporting testimony of Michael Jay Ensrud. COMPTel-MO prays the Commission give that model its utmost consideration and thereafter enter such orders necessary to implement the same.

Respectfully submitted,



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Certificate of Service

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