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August 22, 1997

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:

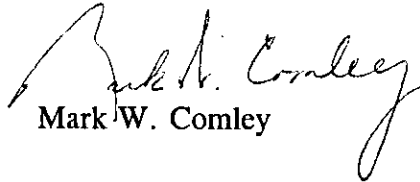
Enclosed for filing in the referenced case please find the original and fourteen copies of the Reply Brief of CompTel-Mo.

Thank you very much.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley

MWC:ab  
Enclosure  
cc: All parties of record

**FILED**  
**AUG 22 1997**  
MISSOURI  
PUBLIC SERVICE COMMISSION

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

AUG 22 1997

MISSOURI  
PUBLIC SERVICE COMMISSION

In the Matter of an Investigation into  
the Provision of Community Optional  
Service in Missouri

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TW-97-333

**REPLY BRIEF OF COMPTel-MO**

**INTRODUCTION**

COMPTel-MO reasserts that it will be satisfied if the Commission implements a form of COS which COMPTel-MO proposed in its initial brief. That being said however, COMPTel-MO would also be satisfied if COS were completely eliminated as a service offering in Missouri. COS was premised upon a fallacy--that certain toll traffic was deserving of special treatment. To achieve its optimum levels, competition in the telecommunications industry should have no subsidized services with which to contend. COS is a highly subsidized service, (and there are apparently others judged by the briefs of the parties) which benefits few customers. Customers who do not currently use COS have other alternatives that are available state wide, the most popular one being "normal" toll. There is ample evidence in this case to conclude that COS has simply outlived its usefulness (assuming it ever had any) given present and anticipated competition.

COMPTel-MO holds fast to this position, but has argument yet to offer in this debate and investigation. What follows is a contribution to that debate with the caution that it should not be construed as an abdication of COMPTel-MO's principle contentions in this proceeding.

## DISCUSSION

### A. THE COMMISSION SHOULD REJECT ONE WAY LATA WIDE FLAT RATE SERVICE .

At page 42 of its initial brief, Southwestern Bell Telephone Company (SWB) encourages the Commission to consider approval of a one way LATA-wide flat rate COS service. The proposal should be rejected as anti-competitive. SWB's rates for the proposed service were intensively analyzed by Mr. Ensrud in his rebuttal testimony. He compared the proposed rates (SWB proposed a \$30.00 residential/ \$60.00 business LATAwide COS rate; Ensrud Rebuttal, Ex.12, pages 4-7), to the access charges COMPTEL-MO members would pay for the same service and showed that the costs of supplying this similar service would soon exceed the revenue.

SWB's LATAwide COS proposal does nothing more than increase the problem of COS. It does little to effect a statewide remedy for its ills. Here, SWB's proposed cure may be a comfort to it alone; however, to the rest of this market, it will mean more of the same chronic condition. LATAwide COS should not be approved.

### B. RESALE OF COS IS REQUIRED BY LAW AND PROHIBITING AGGREGATION OF THAT SERVICE IS UNREASONABLE.

This portion of the brief assumes the continuation of some form of COS. If that is the case, SWB does not dispute that the Federal Telecommunications Act of 1996 (FTA) requires that COS be available for resale. SWB adds however,

[i]f resale is permitted, no resale discount should apply if the price set by the Commission does not cover all costs of providing the service.

(SWB Initial Brief, page 31). COMPTEL-MO does not agree.

Section 252 of the FTA in pertinent part provides:

service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

*(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed that the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers. [italicized emphasis added].*

Prohibiting aggregation in the resale of COS is an unreasonable and discriminatory condition. To bar aggregation of this service would be as unreasonable as barring aggregation of WATS and Foreign Exchange (FX) lines which, it must be recalled, were services that competitors could offer as alternatives to SWB's toll offering during the early stages of telephone competition. The FTA contemplates the same processes in the further development of competition in all telecommunication services. COMTEL-MO submits that the FTA not only anticipated aggregation of resold telecommunications services, it expected it on a grand scale and COS should not be excluded. Aggregation was and still is a catalyst to competition.

C. THE FEDERAL TELECOMMUNICATIONS ACT AND MISSOURI SENATE BILL 507 DO NOT BLOCK THE COMMISSION FROM ELIMINATING OR REFORMING COS.

The Small Telephone Company Group (STCG) states in its brief that:

[i]f COS is eliminated, then the rural customer is likely to pay much higher rates under competition. [cites to exhibits omitted]

Such an increase in prices for rural customers may also run afoul of recent state and federal telecommunications acts which require comparable services at comparable prices for rural, high cost areas.

(STCG Initial Brief, Page 10). The last sentence quoted was followed by citations to

§ 254(b)(3) of the FTA; § 392.185 RSMo Supp. 1996; § 392.200.4(1) RSMo. Supp. 1996; and § 392.200.5 RSMo. Supp. 1996. The Mid Missouri Group (MIDMO) has suggested nearly the same theory and has cited these same statutes in support. To the contrary, these statutes do not prohibit the elimination or reform of COS.

Section 254 of the FTA provides:

(b) UNIVERSAL SERVICE PRINCIPLES-- The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) . . .

