BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation of the Actual Costs Incurred in Providing Exchange Access Service and the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri.	))))))	Case No. TR-2001-65

INITIAL BRIEF OF
ALLTEL MISSOURI, INC.

ALLTEL Missouri, Inc. ("ALLTEL"), pursuant to the Missouri Public Service Commission's *Order Directing Filing*[1] entered in this matter on December 2, 2002, respectfully submits its Initial Brief in this matter.

I. INTRODUCTION

A. The Investigatory Docket.

As an incumbent local exchange carrier ("ILEC"), ALLTEL was made a party to this case by the Commission's Order[2] of September 21, 2000, wherein the Commission made all certificated basic local exchange telecommunications service providers in Missouri parties to this proceeding. ALLTEL serves approximately 70,000 access lines in sixty (60) small, rural, high-cost exchanges throughout diverse geographic areas of the state. (Tr. 60-61).

The procedural history of this case reveals that the purpose or intent of the proceeding was, itself, a somewhat contentious issue, and a review of introductory comments and opening statements highlights the perceived need by both the Commission and the parties to focus on the appropriate scope and purpose of this investigatory docket.

---

[1] *Order Directing Filing*, Case No. TR-2001-65, December 2, 2002, at 1.
[2] *Order Adding Parties and Directing Notice,* Case No. TR-201-65, September 21, 2000.

[Judge Thompson] . . . This is an investigation. This is an effort by the Commission to gather information.

This is not a contested case. The Commission is not adjudicating a dispute between parties or between the Commission's Staff and any party. This is an effort by the Commission to gather information for its own purposes, and those purposes, I think, have been made plain to the parties. It's to determine what exactly are the costs of providing access services with reference to setting a price cap or a cap on CLEC access service, access rates.

So what that all boils down to is, after this hearing this week, the case will not necessarily be done. The Commission will perhaps ask the parties, then, for their views on where do we go from here and we will see what we see with respect to that. (Tr. 17).

[Mr. Poston] The Commission did not direct the Staff to recommend rate changes or to make conclusions as to the reasonableness of the current switched access rates. However, it appears that several parties in this case would like to jump to that next step, rate discussions and Commission authority discussions, without first giving the Commission an opportunity to determine whether switched access rates are truly reflective of the costs.

These premature arguments are being raised by a few parties only and were added to the issue list at their request, despite the irrelevance to today's proceeding, and the Staff hopes that such arguments were checked at the door and that the evidentiary hearing can remain focused on finding the actual costs of providing switched access as directed by the Commission. (Tr. 19).

[Mr. Dandino] At the very start I want to make sure, one of the reasons why a number of the parties, including Public Counsel, is a little leery of this case, when it's called an investigation in a generic docket, you know, we tend to look at it and hope that it will be just an investigation and when the Commission takes some time to gather some information.

However, our sad experience was with the COS investigation and the costs, that a decision was made, an action was taken by the Commission without an opportunity for hearings and for specific hearings on specific aspects of this and what its effects were.

So I just wanted to make sure that there's no doubt that if something comes out of this investigation that affects

> the rates, especially local rates, USF surcharges and access rates, significantly changes those or changes those from the current levels, I want to make it clear that public hearings should be held and that an evidentiary hearing should be held on the specific changes that the Commission proposes or that any of the parties propose. (Tr. 20).

Indeed, most of the parties would concur that the investigatory, "non-contested" nature of this proceeding would preclude the Commission from taking any action relative to access charge rates. As the Commission stated in its March 14, 2002 Order[3]:

> Note, however, that the Commission's intention is simply to *investigate* all issues. "Investigate" implies the gathering, compilation and analysis of data, which is exactly what the Commission has directed its Staff to do. Questions as to the Commission's authority to modify the access rates of price-cap regulated ILECs and rate-of-return regulated ILECs are thus premature. The Commission has not, so far, announced any intention to do those things.
>
> This case derives from an earlier case which established an interim cap on CLEC access rates. An express purpose of this case is to gather the information necessary to replace the interim rate cap with a permanent solution.

Accordingly, Staff's witness, Dr. Ben Johnson, points out in his Direct Testimony (Ex. 1) at page 5, "The Commission also noted that this is an investigation, and that it has not yet announced any intention to modify ILEC access rates."

On the express issue of whether the current capping mechanism for intrastate CLEC access rates is appropriate and in the public interest, there appears to be general consensus among the parties that the current capping mechanism that was adopted in Case No. TO-99-596 is in the public interest and is, in fact, an appropriate permanent solution. (Tr. 32-33; 62).

The record established in this investigatory docket would not, however, support any action by the Commission on tangential – or, as Staff describes above, premature or

[3] *Order Adopting Procedural Schedule, Clarifying the Scope of this Proceeding, and Concerning Motion to Waive Service Requirement and Motion to Compel Discovery*, Case No. TR-2001-65, March 14, 2002.

possible "next step" – issues, related to access rate examinations or other extraneous policy determinations. And while Staff may have intended to focus "on finding the actual costs of providing switched access," the evidentiary record, as discussed more fully below, reveals that the cost development methodologies and analysis employed by Staff's consultants, Ben Johnson and Associates, were flawed and of little value.

