STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 15th day of July, 1999.

In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity.	)))	Case No. TO-99-254

ORDER REGARDING REHEARING

On June 18, 1999, the Small Telephone Company Group (STCG)[1] filed a Motion for Clarification and Application for Rehearing in each of Case Nos. TO-99-254, TO-99-497, TO-99-498, TO-99-499, TO-99-500, TO-99-501, TO-99-502, TO-99-503, TO-99-504, TO-99-505, TO-99-506, TO-99-507, TO-99-508, TO-99-509, TO-99-510, TO-99-511, TO-99-512, TO-99-513, TO-99-514, TO-99-515, TO-99-516, TO-99-517, TO-99-518, TO-99-519, TO-99-520, TO-99-

1 For purposes of this proceeding, the Small Telephone Company Group consists of ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

521, TO-99-522, and TO-99-523. Although separate pleadings were filed in each of these cases, the text of each pleading is identical.

Also on June 18, 1999, MMG Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company filed an Application for Rehearing/Clarification in each of Case Nos. TO-99-254, TO-99-524, TO-99-525, TO-99-526, TO-99-528, TO-99-529, TO-99-530, and TO-99-531.

Also on June 18, 1999, AT&T Communications of the Southwest, Inc. (AT&T) filed an Application for Rehearing, Reconsideration and Clarification. That pleading bears a case style of "Case No. TO-99-254 et al." It is not entirely clear on which issues in which cases AT&T seeks rehearing[2], and on which issues in which cases AT&T seeks reconsideration and clarification.

On June 23, 1999, the Mid-Missouri Group[3] filed a response to AT&T's Application for Rehearing, Reconsideration and Clarification. On June 24, 1999, MCI Telecommunications Corporation (MCI) filed its response to applications for rehearing by the STCG and MMG. On June 25, 1999, STCG filed a response to AT&T's Application for Rehearing, Reconsideration and

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2 In paragraphs 3, 4, and 6 of its pleading, AT&T alleges that the Commission erred or that its "order is unjust and unreasonable." One could infer that AT&T seeks rehearing, rather than reconsideration or clarification, of the issues mentioned in those paragraphs.

3 The Mid-Missouri Group (MMG) consists of MMG Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

Clarification. On June 28, 1999, Southwestern Bell Telephone Company (SWBT) filed a response to all of the applications for rehearing. On July 6, 1999, AT&T filed a response to the replies to its application for rehearing. On July 8, 1999, STCG filed a reply to MCI's and SWBT's responses to its application for rehearing.

STCG's Application for Rehearing

STCG believes that there is a difference between the way the mechanism for achieving revenue neutrality is described in the various ILDP Reports and Orders and in the PTC plan Report and Order. STCG believes that the PTC plan Report and Order does not limit the amount of any refund in the same way that the ILDP Reports and Orders do. The Commission in its Order Regarding Requests for Clarification and Motion to Modify Customer Notice, issued June 24, 1999, clarified its intention that the amount of any refund will be limited to the amount recovered through the surcharge. The refund cannot under any circumstances be greater than the amount collected through the surcharge plus interest, and it could be less, or it could even be zero.

STCG objects to the revenue neutral mechanism because it believes the mechanism will "refund revenues collected under existing permanent rate schedules." STCG apparently does not understand the mechanism the Commission has proposed. As noted above, **no revenues collected under existing permanent schedules will be subject to refund.**

STCG states that requiring a LEC to commit to filing a rate case improperly shifts the burden of proof to the LEC to prove that its rates are reasonable. The LECs that file rate increases to implement revenue

neutrality should rightly bear the burden of proof to show that such increases are necessary. Because of the time strictures placed upon the Commission by the FCC, there is simply not time to examine all relevant factors to determine whether the increase is warranted before implementing IntraLATA Dialing Parity (ILDP) and eliminating the Primary Toll Carrier (PTC) plan. Thus the Commission is allowing LECs to raise rates, if they choose, but only if they are willing to prove that the increase was necessary in a subsequent rate case. The time constraint does not mean that the burden of proof should shift away from the LEC that is raising its rates, it simply means that the proof necessarily comes after the surcharge is implemented on a subject to refund basis. If the LEC is unable to prove that the increase was necessary, it will be required to refund it.

STCG also asserts that the Commission's Report and Order is unlawful because using the mechanism it proposes would constitute retroactive ratemaking. This assertion is without merit. If a surcharge or a rate additive is expressly made subject to refund at the time it is collected, it is not unlawful retroactive ratemaking to require a refund. The Commission has made certain tariffs interim subject to refund pending the

resolution of appeals[4], and the Purchased Gas Adjustment rate charged by natural gas local distribution companies is collected on an interim subject to refund basis[5].

Faced with the LECs' assertion of a right to revenue neutrality, the Commission found itself on the horns of a dilemma. On one hand, the STCG states that it has a constitutional right to the exact level of revenues after the elimination of the PTC plan as it had under the PTC plan. On the other hand, there is the prohibition against single issue ratemaking. If the Commission concedes STCG's point, it will be violating the prohibition against single issue ratemaking by allowing LECs to raise rates based on the elimination of the PTC plan without examining any other factors or making a finding that their earnings will be deficient without this rate increase[6]. If the Commission contests STCG's constitutional argument, and does not allow LECs to increase rates without examining all relevant factors, it runs the risk of becoming involved in a lengthy appeal that could delay the implementation of

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4 "Interim rates have been utilized by the Commission to allow public utilities to collect revenues subject to refund pending judicial review after the Commission's order when those orders have been reversed by the circuit court. Although there is nothing to prohibit the Commission from authorizing interim rates, there is no authority for finding that execution of a circuit court judgment is in fact a remand for implementation of interim rates." State ex rel. GTE North, Inc. v. Missouri Public Service Commission, 835 S.W.2d 356 (Mo. App. W.D. 1992), at 368.

5 The lawfulness of the PGA process was recently upheld in State ex rel. Midwest Gas Users' Ass'n v. Public Service Commission, 976 S.W.2d 470, (Mo. App. W.D. 1998) and State ex rel. Midwest Gas Users' Ass'n v. Public Service Commission, 976 S.W.2d 485, (Mo. App. W.D. 1998).

6 In fact, the witness for the STCG conceded that no party had presented any evidence concerning the level of earnings the LECs would experience if they were not allowed revenue neutrality.

intraLATA competition. The Commission's Report and Order attempted to solve this dilemma by proposing a permissive method that would allow a LEC to achieve revenue neutrality while at the same time protecting ratepayers from paying excessive rates.

STCG objects to this method because it does not give its members an unfettered rate increase on the basis of its projected revenue losses. Even if a utility does have a constitutional right to a certain level of revenues[7], it cannot seriously be argued that the Commission cannot put reasonable conditions on the revenue neutrality process to protect consumers.

STCG also objects to the requirement in the Commission's revenue neutrality mechanism that would require a utility to file a rate case. The Commission agrees that in most circumstances it would not be appropriate to require a utility to file a rate case. However, here the Commission is not simply imposing the requirement "out of the blue," but rather as a part of a package of conditions imposed on LECs seeking revenue neutrality to protect ratepayers from paying unreasonably high rates. Not all LECs will be required to file a rate case, only those

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7 Although the Commission is attempting to allow LECs revenue neutrality, it does not necessarily agree that they have a constitutional right to it. A better statement of the concept is that a utility has a right to the opportunity to earn a reasonable return on the investment it has made to serve the public. It could be a "taking" to deprive a utility of this right without due process. It is not a taking to change a piece of the regulatory framework, and incidentally a piece of a utility's revenue stream, unless the change has the effect of denying that utility the opportunity to earn on its investment. As noted in Footnote 6, there has been no showing, and no attempt to make such a showing, that any LEC will be unable to earn a reasonable return on its investment as a result of the Commission's actions in this case.

that want to raise rates to achieve revenue neutrality. Given the circumstances, these conditions are fair and reasonable.

STCG raises a question about whether the intent of the Commission's Report and Order is to preclude LECs from filing a rate case prior to eight months after October 20, 1999. This was not the Commission's intent, and the Report and Order should not be read as precluding a LEC from filing a rate case at any time.

The Commission finds that STCG has not shown sufficient reason to grant rehearing, and will deny its application for rehearing.

MMG Telephone Company's, Chariton Valley Telephone Corporation's, Choctaw Telephone Company's, MoKan Dial, Inc.'s, Modern Telecommunications Company's, Northeast Missouri Rural Telephone Company's, and Peace Valley Telephone Company's Applications for Rehearing

Almost all of the points raised in this group's[8] Applications for Rehearing are the same as those raised by STCG, and the above discussion of STCG's request for rehearing applies to MMG's request for rehearing as well. In its Request for Rehearing, MMG argues that the process the Commission has imposed on LECs seeking revenue neutrality "appears to violate several ratemaking and revenue neutrality principles[9]." It goes on to give a laundry list of these principles. The Commission will

8 Mid-Missouri Telephone Company did not apply for rehearing, but with that exception, the members of this group are the same as those traditionally referred to as the "Mid-Missouri Group" or MMG, and the Commission will so refer to it herein.

9 It is ironic that MMG's proposal to be allowed carte blanche to achieve revenue neutrality violates many of its "ratemaking and revenue neutrality principles."

address each "principle" listed by MMG, and identify the lettered paragraph(s) in which it is listed.

A, L, M. MMG objects to the requirement in the Commission's revenue neutrality mechanism that would require a utility to file a rate case. The Commission agrees that in most circumstances it would not be appropriate to require a utility to file a rate case. However, here the Commission is not simply imposing the requirement "out of the blue," but rather as a part of a package of conditions imposed on LECs seeking revenue neutrality to protect ratepayers from paying unreasonably high rates. Not all LECs will be required to file a rate case, only those that want to raise rates to achieve revenue neutrality. Given the circumstances, these conditions are fair and reasonable.

MMG states that requiring a LEC to commit to filing a rate case improperly shifts the burden of proof to the LEC to prove that its rates are reasonable. The LECs that file rate increases to implement revenue neutrality should rightly bear the burden of proof to show that such increases are necessary. Because of the time strictures placed upon the Commission by the FCC, there is simply not time to examine all relevant factors to determine whether the increase is warranted before implementing IntraLATA Dialing Parity (ILDP) and eliminating the Primary Toll Carrier (PTC) plan. Thus the Commission is allowing LECs to raise rates, if they choose, but only if they are willing to prove that the increase was necessary in a subsequent rate case. The time constraint does not mean that the burden of proof should shift away from the LEC that is raising its rates, it simply means that the proof necessarily

comes after the surcharge is implemented on a subject to refund basis. If the LEC is unable to prove that the increase was necessary, it will be required to refund it.

B. MMG asserts that it would be unlawful for the Commission to preclude LECs from filing a rate case prior to eight months after October 20, 1999. This was not the Commission's intent, and the Report and Order should not be read as precluding a LEC from filing a rate case at any time.

C. MMG states that the Commission "did recognize that elimination of the PTC Plan would cause a loss of revenues or the incurring of new expenses." The Commission did not make such a finding, and even noted that the LECs themselves found their projections of losses to be questionable.

D. MMG believes that interim rates are not lawful unless ancillary to a permanent rate proceeding initiated by the utility. The Commission agrees, and that is why it ordered any utility that wanted to implement interim rates to achieve revenue neutrality to file a rate case.

E. MMG asserts that subject to refund rates are not lawful. This assertion is without merit. If a surcharge or a rate additive is expressly made subject to refund at the time it is collected, it is not unlawful retroactive ratemaking to require a refund. The Commission has made certain tariffs interim subject to refund pending the resolution of appeals, and the Purchased Gas Adjustment rate charged by natural gas local distribution companies is collected on an interim subject to refund basis.

F, G. MMG attempts to enunciate, with only limited success, the principles of single issue ratemaking and retroactive ratemaking. The Commission's revenue neutrality mechanism violates neither.

H, K. MMG asserts that its rates are presumed to be lawful and that it is entitled to the revenue those rates generate; this is the heart of the Secondary Carrier's revenue neutrality argument. While it is true that Commission-approved rates are presumed lawful, a utility is not "entitled" to a certain level of revenues regardless of changes in circumstance. For example, if a large customer goes out of business, a utility is not "entitled" to be made whole for the revenues it used to receive from that customer. Similarly, while the Commission arguably cannot take actions that deprive a utility of the ability to earn a reasonable return on its investment, it is not required to ensure that every action it takes has no impact on a utility's revenue stream.

I, J. MMG asserts that if a party believes its rates are excessive, it must bear the burden of proof to so demonstrate, and the Commission must make such a finding based on all relevant factors. This is certainly a correct statement of the law, but the issue here is whether MMG can raise rates to achieve revenue neutrality. No party has claimed, and the Commission did not find, that MMG's rates are excessive.

The Commission finds that MMG has not shown sufficient reason to grant rehearing, and will deny its request for rehearing.

AT&T's Application for Rehearing

AT&T did not clearly indicate for which issues it sought rehearing and for which it sought clarification or reconsideration. Nonetheless,

the Commission, without conceding that AT&T validly filed for rehearing of any issues, will address those issues on which AT&T alleges the Commission erred, or that its Report and Order was unjust and unreasonable.

AT&T asserts that the Commission erred in mandating that ILDP incremental costs be allocated to total intrastate, rather than only intraLATA, minutes. AT&T argued this point in its brief, and the Commission fully considered AT&T's arguments in reaching its decision in the Report and Order. AT&T raises no new arguments in its Application for Rehearing, Reconsideration and Clarification and the Commission finds no reason to reconsider its decision on this issue.

AT&T also asserts that the Commission's Report and Order "is unjust and unreasonable in that it singles out AT&T for special treatment on notices to customers." AT&T is not satisfied with the Commission's decision that, because of AT&T's market share, avoiding significant customer confusion requires a specific mention of AT&T's plans to serve the intraLATA market. AT&T also alleges that its plans have changed and that it no longer plans to accept 1+ intraLATA traffic from Secondary Carrier exchanges. AT&T apparently does plan to accept 1+ intraLATA traffic from SWBT exchanges. AT&T does not describe the tariff authority it has to discriminate among customers in this fashion[10]. The Commission finds no reason to reconsider its decision on this issue.

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10 AT&T states that it plans to file new intraLATA toll tariffs. Until and unless the Commission approves those tariffs, AT&T must operate according to its currently effective tariffs or be subject to penalties.

AT&T finally asserts that the Commission "erred in ordering revenues neutrality under the circumstances of this case." The Commission notes that it did not "order" revenue neutrality; it outlined a mechanism under which LECs could obtain it if they so choose. AT&T argued this point in its brief, and the Commission fully considered AT&T's arguments in reaching its decision in the Report and Order. AT&T raises no new arguments in its Application for Rehearing, Reconsideration and Clarification and the Commission finds no reason to reconsider its decision on this issue.

IT IS THEREFORE ORDERED:

1. That the application for rehearing filed by the Small Telephone Company Group on June 18, 1999 is denied.

2. That the application for rehearing filed by MMG Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company on June 18, 1999 is denied.

3. That, to the extent AT&T Communications of the Southwest, Inc. requested rehearing in its pleading filed on June 18, 1999, its application for rehearing is denied.

4. That this order shall become effective on July 15, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray
and Drainer, CC., concur
Schemenauer, C., absent

Mills, Deputy Chief Regulatory Law Judge