

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of Citizens)
Telephone Company of Higginsville, Missouri,)
Inc., for authority to file, establish and put) Case No. TR-93-268
into effect new, increased or revised rates and)
charges for telephone service.)

DISSENTING OPINION OF COMMISSIONERS KENNETH MCCLURE AND PATRICIA PERKINS

We respectfully dissent from the opinion of the majority in the Order Approving Stipulation and Agreement. In so doing, we must state that we are not objecting to the provisions of the Stipulation and Agreement. They appear to be reasonable settlements of the issues. Instead, our concerns focus on the adequacy and clarity of the record. We are not certain that the record of this case supports the conclusions reached in the Stipulation and Agreement.

The Commission based its original decision in Case No. TR-93-268 on the record it had before it and the interpretation placed upon that record. There was considerable concern at the time the case was being considered by the Commission that the record did not sufficiently address all issues nor answer all questions. Certainly, the Commission must bear a portion of the responsibility for this uncertainty because it failed to ask the proper questions of the parties' witnesses during the original hearing. However, the parties must also shoulder the blame for their failure to give the Commission a complete and clear record of the issues. Because of this lack of clarity, which was manifested in the various requests for rehearing, the Commission determined that a rehearing was advisable in order to clarify the record and make any changes deemed necessary. When the parties agreed to a Stipulation, this opportunity was lost.

We have several questions which we would appreciate having answered by the Company in the near future. Copies of the responses should be provided to all members of the Commission and parties to this case. These questions would have been asked had the hearing originally scheduled for November 22, 1993, been held. These questions are as follows:

1. How will the \$5000 additional revenue loss be covered?
2. How were the \$85,500 and \$59,500 reductions for intrastate interLATA and intraLATA access services calculated?
3. Is demand or usage expected to increase as a result of this reduction? If so, does this stimulation of demand have an effect upon the revenue calculation?
4. Does the Company have any concerns regarding the Federal Communications Commission's (FCC) recent restructuring of access in CC Docket 91-141? Please elaborate.
5. Did the Company premise its original NTS recommendations on the assumption that Citizens' loop costs have remained stable since the depooling of the intraLATA pool?
6. Have loop costs for the state jurisdiction gone up in the last three years?
7. How are loop costs shared between the federal and state jurisdictions?
8. How are the FCC's separated loop costs recovered?
9. Has this changed since depooling of intraLATA access in Missouri? If so, in what way?
10. How are the Missouri separated loop costs recovered?
11. Have any of these changed since the depooling of intraLATA access in Missouri? If so, in what ways?

12. Which portions of the loop costs are non traffic sensitive?
13. Does the Company agree that Universal Service Fund (USF) payments are designed by the FCC to keep local rates low?
14. Have the Company's USF payments remained static since the depooling of intraLATA access in Missouri?
15. Did the Company review the NECA data provided to the Federal/State Joint Board 80-286 and published twice annually?

This Commission is keenly aware of the profound changes facing each of our regulated utility industries. Certainly, the investor-owned telecommunications, electricity, natural gas, and even water companies serving Missouri are being faced with a wide variety of pressures ranging from competition to safety concerns, quality of service and more stringent environmental laws and regulations. This Commission wants to display the flexibility and openness necessary to adequately deal with these matters bearing in mind that all interests must be balanced.

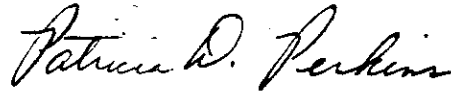
But as we look to the future, we would remind all parties appearing before the Commission of the constitutional and judicial standards which this Commission must meet. Article V, Section 18 of the Constitution of Missouri requires that our decisions be based upon "competent and substantial evidence upon the whole record." This obligation has been highlighted in *State ex rel. Rice v. Public Service Commission*, 359 Mo. 109, 220 S.W.2d 61, 64 (banc 1949) and *State ex rel. Marco Sales, Inc. v. Public Service Commission*, 685 S.W.2d 216, 218 (Mo. App. 1984). While the Commission wants to be flexible, it must base its decisions on the facts properly before it. Parties should not assume anything; the record must be sufficient, clear and concise. We cannot act upon matters which do not meet the constitutional requirements of competent and substantial

evidence. While the Commission is not bound by precedent, those urging dramatic departures from past Commission action must insure that the evidence clearly supports the case.

Respectfully submitted,



Kenneth McClure
Commissioner



Patricia D. Perkins
Commissioner

Dated at Jefferson City, Missouri, on
this 22nd day of November, 1993.