B. ALLTEL's Procedural Dilemma: Staff's Surrogate Study.

During the course of Staff's collection of data "to ensure that the necessary detailed cost information is included in the record,"[4] ALLTEL was included in the Large ILEC category (or the "Big 5 Group") and responded to seven full sets of data requests.[5] (Ex. 46 at 2). Pursuant to agreement among the parties and the Commission's *Order Adopting Procedural Schedule* entered March 14, 2002, on May 1 of 2002 all parties were to provide "feedback to Staff on draft cost studies" contained in the Highly Confidential disk distributed by Staff to counsel of record on April 1, 2002. While ALLTEL had been providing company-specific data (which included, *inter alia*, central office equipment investment information, loop cost information, subscriber quantity information, and demand quantity (minutes of use) information at an exchange level), the cover memorandum accompanying the Highly Confidential Disk on April 1 advised counsel that for "Other LECs" – other than Southwestern Bell Telephone Company, Verizon and Sprint – Staff's consultants had utilized HC-designated information of Southwestern Bell, Verizon and Sprint in developing the other LECs' cost studies, and

[4] "The Commission has directed that this case will take the form of an investigation to ensure that the necessary detailed cost information is included in the record. . . . The Commission points out that it has made all certificated basic local telecommunications carriers parties to this case **to facilitate Staff's collection of actual cost data from those carriers**." *Order Granting Clarification,* Case No. TR-2001-65, December 12, 2000, at 2.

[5] Staff Witness Johnson testifies at page 16 of his Surrebuttal Testimony (Ex. 3): "Eight sets of data requests were sent to the Big 5 group, three sets were sent to the CLECs, four sets were sent to the small ILECs, and two sets were sent to the three largest IXCs (AT&T, WorldCom and Sprint)."

"Hence, none of the parties may see these files except pursuant to the applicable proprietary procedures." (Tr. 63-64; Ex. 46 at 2). In his Direct Testimony, Staff witness Johnson offered the following rationale for his approach: "Since the vast majority of the switched access market is served by a small number of large ILECs in Missouri, the primary focus of Staff's cost studies was necessarily these large ILECs." (Ex. 1 at 4).

Since ALLTEL had not retained an "outside expert" for purposes of this proceeding and, pursuant to the Commission's standard Protective Order issued in this case, ALLTEL's internal employees possessing expertise in this area could not view information designated as "highly confidential," although they had previously executed Nondisclosure Agreements and only desired to see ALLTEL-specific cost models/cost study information at that stage of the proceeding in order to respond to Staff in a timely manner. (Ex. 44 at 3). Only after extensive contacts and the execution of separate Nondisclosure and Protective Agreements with Southwestern Bell, Verizon and Sprint, were three ALLTEL employees, including ALLTEL Witness Steve Brandon, granted permission to review the highly confidential ALLTEL "cost study information" developed by the Staff and its consultants to purportedly identify ALLTEL's cost of access. (Ex. 44 at 3; Tr. 64-65).

C. The Infirmities of Staff's Analysis.

After reviewing Staff's underlying information, ALLTEL expressed concerns regarding the cost development methodologies utilized by Staff witness Johnson. In comparison with ALLTEL's 2000 annual allocated cost study for intrastate access, wherein all costs are based on FCC Parts 36 and 69 rules consistent with its interstate analysis, Staff's cost development was based on 1999 data which utilized: a) loop costs

from an FCC model; b) switching costs from statistical analysis of line terminations, traffic sensitive and getting started costs; and c) transport costs from statistical analysis of per circuit investments. As a result, ALLTEL identified large differences in some of the cost elements, not to mention questions concerning the propriety of the statistical analysis and the utilization of surrogate costs from the "big three" ILECs. (Ex. 44 at 4). As Dr. Johnson, himself, states in his Direct Testimony: "Without question, input choices are a critical step in any modeling process and can profoundly affect the costs that are developed." (Ex 1 at 38).

The record in this proceeding is replete with the many and varied criticisms of parties to Staff witness Johnson's approach and his methodologies employed in this proceeding. As Sprint witness Randy G. Farrar observed:

> I have reviewed BJA [Ben Johnson and Associates] results and concluded that BJA has modified the inputs into Sprint's cost model to the extent that the results do not accurately reflect Sprint Missouri, Inc.'s cost of access. While I am unsure how the Commission will use the cost of access identified in this case, the discrepancy between Sprint's cost of access and BJA's results are so great that Sprint is compelled to sponsor a witness. (Ex. 24 at 4).

[Mr. Dority] Q. In response to some questions from Mr. England, you indicated that, in your view, Dr. Johnson's utilization of your model, particularly in terms of the alterations, I'll use that word, regarding inputs, would lend the results to be non-credible. Would that be an accurate reflection of your testimony here this afternoon?

[Mr. Farrar] A. Yes.

Q. In his Surrebuttal Testimony in talking about the collaborative process that Dr. Johnson had hoped for, he indicates that several of the parties, especially Sprint, took full advantage of this process to obtain detailed advanced knowledge of the approach they were using and provided us with extensive feedback In every instance where someone found an error in our work, we corrected the problem in a subsequent filing.

> Would you agree with that statement as it pertains to your interaction with Dr. Johnson in this proceeding?
>
> A. Well, we did have – we did work with Dr. Johnson and we did have several conference calls. And admittedly he did make several changes to his cost study that we suggested or recommended or discussed in those conference calls. But, as I said, the end result, in my opinion, is still not acceptable.

(Tr. 714-715).

Given the attacks of the "Large ILECs" regarding Dr. Johnson's alteration and manipulation of their respective models, Mr. Kent Larsen, testifying on behalf of the Missouri Independent Telephone Company Group, may have captured the sense of many participants when he describes Dr. Johnson's cost development as "double imaginary" – first in errors claimed by the larger LECs, and then in erroneous reliance on that faulty analysis in the application of regression analysis in the calculation of other LEC costs. (Ex. 30 at 9). Compounding such problems for ALLTEL, was the inconsistent approach of Dr. Johnson in his categorization of ALLTEL. Dr. Johnson categorizes ALLTEL throughout his analysis as a "Large ILEC," and yet he recognizes that ALLTEL reflects the same local service characteristics as other small rural ILECs: "we prepared cost estimates for Alltel and 37 other small rural ILECs." (Ex. 1 at 57). "This follows directly from the lower density, more rural characteristics of the latter two carriers [ALLTEL and CenturyTel] service area." (Ex. 1 at 119) (Ex. 46 at 2-3). In the end, the same faulty analysis in the application of regression analysis is utilized in the calculation of ALLTEL's purported costs.

And while Dr. Johnson would claim that some "small company-specific" inputs were used in his analysis, thereby attempting to bootstrap credibility to his FCC model

manipulations, in reality, his *de minimus* inputs would have no substantive affect on the ultimate outputs of his model.

[Mr. Dority] Q. In response to some questions from Mr. England just now as he was preparing his new exhibit here, you discussed changing the host remote tables based on inputs that you received from the carriers?

[Dr. Johnson] A. Yes.

Q. And I guess my question would be, would these changes have an impact on the loop cost results from the FCC model that was utilized?

A. No.

(Tr. 218).

D. ALLTEL's Cost Study.

ALLTEL sponsored as a witness in this proceeding Mr. Steve Brandon, Director of Costs, who is responsible for all cost development for ALLTEL Corporation. Mr. Brandon sponsored and filed ALLTEL Missouri, Inc.'s cost study, attached to his Direct Testimony (Ex. 44) as Schedule A (Ex. 45 HC), as the appropriate basis for determining ALLTEL's Missouri intrastate access costs. As discussed more fully, *infra*, there are two types of cost studies submitted as Ex. 45 HC: one is a jurisdictionally allocated cost study using FCC Part 36 rules; the second is the state access portion of the jurisdictional study which is derived from FCC Part 69 rules. These cost studies are based on ALLTEL Missouri, Inc.'s specific cost data, and are the basis for ALLTEL Missouri's 2002/2003 interstate access tariff rate development. (Ex. 44 at 4-5). This is the only competent and substantial evidence in the record of this proceeding addressing ALLTEL Missouri, Inc.'s Missouri intrastate access costs.

II. THE LIST OF ISSUES

Pursuant to the Commission's March 14, 2002 *Order Adopting Procedural Schedule, supra* Footnote 3, "[t]he briefs to be submitted by the parties shall follow the same list of issues as filed in the case." Accordingly, the following section discusses ALLTEL's positions on the List of Issues filed by the Commission Staff, on behalf of the parties of record, on August 15, 2002.

1. What is the appropriate cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) to be used in determining the cost of switched access?

ALLTEL Position: As discussed, *supra*, in this proceeding ALLTEL has submitted a forecasted annual allocated cost study for intrastate access, wherein all costs are based on FCC Parts 36 and 69 rules consistent with its interstate analysis. (Ex. 45 HC). The cost studies are based on ALLTEL's specific cost data, and are based on financial forecasts for the period July 1, 2002 through June 30, 2003. They are the same costs that underlie ALLTEL Missouri's interstate access tariff rate development for its July 1, 2002 filing. Part 69 provides ALLTEL Missouri's specific costs for each intrastate access element. (Ex. 44 at 4). One of the issues in this proceeding is the proper assignment of joint and common costs to access elements. Part 36 jurisdictional separations procedures determine what portion of joint and common costs must be recovered from the interstate jurisdiction via interstate access charges, and what portion must be recovered from revenues received from local telecommunications services, by assigning them in the same proportion as direct costs. Part 69 rules specify how these costs are recovered through specific rate elements. This costing methodology has been utilized for many years and is still adequate for developing access rates. (Ex. 46 at 3-4).

In discussing the use of his two average or allocated cost studies, Staff witness Johnson notes that "they are useful because they are conceptually similar to the fully allocated embedded cost studies which have historically been relied upon by the FCC and some state commissions in setting prices." At page 10 of his Rebuttal Testimony (Ex. 2), Dr. Johnson states: "In this proceeding, the average cost studies are particularly useful, since they can be directly compared with the embedded cost studies which have been offered by the small incumbent LECs. The staff average/allocated cost studies rely upon a similar approach to that used by the small incumbent LECs, except that they focus on forward looking rather than historical costs." As observed by small company witness Warinner: "It should be noted that the study presented by ALLTEL utilized the same cost allocation methodology as the Small Companies, but presented projected costs rather than historical costs consistent with its interstate access filing." (Ex. 33 at 4-5).

2. Should the cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) for determining switched access costs be uniform and consistent for all Missouri LECs?

ALLTEL Position: There is no necessity for the Commission to adopt a "one-size fits all" cost methodology for all Missouri LECs.

3. Should loop costs be included in the determination of the cost of switched access, and if so, at what level?

ALLTEL Position: It is ALLTEL's position that a portion of loop costs should be included in the determination of the cost of switched access. While the FCC is moving to a flat rate basis through increased subscriber line charges to provide for recovery of loop costs, it still recognizes that interstate calls account for 25% of loop costs. State access should also recover 25% of loop costs and local rates should recover 50%. (Ex. 46 at 4).

[Mr. Dority] Q. Good Afternoon, Mr. Larsen. (Witness for MITG).

[Mr. Larsen] A. Good Afternoon, counselor.

Q. I just have a couple of questions to follow-up on the line of questions that Commissioner Murray was asking regarding the appropriate allocation of loop costs to switched access services.

And you indicated in your response that there could be, in fact, a number of rational responses in looking at that issue. And while your particular group of companies has chosen to utilize SLU or the subscriber line usage approach, that indeed, the 25 percent allocator similar to what the FCC has in place would be a rational approach as well. Is that the gist of your testimony?

A. Yeah. And let me clarify. I'm hopeful that my answer said that we provided a couple of alternatives there and that my personal preference was the SLU.

Q. Okay. Are you familiar with the testimony of Steve Brandon that was filed in this matter on behalf of ALLTEL Missouri, Inc.?

A. I am.

Q. And are you aware that, indeed, Mr. Brandon has suggested that using the 25 percent factor would be appropriate and that is his recommendation in this proceeding?

A. I believe I recall that, yes.

Q. He basically, as the justification for that, in his surrebuttal states – I'd like to read this and see if you agree with this. While the FCC is moving to a flat-rate basis through increased subscriber line charges to provide for recovery of the loop costs, it still recognizes that interstate calls account for 25 percent of loop costs.

And it's on that basis that it's in his opinion that state access should also recover 25 percent of loop costs. Would you generally agree with that statement?

A. I would.

4. What are the appropriate assumptions and/or the appropriate values for the following inputs?
   a. Cost of capital
   b. Switch discounts
   c. Depreciation

d. Maintenance factors
e. Common and shared costs
f. Fill factors
g. Other major assumptions and/or inputs.

ALLTEL Position: For ALLTEL, the appropriate assumptions and/or the appropriate values for the above inputs are contained in the ALLTEL Missouri, Inc. Cost Study, attached as Schedule A (HIGHLY CONFIDENTIAL) to the Direct Testimony of ALLTEL witness Steve Brandon. (Ex. 45 HC).

5. Is the current capping mechanism for intrastate CLEC access rates appropriate and in the public interest?

ALLTEL Position: Yes, as discussed *supra*, based on the testimony presented in this proceeding, there appears to be general consensus that the current capping mechanism is appropriate and in the public interest. (Tr. 32-33; 62).

6. Are there circumstances where a CLEC should not be bound by the cap on switched access rates?

ALLTEL Position: There may be circumstances where a CLEC should not be bound by the cap on switched access rates, such as where a totally facilities-based CLEC can demonstrate that its costs of providing switched access are higher than the rates allowed under the cap.

7. What, if any, course of action can or should the Commission take with respect to switched access as a result of this case?

ALLTEL Position: The Commission need not take any action with respect to switched access as a result of this case. *See* discussion on purpose and scope of this investigatory docket, *supra*, pp. 1-3. Should the Commission wish to review switched access rates in the future, such review should be done in the context of ILEC-specific proceedings or

other generic proceedings, consistent with the statutory authority of the Commission as discussed below.

III. ADDITIONAL ISSUES REQUESTED TO BE BRIEFED BY JUDGE THOMPSON

At the conclusion of the hearings, Deputy Chief Regulatory Law Judge Thompson requested that the parties address the following ten (10) questions proposed by AT&T at an earlier stage of this matter, as fully set out in the Commission's March 14, 2002 *Order Adopting Procedural Schedule, Clarifying Scope Of This Proceeding, And Concerning Motion to Waive Service Requirement, and Motion To Compel Discovery* (Tr. 1241-42):

> 1. Whether the Commission has the jurisdiction to direct an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, to reduce its switched access rates?
>
> 2. Whether the Commission has the jurisdiction to direct an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, to restructure its switched access rates?
>
> 3. Whether an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, may voluntarily reduce its switched access rates?
>
> 4. Whether an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, may voluntarily restructure its switched access rates?
>
> 5. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to reduce its switched access rates without conducting a full rate case?
>
> 6. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to restructure its switched access rates without conducting a full rate case?
>
> 7. Whether an ILEC that is regulated under rate of return regulation may voluntarily reduce its switched access rates without filing a full rate case?

8. Whether an ILEC that is regulated under rate of return regulation may voluntarily restructure its switched access rates without filing a full rate case?

9. Whether the Commission has jurisdiction to direct a CLEC to reduce its switched access rates?

10. Whether the Commission has jurisdiction to direct a CLEC to restructure its switched access rates?

In addition, Judge Thompson noted that "[t]here was also talk about calling scopes and the authority that the Commission has to impose or to enlarge calling scopes, and there was talk linking this in some way to the idea of access rate reform, if I can use that phrase. I'd like you to address the Commission's authority with respect to enlarging calling scopes, as well, because there has been a lot of talk about that during this week." (Tr. 1242).

Finally, Judge Thompson referenced the issue of the protective order and AT&T's pending Motion for Reconsideration of the Commission's Order with respect to the protective order. "So I'd like the parties to address that as well." (Tr. 1243).

A. Issues 1-4 Related to Price-Cap Regulated ILECs.

1. Whether the Commission has the jurisdiction to direct an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, to reduce its switched access rates?

2. Whether the Commission has the jurisdiction to direct an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, to restructure its switched access rates?

3. Whether an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, may voluntarily reduce its switched access rates?

4. Whether an ILEC regulated under "price-cap regulation" pursuant to Section 392.245, RSMo 2000, may voluntarily restructure its switched access rates?

As discussed, *supra*, page 3, this Commission has indicated that questions regarding the Commission's authority to modify access rates for price-cap and rate of return regulated companies were premature. (March 14, 2002 Order). Nevertheless, portions of the prefiled testimony in this case address the issue of price-cap versus rate of return regulated companies, and the implications such distinctions may have on the Commission's ability to set access rates. (*See*, Southwestern Bell witness Craig A. Unruh Direct Testimony (Ex. 15 at 5-6), Rebuttal Testimony (Ex. 16 at 8) and Surrebuttal Testimony (Ex. 17 at 7); Sprint witness Mark Harper Rebuttal Testimony (Ex. 27 at 7-8); MITG witness Kent Larsen Direct Testimony (Ex. 28 at 15).

Consistent with the views expressed by other price-cap regulated companies[6], ALLTEL believes that the Commission lacks the statutory authority to direct a price-cap regulated company to reduce or restructure its switched access rates, except as provided under the provisions of Section 392.245, RSMo 2000. ALLTEL believes that a price-cap regulated company may voluntarily reduce or restructure its switched access rates, provided that the switched access rates remain below the maximum allowable prices.

Section 392.245, RSMo 2000 contains the exclusive statutory authority of the Commission to regulate price-cap regulated companies, including regulation of switched

[6]"So the record in this matter is clear, on May 17, 2002, ALLTEL Missouri, Inc. filed its Notice of Election To Be Price Cap Regulated Under Section 392.245, RSMo 2000, as a small incumbent local exchange telecommunications company. ALLTEL advised the Commission that it was exercising its statutory right to elect to be regulated under Section 392.245 by providing written notice to the Commission, and that no further action of the Commission was required to effectuate ALLTEL's election. I would note that the Staff of the Commission has filed a motion requesting that the Commission reject such election; however, ALLTEL Missouri, Inc. does consider itself to be a price cap regulated company as of the May 17, 2002 date. ALLTEL's witness does not address the implications for setting access rates, for like most of the parties to this proceeding, ALLTEL agrees that access rates cannot and should not be altered in the context of this case." Opening Statement of Mr. Dority. (Tr. 69).

access rates. According to Section 392.245(1), price cap regulation "shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section."

Pursuant to Section 392.245(3), the maximum allowable prices for a price-cap regulated company "shall be those in effect on December thirty-first of the year preceding the year in which the company is first subject to regulation under this section." This provision would include a price-cap regulated company's access rates. Pursuant to Section 392.245(4), the maximum allowable prices for exchange access and basic local telecommunications services of a price-cap regulated company shall be annually changed by one of the following methods:

> (a) By the change in the telephone service component of the Consumer Price Index (CPI-TS), as published by the United States Department of Commerce or its successor agency for the preceding twelve months; or
>
> (b) Upon request by the company and approval by the commission, by the change in the Gross Domestic Product Price Index (GDP-PI), as published by the United States Department of Commerce or its successor agency for the preceding twelve months, minus the productivity offset established for telecommunications service by the Federal Communication Commission and adjusted for exogenous factors;

Based upon the provisions of Section 392.245(4), the Commission may direct that the access rates of a price-cap regulated company be reduced, if the CPI-TS is negative for the preceding twelve-month period, or if the alternative GDI-PI approach (as requested by the company and approved by the Commission) results in a negative adjustment. In fact, the Commission has ordered (or permitted) Southwestern Bell, Verizon and Sprint to lower access rates in previous years when the CPI-TS was

negative, as requested by these price-cap regulated companies.[7] On the other hand, when the CPI-TS index has been positive, the Commission has permitted price-cap regulated companies to increase their maximum allowable access rates, pursuant to the formula contained in Section 392.245(4).[8] As noted by Southwestern Bell witness Unruh, "Pursuant to Section 392.245, SWBT's maximum switched access prices have been adjusted by the change in CPI-TS, which is a telecommunications-based inflation index." (Ex. 16 at 8, Footnote 10).

