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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Request for Suspension and)
Modification of Federal Communications Commission) Case No. TO-97-220
Rules Regarding IntraLATA Dialing Parity.)
)

REPORT AND ORDER

Issue Date: May 22, 1997

Effective Date: June 3, 1997

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In the Matter of the Request for Suspension and)
Modification of Federal Communications Commission) **Case No. TO-97-220**
Rules Regarding IntraLATA Dialing Parity.)
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APPEARANCES

W.R. England, III and Sondra B. Morgan, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for: ALLTEL Missouri, Inc., BPS Telephone Company, Bourbeuse Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Cooperation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Inc., Kingdom 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 (the "Small Telephone Company Group").

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102-1438, for Alma Telephone Company, Chariton Valley Telephone Company, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company (the "Mid-Missouri Group").

Leo J. Bub, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Carl J. Lumley, Curtis, Oetting, Heinz, Garrett & Soule, P.C.,
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and

Stephen F. Morris, Attorney, MCI Telecommunications Corporation,
701 Brazos, Suite 600, Austin, Texas 78701, for MCI Telecommunications
Corporation.

Paul S. DeFord, Lathrop & Gage, L.C., 2345 Grand Boulevard, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

James C. Stroo, Associate General Counsel-Midwest, GTE Operations, 1000 GTE Drive, Wentzville, Missouri 63385, for GTE Midwest Incorporated.

Linda K. Gardner, Senior Attorney, United Telephone Company of Missouri d/b/a Sprint, 5454 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri d/b/a Sprint.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102-7800, for the Office of the Public Counsel and the public.

Penny G. Baker, Deputy General Counsel, and Colleen M. Dale, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: L. Anne Wickliffe, Deputy Chief.

REPORT AND ORDER

Procedural History

The Small Telephone Company Group (STCG)¹ and the Mid-Missouri Group² (MMG) of local exchange companies filed a petition on November 27,

¹ The following companies comprise the Small Telephone Company Group: ALLTEL Missouri, Inc., BPS Telephone Company, Bourbeuse Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Co., 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.

² The following companies comprise the Mid-Missouri Group of local exchange companies: Alma Telephone Company, Chariton Valley Telephone

1996, for suspension and modification of selected Federal Communications Commission (FCC) rules on intraLATA dialing parity. This Commission has the authority to suspend or modify the application of those rules pursuant to § 251(f)(2) of the Federal Telecommunications Act of 1996 (the Act). The Commission granted temporary suspension and issued notice of the petition on December 6, and granted intervention to Southwestern Bell Telephone Company (SWBT), MCI Telecommunications Corporation (MCI), AT&T Communications of the Southwest, Inc. (AT&T), United Telephone Company of Missouri d/b/a Sprint (Sprint-United), and GTE Midwest Incorporated (GTE) on February 4. The parties met in a prehearing conference and submitted a proposed procedural schedule on March 7 which was adopted by the Commission.³

The procedural schedule directed the parties to file a Stipulation and Agreement by March 20. Instead, the petitioners (STCG and MMG), Staff, OPC, SWBT, and Sprint-United filed a joint motion on March 20 asking that the Commission suspend the FCC dialing parity implementation rules for the petitioners by May 26. GTE filed a response stating that it did not oppose the motion. MCI and AT&T filed a joint response asking that the Commission limit the suspension by imposing a condition that the petitioners not expand their intraLATA interexchange activities beyond their present scope without express Commission approval.

Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, Moka Dial, Inc., Northeast Missouri Telephone Company, and Peace Valley Telephone Company.

³ The procedural schedule included dates for a technical conference, conference report, and an evidentiary hearing on the issue of the PTC (Primary Toll Carrier) Plan. That aspect of the proceeding remains for resolution and is not addressed by this order.

The Commission found that the parties had failed to allege facts that would permit suspension of the FCC rules under the Act and issued an order modifying the procedural schedule on March 28. That order directed the parties to file testimony or stipulated facts addressing the specific findings required by the Act and set a date for an evidentiary hearing. The parties filed testimony and advised the administrative law judge that they were willing to waive cross-examination. Accordingly, the Commission canceled the evidentiary hearing scheduled for April 21-22 and directed the parties to file briefs. The Commission will review the testimony and briefs filed, and resolve the issue of suspension of the FCC implementation rules on the record before it.

Discussion

This Commission has the authority to suspend or modify the application of the FCC rules at issue in this case pursuant to § 251(f)(2) of the Federal Telecommunications Act of 1996 (the Act):

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification -

(A) is necessary -

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement
that is technically infeasible;
and

(B) is consistent with the public interest,
convenience, and necessity.

In order to grant suspension the Commission must find that suspension is consistent with the public interest, convenience, and necessity to avoid a significant adverse economic impact on users, to avoid imposing an unreasonable burden on the companies, or because provision of intraLATA dialing parity as ordered would be technically infeasible.

Three aspects of intraLATA service as it exists in Missouri are particularly relevant to this determination: the PTC (Primary Toll Carrier) Plan, COS (Community Optional Service) service, and 911 emergency service. All the witnesses testified that maintenance of the PTC Plan is inconsistent with the implementation of intraLATA dialing parity. The PTC Plan requires SCs (secondary carriers) such as the petitioners to route all intraLATA toll traffic to the PTC (primary toll carrier). The PTC is able to handle this traffic at a reasonable rate by geographically averaging rates over all the exchanges for which it provides toll service. Thus high cost rural areas may receive toll service at the same price as high-density areas where the cost of providing service is lower. In addition, 911 services are provided by means of private line services that are rate controlled under the PTC Plan. When intraLATA dialing parity is implemented, the fact that some customers are presubscribed to an interexchange carrier other than the PTC would mean that the SC would be required by state and federal law to violate the Plan's requirement that all toll traffic be routed to the PTC.

Missouri LECs (local exchange companies) are required by the Commission to provide COS service to qualifying exchanges. COS service,

where a subscriber in a petitioning exchange pays a flat rate for toll-free service to and from one or more target exchanges, is also dependent on the PTC Plan. In order to initiate a COS route, the companies involved must provide the Commission with calling study data to demonstrate that the volume of calls to the target exchange and the percentage of customers making those calls satisfy the COS criteria. Under the Primary Toll Carrier Plan, PTCs and SCs share the information necessary for properly tracking and billing COS subscriber calls, a process that would be complicated if dialing parity were implemented. All the parties recommended that implementation of dialing parity be delayed for the petitioners until the Commission resolves all COS issues and establishes an implementation schedule, or until April 1, 1998, whichever is sooner.

A. Percentage of Subscriber Lines

According to the Act, a local exchange carrier with "fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide" may petition for suspension of the FCC implementation rules.⁴ STCG witness Robert Schoonmaker testified that, according to the National Exchange Carrier Association, there were 159,709,923 "loops" in the United States at the end of 1995.⁵ Less than two percent would then be less than 3,194,198 access lines. STCG and MMG submitted documentation giving the number of access lines for each of their member LECs.⁶ Each

⁴47 U.S.C. 251(f)(2).

⁵ See also Attachment C to Suggestions of the Small Telephone Company Group and the Mid-Missouri Group in Support of Their Petition for Suspension and Modification filed in this case on January 10, 1997.

⁶ *Id.*, Attachment A.

petitioning LEC has fewer than 3,194,198 access lines. No party disputes the fact that the petitioners meet the "less than two percent" criterion.

B. Applicability of Implementation Rules to Petitioners

Section 51.213(c)(2) of the Act requires implementation of toll dialing parity by August 8, 1997, of "LECs that begin providing in-region, interLATA or in-region, intraLATA toll service before August 8, 1997." The pleadings and testimony indicate that the petitioners are not certain whether the implementation rule applies to them. According to Schoonmaker, the petitioners could conceivably be considered to be providing interstate intraLATA toll services because: they are identified as connecting carriers in SWBT's interstate intraLATA toll tariff (SWBT Tariff FCC No. 67); some of the petitioners have affiliates that provide intraLATA toll service; and petitioner Fidelity Telephone Company is a PTC and regularly provides intrastate intraLATA interexchange services that would make it subject to the dialing parity implementation schedule. The petitioners have requested suspension of the rules even though it is unclear whether they apply in order to avoid an unnecessary violation. The Commission may decide the suspension issue without determining whether the FCC rules should be applied to the petitioners. The Commission's determination will be valid as long as the petitioners continue to exercise the same level of in-region interLATA and intraLATA toll activity.

C. Significant Adverse Economic Impact on Users

There was considerable testimony to the effect that implementing dialing parity on the schedules ordered by the FCC would have a significant adverse economic impact on end users, primarily because of the effect it would have on provision of COS service. According to Staff witness

Gay Smith, the petitioners together have 66 exchanges that are petitioning COS exchanges.

MMG witness David Jones testified that COS subscribers receive many toll-free incoming calls from the target exchanges, a benefit that would be reduced or lost when MMG members implement dialing parity. Schoonmaker testified that COS subscribers pay approximately \$1.2 million annually in flat rates for the service and receive an equivalent value of approximately \$7.3 million in toll calls in return. Schoonmaker stated that COS subscribers initiate approximately \$3.3 million worth of calls to target exchanges and receive approximately \$4 million worth of calls from target exchanges. If COS service became unavailable to some or all subscribers as a result of the implementation of dialing parity, end users would lose a significant portion of the value of the service. If COS were continued as a one-way service at a reduced price, as recommended by Staff witness Smith, the value of the service to subscribers would be reduced. Jones testified that converting COS to a one-way service would decrease the demand for the service as well. Reduced demand would mean reduced revenues for the SCs that would have to be recouped, perhaps from basic local rates.

According to Schoonmaker, if the PTCs should refuse to carry intraLATA toll service because of the implementation of dialing parity, SCs would be forced to take on that role. Because SCs do not have the advantage of averaging rates over different geographical areas, the result would be a increase in the cost of providing toll service. That cost would be passed on to customers purchasing toll service with a significant adverse impact on toll rates.

