

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
March 15, 2001**

CASE NO: TC-2001-402; TT-2001-117

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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified copies:

**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 March, 2001.

Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-2001-402</u>
)	
Ozark Telephone Company,)	
)	
Respondent.)	
In the Matter of the Access Tariff Filing of Ozark Telephone Company.)	<u>Case No. TT-2001-117</u> Tariff No. 200100203

ORDER GRANTING MOTION TO CONSOLIDATE,
DENYING REQUEST FOR MEDIATION,
AND SCHEDULING PREHEARING CONFERENCE

On January 31, 2001, the Staff of the Missouri Public Service Commission (Staff) filed a complaint regarding its audit of Ozark Telephone Company's (Ozark) books and records. Based on this audit, the Staff concluded that Ozark's rates and charges are unreasonable and that its revenues should be reduced by up to \$650,000 on an annual basis. In addition, Staff concluded that Ozark's current depreciation rates are not proper and adequate.

I. Motion to Consolidate

Staff also filed a motion to consolidate this case with Case No. TT-2001-117. Case No. TT-2001-117 involves a tariff sheet Ozark filed to make permanent the interim surcharge that Ozark had implemented pursuant to the Commission's Reports and Orders in Case No. TO-99-254 and Case

No. TO-99-519. In Case No. TT-2001-117, the Commission directed Staff to file supplemental rebuttal testimony, a stipulation and agreement, or direct testimony in an earnings complaint case no later than January 31, 2001. In compliance with that order, Staff filed its complaint, creating Case No. TC-2001-402.

In support of its motion to consolidate, Staff indicates that both cases involve a common question of law, namely whether Ozark's obligation to refund all or a portion of the revenues generated by the interim Carrier Common Line (CCL) rates should be determined in a rate case that considers "all relevant factors," or whether it should be determined in a case that only examines whether the revenues generated by the interim CCL rates equaled or exceeded the amount of revenue that Ozark lost as a result of the termination of the Primary Toll Carrier (PTC) Plan. Staff contends that these cases also involve common questions of fact, including how much revenue Ozark received as a result of the interim surcharge on CCL rates, how much revenue Ozark lost as a result of the termination of the PTC Plan, whether Ozark collected more revenue through the interim surcharge on CCL rates than it lost as a result of the termination of the PTC Plan, and whether Ozark's interim CCL rates were and are unreasonable.

Ozark opposes the motion to consolidate, arguing that the cases have no questions of law in common, and that the only fact in common is that both cases involve Ozark. Ozark states that Case No. TT-2001-117 involves a consideration of tariffs filed by Ozark to make permanent an interim intrastate access CCL rate designed to make it revenue-neutral with respect to the termination of the PTC Plan. Ozark further states that the tariffs it filed do not involve a general rate increase request, inasmuch as they do not involve a request for an overall increase in revenues as specified in Commission Rule 4 CSR 240-10.070(2). Ozark contends that the only legitimate inquiry with respect to making the interim charge permanent

is whether post-PTC Plan revenues generated by the interim tariff exceeded revenues collected by Ozark under the PTC Plan immediately prior to its termination and, if so, to refund the amount already collected by Ozark in excess of that amount. Ozark argues that Case No. TT-2001-117 involves a retrospective analysis of one line item of revenues, whereas Case No. TC-2001-402 will involve a prospective analysis of earnings by examination of all aspects of Ozark's revenue and expenses.

Upon review of these matters, the Commission concludes that consolidation of these proceedings will result in the most efficient use of the Commission's resources. The Commission will grant the motion to consolidate.

II. Request for Mediation

On February 28, 2001, Ozark filed its Request for Referral of Complaint to Third Party Mediator. Ozark argues that this complaint is uniquely suited for a third-party mediator inasmuch as the basis of the complaint has arisen out of litigation involving both the Commission and Ozark in which Ozark took the position that the Commission unlawfully and unreasonably failed to establish a revenue-neutrality mechanism to make the company whole at the time the PTC Plan was terminated. Ozark contends that it subsequently prevailed in its view that the Commission's failure to provide revenue neutrality was unlawful and unreasonable. See *State ex rel. Alma Telephone Company, et al. v. Public Service Commission*, Case No. WD58324. Ozark further alleges that this complaint has come about as a direct consequence of the Commission's unlawful and unreasonable Report and Order in Case No. TO-99-254.

The Commission issued an order directing Staff to respond, no later than March 6, 2001, to Ozark's request for mediation. Staff filed its response on that date. Staff opposes the request for mediation. Staff

notes that its audit of Ozark revealed that Ozark's rates and charges are unreasonable and that the company's revenues should be reduced by up to \$650,000 on an annual basis. According to Staff, each month's delay in processing the complaint will result in Ozark receiving revenues that exceed the cost of service by more than \$50,000. Staff contends that for the protection of ratepayers, the complaint should be processed as rapidly as possible.

Staff further notes that Ozark has been aware of the Staff's finding of substantial overearnings since November 2000, but that the company has made no attempt to negotiate a settlement. Staff indicates it is not reasonable to believe that mediation is likely to result in a settlement of the case, but will instead only result in more delays, to the detriment of the company's ratepayers. Staff also notes that in its request for mediation, Ozark alleges that "this complaint has come about as a direct consequence of the Commission's unlawful and unreasonable Report and Order in Case No. TO-99-254." Staff believes that Ozark does not have a bona fide interest in settling the complaint.

Staff points out that it has filed a motion to consolidate this case with Case No. TT-2001-117, *In the Matter of the Access Tariff Filing of Ozark Telephone Company*. If the Commission refers this case to a third party for mediation, Staff believes that it will make it practically impossible to consolidate the two cases, because the tariff in Case No. TT-2001-117 has an operation-of-law date of June 24, 2001.

The Commission has reviewed Ozark's request for mediation, Staff's response, along with the official case file, and determines that the request for mediation should be denied. The Commission has already determined that consolidation of this case with Case No. TT-2001-117 is appropriate. However, the operation-of-law date of the tariff in Case No. TT-2001-117 is approaching quickly, making mediation impracticable.

More importantly, it appears that Ozark's request for mediation is at least partly motivated by an attempt to delay resolution of the complaint. The request for referral to a third-party mediator is denied.

In order to ensure the prompt resolution of these matters, the Commission will schedule a prehearing conference and will direct the parties to file a proposed procedural schedule.

IT IS THEREFORE ORDERED:

1. That Cases TC-2001-402 and TT-2001-117 are hereby consolidated for all purposes. Case TC-2001-402 shall be the lead case, and hereinafter all pleadings, briefs, and correspondence regarding the consolidated cases shall be filed in the lead case.

2. That the Request for Referral of Complaint to Third Party Mediator, filed by Ozark Telephone Company on February 28, 2001, is denied.

3. That a prehearing conference will be held on March 22, 2001, beginning at 9:30 a.m. The prehearing conference will be held in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets accessibility standards required by the Americans With Disabilities Act. If any person needs additional accommodations to participate in this prehearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the conference.

4. That the parties shall file a proposed procedural schedule no later than March 22, 2001. The proposed procedural schedule shall provide for a hearing to take place on or before May 1, 2001.

5. That this order shall become effective on March 22, 2001.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray,
Schemenauer, and Simmons, CC.,
concur.

Ruth, Regulatory Law Judge

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,
Missouri, this 15th day of March 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