In addition, Section 392.245(8)[9] & (9)[10] provided for rate re-balancing of access rates and basic local exchange rates, under certain conditions specified in the statute.

---

[7] *See e.g.*, PSC Press Release, *Southwestern Bell To Lower Basic Monthly Rates Under Filing Approved by PSC,* (November 6, 2001)*;Order Regarding Tariff and Motion to Suspend*, ***Re GTE Midwest d/b/a Verizon Midwest***, Case No. TR-2002-250 (December 20, 2001); *Order Regarding Tariff and Motion to Suspend*, ***Re Sprint***, Case No. TR-2002-251 (December 6, 2001).

[8] *See e.g., Order Regarding Tariff* Case No. IT-2003-0167. (December 10, 2002); PSC Press Release, *Southwestern Bell To Change Monthly Telephone Rates Under Price Cap Filing* (November 25, 2002)

[9] Subsection 8 provides:
An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section. Absent commission action under subsection 10 of this section, an incumbent local exchange telecommunications company regulated under this section shall have four years from the date the company becomes subject to regulation under this section to make the adjustments authorized under this subsection and subsection 9 of this section. Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section.

[10] Subsection 9 provides:
Other provisions of this section to the contrary notwithstanding and no earlier than January 1, 1997, the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the revenue loss resulting from the first year's access service rate reduction by increasing its monthly maximum allowable prices applicable to basic local exchange telecommunications services by an amount not to exceed one dollar fifty cents. A large incumbent local exchange telecommunications company shall not increase its monthly rates applicable to basic local telecommunications service under this subsection unless it also reduces its rates for intraLATA interexchange telecommunications services by at least ten percent. No later than one year after the date the incumbent local exchange telecommunications company becomes subject to regulation under this section, the commission shall complete an investigation of the cost justification for the reduction of intrastate access rates and the increase of maximum allowable prices for basic local telecommunications service. If the commission determines that the company's monthly maximum allowable average statewide prices for basic local telecommunications service after adjustment

Access rates may be lowered to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to price cap regulation. The revenues lost from the access charge reductions may be offset by increases in basic local exchange rates (up to $1.50 per month per access line). This rate re-balancing process may be accomplished over a four-year period.

However, Section 392.245(8) also specifically provides that: "Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates. . . "

Based upon these statutory provisions, ALLTEL believes that the Commission lacks statutory authority to direct a price-cap regulated company to lower or restructure its access rates except as provided under the provisions of Section 392.245.

B. Issues 5-8 Related to Rate of Return Regulated ILECs.

5. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to reduce its switched access rates without conducting a full rate case?

---

pursuant to this subsection will be equal to or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing basic local telecommunications service and that the company's intrastate access rates after adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services, the commission shall allow the company to offset the revenue loss resulting from the remaining three- quarters of the total needed to bring that company's intrastate access rates to one hundred fifty percent of the interstate level by increasing the company's monthly maximum allowable prices applicable to basic local telecommunications service by an amount not to exceed one dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction of intrastate access rates and the increase of monthly maximum allowable prices for basic local telecommunications services to be terminated at the levels the commission determines to be cost-justified. The total revenue increase due to the increase to the monthly maximum allowable prices for basic local telecommunications service shall not exceed the total revenue loss resulting from the reduction to intrastate access service rates.

ALLTEL believes that the Commission lacks the statutory authority to direct a rate of return regulated company to reduce its access rates, without conducting a hearing, pursuant to Section 392.230, RSMo 2000. Since the Commission is required to take "all relevant factors" into consideration, ALLTEL believes that it would be unlawful for the Commission to order that access rates be reduced for a rate of return regulated company without conducting a rate case.

A Commission order to reduce access rates outside the context of a rate case would result in a change to the company's tariffs and rates in a way that would reduce the company's existing revenues, income and achieved returns without taking into account all relevant factors. Missouri statutes provide that "[a]ll rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be *prima facie lawful*, and all regulations, practices and services prescribed by the commission shall be in force and shall be *prima facie lawful and reasonable* until found otherwise in a suit *brought for that purpose* pursuant to the provisions of this chapter." Section 386.270, RSMo 2000 (*emphasis added*). A party challenging those rates, charges and schedules bears the burden of showing the Commission previous findings are not reasonable or lawful. Section 386.430 RSMo 2000; ***State ex rel. Gulf Transp. v. Missouri Public Service Commission***, 658 S.W.2d 448, 452[5] (Mo. App. 1983).

Before the Commission may order a change in a rate of return regulated utility's rates, including switched access rates, the Commission must give due regard to a reasonable average return upon the value of the property used in the public service. Section 392.240(1); 393.270.4, RSMo 2000. This requires the Commission to consider

"all relevant factors" before it may order a change in any such rate to generate a different level of revenues. ***State ex rel. Utility Consumers' Council of Missouri v. Missouri Public Service Commission***, 585 S.W.2d 41, 49 [10] (Mo.banc 1979); ***State ex rel. Missouri Water Co. v. Missouri Public Service Commission***, 308 S.W.2d 704, 718-19[8] (Mo. 1951).

The Commission clarified this position in its Order Rejecting Tariff, issued on April 3, 2001, in ***In the Matter of UtiliCorp United Inc.'s Tariff Filed to Update the Rules and Regulations for Gas***, MoPSC Case No. GT-2001-484. In that case, UtiliCorp had filed new tariffs seeking to change interest paid on customer deposits, late payment charges, reconnection fees and charges for returned checks. The purpose of the tariff changes was to make the charges consistent between UtiliCorp's Missouri Public Service division and its newly acquired St. Joseph Light & Power division. Although the changes were sought for "various fixed charges," would not have affected "the rates charged for gas" and would have resulted in a revenue change of only "about $11,000 per year," the Commission found as follows:

> The law is quite clear that when the Commission determines the appropriateness of a rate or charge that a utility seeks to impose on its customers, it is obligated to review and consider all relevant factors, rather than just a single factor.

The Commission has also rejected, as single-issue ratemaking, a small telephone company tariff that would have introduced a $5.00 late-payment charge. ***In the Matter of the Chapter 33 Tariff Filing of Miller Telephone Company***, *Report and Order*, Case No. TT-2001-257 (December 12, 2000).

The access rates of a rate of return regulated company, as well as the other rates and fundamental terms and conditions of service, enjoy a legal presumption of reasonableness and lawfulness. Rather, a party challenging them bears the burden of showing that circumstances have changed such that they are no longer reasonable. The Commission may not order a change in those rates outside the context of a rate case, unless the Commission also allows a revenue neutral adjustment in other rates to make up for the losses of revenue associated with the access charge rate reduction.

The Missouri courts have found that such revenue neutrality is required if the Commission issues an order reducing a company's rates, without reviewing all relevant factors. A fairly recent example of a Commission attempt to change this process is discussed in ***State ex rel. Alma Telephone Company, et al. v. Public Service Commission***, 40 S.W.3d 381 (Mo.App. 2001) ("PTC" Plan). The Circuit Court of Cole County has also previously found similar principles required revenue neutrality in striking down the Commission's Community Optional Service orders. ***See State ex re. Contel of Missouri, et al. v. Public Service Commission***, Cases Nos. CV190-190CC, CV190-191CC and CV190-193CC and ***State ex rel. Choctaw Telephone Company v. Public Service Commission***, Case No. CV193-66CC.

6. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to restructure its switched access rates without conducting a full rate case?

ALLTEL believes that it would be lawful for the Commission to review a rate of return regulated company's access rates in the context of a rate design proceeding (not a full blown rate case), provided that the Commission maintained the overall level of the Company's revenues.

For many years, the Commission has conducted revenue-neutral rate design proceedings to restructure the rate designs of rate of return regulated electric and gas companies.[11] In these cases, the Commission did not review the public utility's earnings levels, but instead re-balanced its various rates on a revenue-neutral basis without reviewing the revenue requirement. Of course, such rate design proceedings have occurred in the context of a contested case in which a hearing was conducted or a settlement among the parties was approved.

7. Whether an ILEC that is regulated under rate of return regulation may voluntarily reduce its switched access rates without filing a full rate case?

8. Whether an ILEC that is regulated under rate of return regulation may voluntarily restructure its switched access rates without filing a full rate case?

ALLTEL believes that a rate of return regulated company may voluntarily reduce or restructure its switched access rates with the approval of the Commission, pursuant to the "file and suspend" method of changing its rates. *See* Section 392.230(3). *See e.g.,* ***Re United Telephone Company of Missouri for authority to decrease rates for Billing and Collection Service in its Missouri Intrastate Access Tariff***, Case No. TR-88-180, 29 Mo.P.S.C. (N.S.) 498 (September 27, 1988).

C. Issues 9-10 Related to CLECs.

9. Whether the Commission has jurisdiction to direct a CLEC to reduce its switched access rates?

10. Whether the Commission has jurisdiction to direct a CLEC to restructure its switched access rates?

[11]See e.g., ***Re Union Electric Company d/b/a AmerenUE***, Case No. EO-96-15, 8 Mo. P.S.C. 3d 407 (Nov. 18, 1999); ***Re Laclede Gas PGA Rate Design***, Case No. GR-94-328, 4 Mo.P.S.C. 3d 32 (Aug. 22, 1995); ***Re Union Electric***, Case No. EO-87-175, 30 Mo.P.S.C. (N.S.) 406 (Nov. 6, 1990); ***Re Kansas City Power & Light Company***, Case No. EO-78-161, 25 Mo.P.S.C. (N.S.) 605 (Feb. 28, 1983).

