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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 21st
day of May, 1998.

In the Matter of an Investigation Concerning the)
Continuation or Modification of the Primary Toll) Case No. TO-97-217
Carrier Plan When IntraLATA Presubscription is)
Implemented in Missouri.)
)

ORDER DENYING MOTION TO COMPEL ANSWERS TO DATA REQUESTS

The Commission conducted an evidentiary hearing in this case from October 27 through 31, 1997. The Commission's Report and Order resolving the case was issued on March 12, 1998 and became effective on March 24. The Mid-Missouri Group of Local Exchange Companies (MMG) filed a Motion to Compel Answers to Data Requests (DRs) with the Commission on March 27. MMG stated that it propounded two DRs to MCI Telecommunications Corporation (MCI) on March 20 to which MCI refused to respond. MCI served objections to the DRs on MMG on March 25.

DR No. 1 asks MCI to indicate whether it would be willing to contract with MMG members to provide intraLATA toll services to their customers, or to become the intraLATA toll carrier of last resort (ITCOLR) for MMG members. DR No 1 also asks MCI to specify the terms, conditions, and compensation under which it would be willing to assume such responsibilities. DR No. 2 asks MCI to indicate whether it would be willing to participate in the intraLATA presubscription balloting or selection process in MMG exchanges.

In its motion to compel MMG describes MCI's objections to the DRs but argues that the information requested is directly pertinent to the Commission's Report and Order in terms of the requirements of an implementation plan, customer notification, and as to whether the imposition of the ITCOLR responsibility will have a potential for adverse financial impact upon secondary carriers. MMG asks the Commission to overrule the objections and direct MCI to answer.

MCI filed a response on April 6 arguing that discovery is meant to generate evidence for introduction at a hearing, citing to *Missouri Rules of Civil Procedure 56.01* and 4 CSR 240-2.090. MCI states that, since the evidentiary hearing is concluded and no additional contested hearing is scheduled, the DRs were improperly promulgated and MCI should not be required to respond.

MCI specifically objects to DR No. 1 on the grounds that it concerns potential contract negotiations, not existing facts, and is therefore improper discovery. MCI states that if MMG wants to identify potential contract terms it should issue a request for proposals. MCI specifically objects to DR No. 2 on the grounds that it attempts to preempt the schedule set by the Commission by requiring MCI to determine whether to participate in customer notices earlier than would be necessary under the Commission's schedule. In addition, MCI objects to the reference to balloting because the Commission has not required balloting. MCI asked the Commission to deny the motion to compel.

The Commission has reviewed the DRs, MMG's Motion to Compel, and MCI's response, as well as the applicable evidentiary rules and legal precedents. A data request is the equivalent of an interrogatory according to Arkansas Power & Light Company v. Public Service Commission, 736 S.W.2d

457, 459 (Mo. App. 1987). It should, therefore, serve the same purpose as an interrogatory, i.e., to inquire into a matter that is reasonably calculated to lead to the discovery of admissible evidence. Martel v. Gallagher, 797 S.W.2d 730, 732 (Mo. App. 1990). Since the evidentiary hearing in this case has concluded, there is no legitimate purpose for a DR propounded at this stage of the proceedings. See 23 Am. Jur. 2d, Depositions and Discovery § 1, stating that discovery may be compelled "from the time of trial to the period preceding it."

The Commission finds that the DRs promulgated by MMG are untimely in that the evidentiary hearing set in this case has already concluded. Because the Commission makes this finding, it is not necessary to reach the more specific objections posed by MCI to the substance of the DRs. The Motion to Compel filed by MMG will be denied.

IT IS THEREFORE ORDERED:

1. That the Mid-Missouri Group's Motion to Compel Answers to Data Requests filed on March 27, 1998 is denied.

2. That this order shall become effective on June 2, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Wickliffe, Deputy Chief Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION