

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 22nd day of June, 1987.

Case No. TO-85-191

In the matter of the request for extended area service between the Tebbetts exchange served by Kingdom Telephone Company to the Jefferson City exchange served by United Telephone Company of Missouri.

ORDER

By pleading filed May 20, 1987, the Missouri Office of the Public Counsel (Public Counsel or Applicant) filed a Motion for Clarification in the above-referenced case. Public Counsel requests that the Commission change the effective date of its Order directing that Extended Area Service (EAS) be established in the Tebbetts exchange (Tebbetts) of the Kingdom Telephone Company (Kingdom).

In support of its motion Public Counsel states that it filed a timely application for rehearing when the Commission issued an Order on January 15, 1987, rejecting the Public Counsel's motion to exclude lost toll revenues from the additive to be charged for the EAS offering proposed in the Tebbetts exchange. Said petition for rehearing was denied by the Commission and Public Counsel filed a petition for writ of review with the Cole County Circuit Court (Court) which was quashed by the Court.

Public Counsel states that the Court found, in effect, that the appeal was premature since the issue on appeal would not ripen until the balloting occurred and a favorable vote made the implementation of the questioned rates possible. Public Counsel states that the Court wrote, in its order quashing the writ of review, that an appeal is not properly taken until there has been a final determination in the case.

Therefore, Public Counsel argues that it will be denied its due process right of appeal unless the Commission modifies its Order directing the establishment of EAS in Tebbetts by changing its effective date from the "date hereof" to a later date allowing Public Counsel an opportunity to file a timely application for rehearing. Public Counsel cites Section 386.500, RSMo 1986, which provides that no cause of action arising out a decision of the Commission shall accrue in any court unless the party shall have made before the effective date of such order or decision application to the Commission for rehearing.

Within ten (10) days of the Order directing establishment of EAS in Tebbetts, Public Counsel filed its second application for rehearing on the same issue as addressed by it in its first application for rehearing. Public Counsel's first application for rehearing was filed following the Order issued by the Commission on January 15, 1987, denying the Public Counsel's request to exclude lost toll revenues from the calculation determining the additive to be charged in Tebbetts for EAS. At that time the Commission determined that lost toll revenues should be included; that the rates should be \$8.45 for residential customers and \$12.65 for business customers; and that the companies should conduct a survey to ascertain if the customers in Tebbetts desired EAS at the price determined.

By Order issued January 30, 1987, the Commission denied the original application of Public Counsel for rehearing on the issue of including lost toll revenues in the additive.

The Commission believes it made its substantive decision as to the matter of including lost toll revenues and the amount of the additive to be charged at the time of its original order denying Public Counsel's motion to exclude lost toll revenues. Its Order of May 13, 1987, directing the establishment of EAS was in response to the vote of the customers in Tebbetts in favor of EAS at the price determined. If the vote had failed, the Commission would have not changed the

additive or the method of its calculation or allowed another vote. The Commission would simply have dismissed the case pursuant to its rule governing the provision of EAS (4 CSR 240-30.030).

The Commission is of the opinion that Public Counsel already has preserved its right of appeal of the decision by having filed a timely petition for rehearing at the time the Commission made a decision on the issue of including lost toll revenues in the EAS additive. Since then, the issue has become ripe because the customers have voted in favor of implementing EAS at the determined rate and the Commission has directed Kingdom to provide the requested service at that rate level which was accepted by the Commission at the time it denied Public Counsel's original motion for rehearing.

Therefore the Commission believes that it need not modify the effective date of its Order of May 13, 1987, or, once more, deny the rehearing application of Public Counsel on the issue of including lost toll revenues in the EAS additive in question. The Commission further believes that the instant order clarifies the position of the Applicant in that Public Counsel has exhausted its administrative remedies and, should it deem it appropriate, Public Counsel may seek an appeal of the decision reflected in this order within thirty (30) days of the effective date of this order as mandated by Section 386.510, RSMo 1986.

It is, therefore,

ORDERED: 1. That the motion for clarification and modification made by the Missouri Office of the Public Counsel is denied hereby.

ORDERED: 2. That the Missouri Office of the Public Counsel is directed hereby to look to the Commission original Order denying Public Counsel's application for rehearing, issued January 30, 1987, to find the Commission's ruling on the issue, now ripe, of the inclusion of lost toll revenues in the calculation of the EAS additive in question.

ORDERED: 3. That this Order shall become effective on the 2nd day of
July, 1987.

BY THE COMMISSION

Harvey G. Hubbs
Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Musgrave, Hendren, and
Fischer, CC., Concur.
Mueller, C., Dissent.

O'Donnell / Coffey

CASE NO. TC-85-191

WDS [REDACTED]

Chairman

C.M.

Commissioner

G.G.M. NO

Commissioner

CBH

Commissioner

JM

Commissioner

~~CA~~ ~~4/27/87~~

E1-02/82

A.A. ~~4/27/87~~
6/22/87

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission at Jefferson City, this 22nd day of June, 1987.

Harvey G. Hubbs

Harvey G. Hubbs

Secretary