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At a session of the Public Service Commission held at its office in Jefferson City on the 11th day of September, 1997.

In the Matter of Touch 1 Communications,)
Inc.'s Tariff Filing To Introduce) Case No. TT-98-86
First touch Flat Service.)

ORDER APPROVING TARIFF SHEETS
AND DENYING MOTION TO CONSOLIDATE

Touch 1 Communications, Inc. (Touch 1 Comm.) submitted a tariff filing (File No. 9800109) to the Commission for approval on August 4, 1997, with an effective date of September 5. The effective date was later extended to September 15. Touch 1 Comm.'s filing is designed to introduce a new service called First Touch Flat that offers a flat per minute rate of \$.145 for direct dialed 1+ calls to anywhere in the U.S. regardless of time of day, or day of the week, on which the call is made.

The Staff of the Commission (Staff) filed a Motion to Suspend on August 28, stating that the tariff filing would violate Section 392.200.2, RSMo 1994, which prohibits rate discrimination, i.e., the charging of differing rates for the same service. Staff argues that the only difference between the proposed First Touch Flat and the company's existing Pure and Simple service is that the services are offered at different rates. Therefore, the proposed rates are discriminatory and the tariff should be suspended. Staff points out that the Commission has the discretion to waive the application of certain statutory provisions and Commission rules, but asserts that the prohibition against discriminatory pricing is not among those provisions that can be waived. Staff also

filed, on August 28, a Motion to Consolidate this case with numerous other tariff filings to which the Staff has similar objections.

The Commission has reviewed Touch 1 Comm.'s tariff filing, and Staff's motions to suspend and consolidate. The Commission finds that the Motion to Consolidate this case with other tariff cases is inappropriate in that, although Staff makes the same objections to all the proposed tariffs, the tariffs have been submitted by different companies and differ in substance. The Commission will consider each proposal on its own merits.

Touch 1 Comm.'s proposed First Touch Flat plan does appear to offer identical services to the existing Pure and Simple plan, only at differing rates. However, both plans appear to be available to any customer. The concept of discriminatory pricing is relevant only as applied to customers. The Commission must ask whether a proposed calling plan would result in similarly situated customers being forced to pay differing rates for the same services. See State of Missouri, ex rel. DePaul Hospital School of Nursing v. Missouri Public Service Commission, 464 S.W.2d 737, 740 (Mo. App. 1970).

In this case there are no customers who are captive in the sense that they are tied to one plan or the other. Neither are there captive customers in the sense that they have no option but to rely on Touch 1 Comm. for long distance services. Touch 1 Comm. is one competitive interexchange carrier among many from which a customer may choose. The Commission finds that approval of the proposed tariff sheets would not result in unduly discriminatory pricing because Touch 1 Comm. is a competitive company and both plans are available to all customers.

Accordingly, the proposed tariff sheets will be approved to become effective on September 15.

IT IS THEREFORE ORDERED:

1. That the following tariff sheets, submitted on July 30, 1997, by Touch 1 Communications, Inc. are approved to become effective on September 15, 1997:

M.P.S.C. No. 1

4th Revised Page No. 11, Canceling 3rd Revised Page No. 11

5th Revised Page No. 12, Canceling 4th Revised Page No. 12

Original Page No. 15.6

Original Page 24

2. That this order shall become effective on September 15, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

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

ALJ: Wickliffe