(3) ACCESS IN RURAL AND HIGH COST AREAS. -- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

STCG and MIDMO do not quote the preamble of §254(b)(3) and without it, the provision could be read as a directive to state Commissions. This section is instead a "principle" which the Joint Board is to follow. The "principle" itself lacks mandatory language; note that the word "should" rather than "shall" is the predicate in the sentence.

Moreover, there is evidence from which the Commission could conclude that a reasonably comparable service at reasonably comparable rates is being provided in rural areas of Missouri and the service is toll. COS is a toll service which has been renamed and packaged at a price that does not cover its costs. It constitutes a service that is unreasonably comparable to a toll service<sup>2</sup> at a rate that is unreasonably priced with respect to the principles of competition

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<sup>2</sup>Perhaps, it is just as correct to print that COS is a service unreasonably comparable to toll because it is an illegal service under the FTA. As the Staff has pointed out, the fact that COS is mandated by this Commission

the FTA was designed to engender. As such, it should not even qualify for consideration under the guidelines set forth in §254.

STCG and MIDMO also cite §392.185 (1) and (7):

**Purpose of chapter.--** The provisions of this chapter shall be construed to:

(1) Promote universally available and widely affordable telecommunications services;

(2) Promote parity of urban and rural telecommunications services . . .

There is no evidence in this record which would establish that COS is a universally available service. To the contrary, the record indicates that COS is utilized by only 12% of the customers where the service is available. It is a service which only a few have requested, and which only a few are utilizing at high cost to those who do not. The universally available service at this stage, and one which has been encouraged to grow by competition since windows to telecommunication markets were opened, is toll service. Long distance toll service is as available to rural customers as it is to urban ones. This section of Senate Bill 507 reinforces what COMTEL-MO has argued. The Commission should construe the chapter and its provisions in favor of those services which are globally available and view those services which discourage universally available services with disfavor.

Furthermore, there is clear evidence that the rates for toll service in this state are widely affordable. According to MIDMO's brief, the 39 small companies have between them 160,000 access lines, 5,749 of which, roughly 3.5%, are subscribed to COS. The other 96.5% of the

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serves as a barrier to entry by other competitive telecommunications carriers and thus violates § 253 of the FTA. (Staff's Initial Brief, page 22). If STCG and MIDMO have a right under § 254 of the FTA to evaluate reasonably comparable services in rural areas, they must be able to point to an unquestionably legal service with which to make comparisons.

lines are using another service for their calls to neighboring exchanges outside the calling scope. That service must be toll. If 96.5% are using toll then, there is a strong foundation for the proposition that it is a widely affordable service. On a statewide basis if COS is taken by subscribers on less than one-half of one percent of all access lines in Missouri, as testified to by Ms. Bourneuf,<sup>3</sup> there is conclusive evidence that the rates for toll service and long distance service from telecommunications carriers are widely affordable.

Section 392.200.4(1) is cited by STCG and MIDMO apparently for its reference to "market segmentation" and for the proposition that the Commission must approve any service based upon that factor. COMPTel-MO submits that COS is a service offered by telecommunications companies based upon geographic area and market segmentation and regrettably, it did acquire Commission approval. COS has segmented the market such that customers subscribing to the service have no economic incentive to seek a competitor's services. COS effectively cuts its subscribers off from a competitive alternative. COMPTel-MO members, although able to offer a service similar to that offered by COS, i.e. intraLATA toll with dialers, cannot break into this market segment because of subsidies and cross-subsidies that keep the price of COS's service well below its actual costs. This statutory section does not serve as a basis for preserving COS from elimination. If COS is no longer necessary to promote the public

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<sup>3</sup> Ms. Bourneuf testified:

Based on the best data currently available to SWBT, it believes that there are approximately 18,000 COS subscribers. These 18,000 total COS subscribers represent only about one-half of one percent of all access lines in the state.


(Bourneuf Rebuttal, Ex. 24, page 2)

interest or the policies of Chapter 392,<sup>4</sup> it should be eliminated in accord with this section.

### CONCLUSION

On the basis of the above arguments and those in its initial brief, COMPTel-MO requests that the Commission implement the relief requested in its initial brief.

Respectfully submitted,

  
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### Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via facsimile, or hand delivered, on this 22nd day of August, 1997 to:

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<sup>4</sup>One of the purposes of the chapter is to "[e]nsure that customers pay only reasonable charges for telecommunications service." § 392.185(4) Paying rates based on cost and that cover cost is at its core reasonable. Another purpose is to

"[a]llow full and fair competition to function as a substitute for regulation when consistent with the protection of the ratepayers and otherwise consistent with the public interest; . . .

§ 392.185(6). The reduction of access rates, the disappearance of mandatory COS, and the disabling of subsidies will allow full and fair competition. Ultimately, the intraLATA market will set the price and allocate the resource consistent with the needs of the public.



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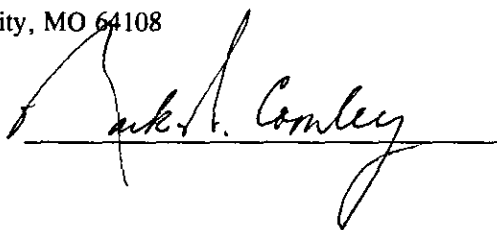
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