ALLTEL believes that the Commission has the statutory authority to adopt its interim policy of capping CLEC access rates at the level of the ILEC access rates on permanent basis. ALLTEL takes no position on whether the Commission has the jurisdiction to direct a CLEC to reduce its switched access rates, or restructure its switched access rates, if they are otherwise below the Commission-mandated rate cap.

D. Commission Authority to Enlarge Calling Scopes.

Issues related to the enlargement of calling scopes are far beyond the scope of this proceeding, and should not be addressed by the Commission herein. The evolution of expanded local calling scopes in Missouri reveals the difficulty and extraordinary challenges the Commission has faced over the years in addressing this highly complex and technical policy issue.[12] When examining the Commission's authority in this area, the case law cited herein in Section B, above, must also be considered in any legal analysis (*e.g.*, ALLTEL believes that the Commission lacks the statutory authority to order ILECs to file tariffs enlarging the local, flat-rate calling scopes if it would have the effect of reducing the ILEC's revenues, without making offsetting adjustments to maintain revenue neutrality. ***See State ex re. Contel of Missouri, et al. v. Public Service Commission***, Cases Nos. CV190-190CC, CV190-191CC and CV190-193CC and ***State ex rel. Choctaw Telephone Company v. Public***

[12] In the past, the Commission adopted various forms of an Extended Area Service (EAS) rule (**4 CSR 240-30-30.030**) which was later abandoned as unworkable (rescinded Sept. 24, 1987)). *See* ***Re Extended Area Service***, Case No. TO-86-8, 29 Mo.P.S.C. (N.S.) 75, 103 (March 20, 1987). The Commission also attempted to develop an Extended Measured Service to resolve rural calling scope issues, which was also abandoned. ***Re Extended Measured Service***, Case No. TO-87-131. More recently, the Commission approved a Community Optional Service (COS) which was also rescinded. ***Re Investigation into the Provision of Community Optional Calling Services***, Case No. TW-97-333, 6 MPSC 3d 531 (Oct. 16, 1997).

Service Commission, Case No. CV193-66CC). Again, however, ALLTEL would respectfully state that such issues are far beyond the scope of this investigatory docket and should not be addressed in this matter.

E. Protective Order Issues.

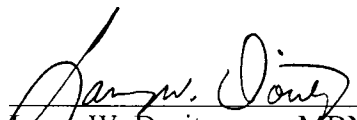
As discussed in Section I, B, *supra,* pages 4-5, ALLTEL's ability to access the underlying highly confidential ALLTEL "cost study information" developed by the Staff and its consultants to purportedly identify ALLTEL's cost of access, was seriously diminished in this proceeding. While the terms of the Commission's standard Protective Order issued in this case prohibited ALLTEL's internal employee's possessing expertise in this area from viewing highly confidential data, it was not the Protective Order that created this untenable situation. Rather, it was the Staff consultant's reliance on highly confidential surrogate cost information derived from other companies to develop ALLTEL's purported cost of access. Accordingly, while truly being one of the parties most directly impacted by the operation of the Commission's standard Protective Order in this matter, ALLTEL is not prepared to suggest that the standard Protective Order must be modified at this time. However, the Commission may wish to address the extent to which the terms of the standard Protective Order are being used to keep internal, in-house experts from viewing highly confidential data related to their own company.

CONCLUSION

In addressing the narrow public policy issue related to CLEC access charges for which this investigatory proceeding was established, the record evidence clearly supports a determination by the Commission that the interim CLEC access rate cap that was adopted in Case No. TO-99-596 is appropriate and in the public interest, and should be

adopted on a permanent basis, subject to the proviso that a totally facilities-based CLEC may be permitted to raise its switched access rates above the cap, upon a showing that its costs of providing switched access are higher than the rates allowed under the cap. Certainly, the Commission should not take any action on other tangential issues that some parties have attempted to interject in this matter. Upon the issuance of the Commission's Report and Order herein, this particular case should now be closed. As ALLTEL has respectfully stated throughout this proceeding, the Commission need not take any action with respect to switched access as a result of this case. Should the Commission wish to review switched access rates in the future, however, such review should be done in the context of ILEC-specific proceedings or other generic proceedings, consistent with the Commission's statutory authority as discussed herein.

Respectfully submitted,

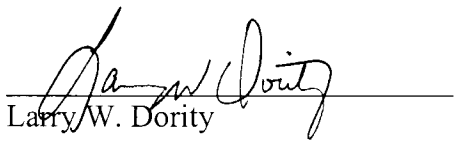


Larry W. Dority MBN 25617
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101
Tel.: (573) 636-6758
Fax: (573) 636-0383
Email: lwdority@sprintmail.com

Attorneys for
ALLTEL Missouri, Inc.

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 13th day of December, 2002.



Larry W. Dority