D. Imposition of an unreasonable burden on the petitioners

Jones testified that converting COS to a one-way service would decrease the demand for the service, meaning reduced revenues for the SCs. Schoonmaker testified that implementation of dialing parity would impose an unreasonable economic burden on the petitioners because it would result in the termination of the PTC Plan. SCs providing intraLATA toll service would experience a higher cost of service and a substantial loss of access revenues that are currently paid by the PTC.

E. Technical Infeasibility

1. **Provision of COS Service.** Jones testified that implementing dialing parity while maintaining COS service poses feasibility problems. COS is currently provided by cooperation of the parties to the PTC Plan who share the necessary subscriber and traffic information, and have appropriate billing mechanisms in place. Smith testified that in the past some interexchange carriers had experienced great difficulty in gathering the data necessary to provide Staff with their call traffic volumes in a timely fashion. The accurate and timely exchange of information is necessary to maintain COS, particularly in its present two-way form.

Smith and Schoonmaker testified that customers could inadvertently lose their COS service by presubscribing to a new intraLATA toll carrier that does not offer an equivalent service. Those customers could experience a considerable, unexpected increase in their toll bills. Schoonmaker stated that target exchange callers, accustomed to toll-free calling to a petitioning exchange, would be unhappy and confused upon receiving toll bills for these calls after dialing parity is implemented.

2. **The PTC Plan.** Jones, Schoonmaker, and Staff witness Childers testified that implementation of dialing parity is inconsistent with the PTC Plan. The Plan requires SCs to automatically route toll traffic to the PTC. Presubscription would result in many involuntary violations of this contractual provision by the SCs.

F. Consistency With the Public Interest, Convenience, and Necessity

Jones testified that implementing dialing parity now, before issues surrounding COS service and the PTC Plan are resolved, would not be consistent with the public interest. Disruption of the PTC Plan would threaten the protections that are now in place for high cost rural LECs and their customers.

Childers testified that implementation of dialing parity, because it is incompatible with the PTC Plan, would potentially jeopardize customers' ability to place and receive toll calls since the PTC's responsibility as toll carrier of last resort would be brought into question.

Schoonmaker testified that a delay in implementation is in the public interest so that the Commission may resolve issues associated with the provision of COS and the PTC Plan in an orderly and deliberate fashion.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

A. The Commission finds that if the petitioners were to implement dialing parity in accordance with the schedule required by the FCC rules

and Order, it would have a significant adverse economic impact on certain end-user customers of these petitioners.

B. The Commission finds that under the facts of this case it is technically infeasible for these petitioners to implement dialing parity in accordance with the schedule required by the FCC rules before the Commission resolves the issues surrounding provision of COS service.

C. The Commission finds that granting the petitioners a delay in implementation of dialing parity to permit resolution of the issues surrounding the PTC Plan and provision of COS service is consistent with the public interest, convenience, and necessity.

D. The Commission finds that it is reasonable to require the petitioners to refrain from expanding their intraLATA interexchange activities beyond the present scope without Commission approval.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The petitioners are public utilities and telephone companies subject to the Commission's jurisdiction under Section 386.250 and Chapter 392, RSMo 1994. The Federal Telecommunications Act of 1996 and the Federal Communications Commission Rules require LECs that will be providing in-region, interLATA or in-region intraLATA toll service before August 8, 1997 to implement intraLATA equal access by August 8, 1997.⁷ A LEC that is not able to comply with the deadline must notify the FCC by May 8, 1997, and justify its inability to comply.⁸ The petitioners have requested a

⁷ 47 C.F.R. § 51.213(c)(2).

⁸ 47 C.F.R. § 51.211(c).

suspension of application of these rules pursuant to § 251(f)(2) of the Act. Suspension may be granted where it is consistent with the public interest, convenience and necessity upon a finding that suspension of the rules is necessary to avoid a significant adverse economic impact on users, to avoid imposing an unreasonable burden on the companies, or because provision of intraLATA dialing parity as ordered would be technically infeasible.⁹

Based upon its findings of fact, the Commission has determined that the petition for suspension should be granted.

IT IS THEREFORE ORDERED:

1. That the petition filed by the Small Telephone Company Group and the Mid-Missouri Group is granted to the extent that the petitioners may delay compliance with the FCC's rules and Order regarding implementation of dialing parity until the sooner of April 1, 1998, or resolution by this Commission of the issues surrounding COS service and the PTC Plan, and the establishment of an implementation schedule.

2. That the suspension in Ordered Paragraph 1 is granted upon the condition that the petitioners do not expand their intraLATA interexchange activities beyond the present scope without express approval of this Commission.

⁹47 U.S.C. 251(f)(2).

3. That this Report And Order shall become effective on June 3, 1997.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright", with a horizontal line extending from the end of the signature.

**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Drainer and
Murray, CC., concur and certify
compliance with the provisions
of Section 536.080, RSMo 1994.
Crumpton, C., absent.

Dated at Jefferson City, Missouri,
on this 22nd day of May, 1997.