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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 16th
day of April, 1998.

In the Matter of Southwestern Bell)
Telephone Company's Proposed Revision)
of Its PSC MO - No. 35, General)
Exchange Tariff to Provide a 1+ SAVER) Case No. TT-98-292
10% Toll Discount to SWB Local)
Exchange Customers Subscribing to)
Certain Local Vertical Service)
Packages.)

ORDER DENYING MOTION FOR REHEARING

The Missouri Public Service Commission (Commission) issued an Order Approving Tariff in this case on February 4, 1998, in which the Commission approved as amended the tariff sheets filed by Southwestern Bell Telephone Company (SWBT) on December 22, 1997. The approved tariff revisions established a 1+ SAVERSM 10% Optional Calling Plan (the 1+ SAVERSM Plan) free of charge for customers subscribing to The WORKS®, BizSaverSM, or the BASICSSM vertical services packages. The Plan would provide a 10% discount on the customer's use of SWBT's Long Distance Message Telecommunications Service (MTS) during all rate periods, with no monthly recurring rate, and no initial block of minutes or additional usage rate. The offer would apply to existing and new business and residence customers, and would be available to SWBT local exchange customers statewide. In its order, the Commission denied the motions to suspend filed by the Mid-Missouri Group of Local Exchange Companies (MMG) and the Small Telephone Company Group (STCG).

On February 10, the MMG filed an Application for Rehearing. The MMG contends: (1) that the 1+ SAVERSM Plan is contrary to the provisions of the

Primary Toll Carrier (PTC) Plan, which was specifically intended to prohibit SWBT from creating new toll plans just for its customers; (2) that unlike SWBT customers who choose not to purchase the requisite vertical services packages, the customers of secondary carriers (SCs) do not have a choice because they are not eligible to purchase the vertical packages; (3) that the 1+ SAVERSM Plan is not similar to the discount plan referred to by the Commission in its order, which SWBT currently has in effect, because unlike that plan the 1+ SAVERSM Plan offers a toll service "available in Southwestern Bell exchanges only"; (4) that if the 1+ SAVERSM Plan were made available to SWBT toll customers residing in SC exchanges, it would have the same effect of stimulating MTS usage and recovering lost revenue, so there is no legitimate basis to exclude SC customers from eligibility for the 1+ SAVERSM Plan; (5) that the 1+ SAVERSM Plan violates Sections 392.185¹, 392.200.2, 392.200.3, 392.200.4(1), 292.200.5, and 392.220, and Section 392.230, RSMo 1994.

On February 17, the STCG filed an Application for Rehearing. The STCG contends: (1) that the Commission's findings are unsupported by substantial evidence because there was no hearing or even a verified application, but only a cover letter; (2) that there is no evidence to support the Commission's finding that the PTC Plan was not intended to prevent the PTCs from creating new services for their own customers; (3) that the Commission did not find that the 1+ SAVERSM Plan is in the public interest, as required by Section 392.200(1) when a tariff proposes to define a service based on a geographic area; (4) that the Commission's decision may be in violation of Section 392.400.1, RSMo 1994, in that it is not known whether local noncompetitive services are subsidizing other

¹ All statutory references are to the 1997 Supplement of the Missouri Revised Statutes, except where otherwise indicated.

competitive or transitionally competitive services; and (5) that the 1+ SAVERSM Plan violates Sections 392.185, 392.200.2, 392.200.3, 392.200.2(1), and 392.200.5.

SWBT filed a response to the MMG's application on February 19, which asserts: (1) that the MMG has cited no authority for its claim alleging a violation of the PTC Plan; (2) that a similar offering was in fact approved by the Commission on December 28, 1994 in Tariff File No. 9500374; (3) that the MMG has raised no new substantive points, but merely repeats the arguments in its motion to suspend; and (4) that the Commission appropriately found that the 1+ SAVERSM Plan is not unreasonably discriminatory and made the public interest finding that the 1+ SAVERSM Plan is reasonably related to the goal of increasing customer choice.

Both the MMG and the STCG raise the issue of the lack of time to file a rehearing motion before the effective date of the order, February 6, which was only a few days after issuance of the order of February 4. The effective date of the order was simultaneous with the effective date of the tariff, which contained a thirty-day effective date per Section 392.220.2. The Commission will treat the rehearing motions as timely filed and will review them on the merits.

Pursuant to Section 386.500, RSMo 1994, the Commission shall grant and hold a rehearing if in its judgment sufficient reason has been made to appear. Most of the points contained in the MMG's rehearing motion constitute reargument of points mentioned in its motion to suspend, and none of the grounds raised by the MMG are matters which the Commission has not previously considered in rendering its decision.

Similarly, the STCG also reargues points from its motion to suspend. The only point that is not a reargument of the motion to suspend is the STCG's claim that the 1+ SAVERSM Plan may violate Section 392.400.1, RSMo

1994, which prohibits noncompetitive services from subsidizing competitive or transitionally competitive services. However, neither the MMG nor the STCG raised this issue in their motions to suspend, so it is being presented to the Commission for the first time in the STCG's motion for rehearing. The STCG does not specify how it believes the 1+ SAVERSM Plan violates Section 392.400.1, RSMo 1994, nor does it explain which services it believes may be subsidizing other services. The Commission determines that it would be inappropriate at this juncture to consider an issue which was not properly raised at the appropriate time. The Commission also notes, as it pointed out in its Order Approving Tariff, that the Staff of the Commission reviewed the rate and cost information provided by SWBT, and had no objection to the tariff filing.

With regard to grounds previously raised in the motions to suspend, both the MMG and the STCG appear to believe that as long as a claim is made that a tariff violates a statutory provision, the Commission must suspend the tariff, or must apply the standard contained in that statute and have evidence to support a finding that the standard has been met. The Commission does not agree with this premise. The Commission need not accept a proponent's legal interpretation as true, but may make a determination on its face that the cited statutes are inapplicable. The allegations in the motions to suspend were previously considered by the Commission and found to be unpersuasive.

The Commission also notes that movants premise their claims of discriminatory treatment and statutory violation on the existence of the PTC Plan. Without the PTC Plan, there can be no colorable claim of discrimination, geographic deaveraging, and so forth, since SWBT is offering the 1+ SAVERSM Plan throughout its service area. Although the PTC Plan continues in existence, the Commission takes note that it will be

phased out pursuant to the Commission's Report And Order in Case No. TO-97-217, which was issued on March 12, 1998. Thus, while the Commission denied the motions to suspend on their merits, the Commission is also aware that the claims on their own terms will become moot as the PTC Plan is phased out.

The Commission finds that the applications for rehearing filed by the MMG and the STCG do not present sufficient grounds for rehearing. The Commission will, therefore, deny the applications.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing filed on February 10, 1998 by the Mid-Missouri Group of Local Exchange Companies is denied.
2. That the Application for Rehearing filed on February 17, 1998 by the Small Telephone Company Group is denied.
3. That this order shall become effective on April 28, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Bensavage, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION