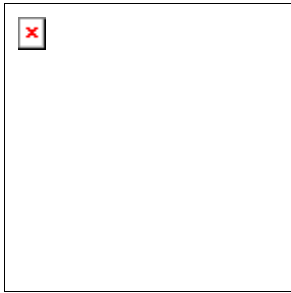


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of an Investigation into)
the Provision of Community Optional) CASE NO. TW-97-333
Calling Service in Missouri.)



REPORT AND ORDER

Issue Date: October 16, 1997

Effective Date: October 28, 1997

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OF THE STATE OF MISSOURI**

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REGULATORY

LAW JUDGE: Dale Hardy Roberts, Chief.

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REPORT AND ORDER

I. Procedural History

A. Relevance of AW@ Case Designation

In an exercise of its quasi-legislative power to establish working groups and inquire into policy matters, the Commission created a working case (AW@) designation in February of this year. Cases opened under this designation are distinguished from contested cases which review the rights of any individual, group or particular company and do not require traditional procedures. The Commission may establish a AW@ case to review and develop policy. TW-97-333 was the first case to be opened in this new category.

B. Procedural History of TW-97-333

On March 7, 1997, the Commission issued its Order Establishing Docket. In that order, the Commission noted that in the twelve months since the enactment of the Telecommunications Act of 1996 (the Act) the Commission had monitored the rapid and varied changes which had taken place in the telecommunications industry. The Commission found it appropriate to review the Community Optional Services (COS) provided in the State of Missouri in light of local competition and equal access (dialing parity) issues.

In order to ensure extensive dissemination of the notice the Commission ordered a copy of the Order Establishing Docket to be sent to every certificated local exchange company and every certificated interexchange carrier in the State of Missouri. In addition, the Commission directed its Information Office to send a copy of the order to all members of the Missouri General Assembly and to all newspapers in the State of Missouri as listed in the newspaper directory of the Official Manual of the State of Missouri.

The Commission's order set out a straw COS proposal along with related questions and directed all participants to respond to those issues in their direct testimony not later than April 11. All participants were given an opportunity to raise other pertinent issues. The schedule provided for the filing of rebuttal testimony not later than May 2. The Commission initially scheduled a hearing for the presentation of positions for May 15. In response to numerous requests for changes in the procedural schedule, the Commission issued an order Changing Procedural Schedule on May 1. Pursuant to the revised schedule, rebuttal testimony was due on May 23 and surrebuttal testimony was due on June 9. An issues memorandum was to be filed on June 10 and the hearing was moved to

June 23. Thereafter, initial briefs were to be filed not later than August 8 and reply briefs were to be filed not later than August 22. Staff of the Missouri Public Service Commission (Staff) filed its initial brief on August 11 along with a Motion to File Out of Time and that motion will be granted. On September 16 the Mid-Missouri Group (MMG) filed a Notice of Vacation of FCC Intrastate IntraLATA Toll Dialing Parity Requirements and on August 26 a Reply to Mid-Missouri Group's Notice was filed by SWBT, GTE and MCI.

C. History of Community Optional Services in Missouri

Staff attached to its initial brief a document captioned "Detailed History of Expanded Area Calling and Community Optional Service." This history of COS is thorough and detailed and may prove helpful in understanding the way in which these services have evolved in Missouri. Therefore, the Commission will attach Staff's detailed history as Appendix A.

The Commission has attempted to address expanded calling area needs over the years with several different plans. Originally, the Commission adopted Extended Area Service (EAS) for calling beyond a local exchange. EAS allowed calling beyond an exchange's boundaries at a flat rate. When EAS proved unsuccessful in addressing the calling expectations of customers, the Commission created a discounted toll plan called Extended Measured Service (EMS). EMS did not meet the calling expectations of customers and the Commission mandated Community Optional Service in 1990. COS was established at a flat rate for unlimited calling where a petitioning exchange met certain criteria which might demonstrate a community of interest with a target exchange. In 1992 the Commission adopted a metropolitan calling area (MCA) plan, and an outstate calling area (OCA) plan and a modified COS plan. COS is optional and is offered as a two-way service.

II. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the participants have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any participant does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

COS is an optional toll plan ordered by the Commission to be provided by primary toll carriers (PTCs). COS is designed to provide a flat-rate option to toll charges for calls between exchanges which meet a community of interest standard. For a flat-rate a COS customer in a petitioning exchange may place unlimited calls to a number in the target exchange and any target exchange subscriber may place toll-free calls to that COS subscriber. Absent COS, the calls between the target exchange and the petitioning exchange, would be toll calls. For toll calls, the PTC receives toll revenue from the customer placing the call and pays a secondary carrier (SC) access for use of the SC's facilities in processing that toll call.

To apply for COS, 25 customers in the petitioning exchange are required to file a petition with the Commission to request expanded calling to the targeted exchange. Thereafter, the Commission directs the petitioning exchange company

to conduct a calling study of the toll traffic to the target exchange to determine if the community of interest criteria exists. The community of interest criteria consists of an average of six calls or more per customer per month and two-thirds of the customers making two or more calls to the target exchange. The calling study does not consider the length of call. Therefore, two one-minute calls satisfy the criteria as well as two sixty-minute calls.

Meeting the community of interest criteria neither ensures nor correlates to a high percentage take rate. The take rate, or percentage of eligible customers who actually subscribe to the service, varies and overall less than thirteen percent of eligible customers avail themselves of this service. Such a small take rate brings into question the actual extent of the community of interest.

COS must be closely reevaluated in light of the Telecommunications Act and Missouri's Senate Bill 507. The purpose of the Act was to provide for a pro-competitive national framework to accelerate deployment of advanced telecommunications and information technologies and services to all Americans. Staff correctly states in its brief that the Commission must determine what form of COS, if any, should be available in today's dynamic and increasingly competitive telecommunications market. All participants concede that the COS market will be eroded by alternative services offered by competitive local exchange companies (CLECs).

The Order Establishing Docket directed the participants to address certain proposals. The subsequent testimony was framed around those proposals as was the issues memorandum. This order will address those proposals, in order, as they apply to disposition of the issues in this case.

A. Two-Way COS Modified to Use an 800/888 Number-Based Service

This proposal would require each COS customer to have a separate toll-free number for use as a substitute for the current COS. A two-way COS using toll-free numbers for the return calling portion of two-way COS is not reasonable according to Staff. Its position is based upon evidence of the lack of availability of toll-free numbers, problems with telephone directory listings required by this service, directory assistance, billing concerns and customer confusion. The Commission may take official notice of facts widely known and accepted in the industry. One such fact is that toll-free numbers and all other numbers generally available are rapidly being depleted.

As this order was being prepared the Federal Communications Commission (FCC) distributed a letter in which it noted that the date planned for implementation of the new (877) toll-free number is April 4, 1998. However, the FCC stated that unless a conservation plan is imposed, the existing 800/888 toll-free numbers will exhaust prior to April 4. As a result, the pool of available toll-free numbers which may be reserved has been reduced. For example, Southwestern Bell Telephone (SWBT) may now reserve only 250 numbers per week for its five-state area. This restriction allows SWBT to reserve only an average of ten toll-free numbers per day for the State of Missouri. Mandatory use of 800/888 numbers to provide COS would contribute to the depletion of toll-free numbers at a faster pace than currently projected and could inhibit the general use of 800/888 numbers by all carriers to provide toll-free calling services. Staff notes that the use of an 800/888 toll-free number would require multiple directory listings as the customer would not only have a traditional local listing but also have an 800/888 number which would be used to receive return

calls from the target exchange. This raises questions as to whether both numbers would appear in a local telephone directory and whether the customer would be required to pay for the additional listing. Further complications would arise because 800/888 directory assistance is accessed by dialing 1+800+555+1212 whereas local directory assistance is accessed by dialing a different number.

The Staff's experience with the early provision of two-way COS suggests additional problems with the 800/888 number proposal. Two-way COS was originally provided using remote call forwarding (RCF) with the assignment of a second number in order for return calling to be toll free back to a COS customer. Customer confusion with the second number assignment generated a number of calls to the Local Exchange Companies (LECs) and to the Commission. Provision of two-way COS using the 800/888 number for return calls could be even more confusing than RCF.

The toll-free number proposal could also require modification of billing systems. Under the current two-way COS, return calls go through the individual LEC billing system where a call from a COS customer to a target exchange customer is classified as a toll-free call. Testimony adduced at the hearing indicated additional complications with, for example, any customer who subscribes to Common Line 800 service. Since both the COS toll-free number and the Common Line 800 number would be associated with the same access line, it would be impossible to distinguish the usage for calls to one of the 800/888 numbers versus the other for billing purposes.

B. One-Way Reciprocal COS to Replace Two-Way COS Service

If the target exchange has EAS routes or is part of an MCA plan, adoption of one-way reciprocal COS would increase the calling scope of subscribers in the target exchange. Because COS customers in the petitioning exchange would have toll-free calling to the target exchange as well as the EAS exchanges of the target exchange, subscribers to COS in the target exchange would also be able to call customers in each EAS exchange of the petitioning exchange. Such expansion of the toll-free area available to target exchange customers raises questions regarding the revenue impact on the involved companies and the effect on competition of reduction of the size and scope of the intraLATA toll market.

The major flaw of one-way reciprocal COS, as pointed out by the Small Telephone Company Group (STCG), is that it lacks the Automatic[®] two-way calling feature of COS. It does not allow a COS subscriber in the petitioning exchange to pay for the return service (the return call) to encourage calling from the target exchange to the petitioning exchange. A one-way reciprocal service would eliminate much of the original purpose of two-way COS.

C. One-Way COS to Replace Two-Way COS

One-way COS warrants little consideration as it falls far short of the original intent of COS. One-way COS allows only for calls from petitioning exchanges to target exchanges to be placed toll-free. As such it duplicates present OCA and MCA services. One-way COS brings with it barriers to competition for new entrants into local telecommunications services. Issues such as the compensation mechanisms, classification of COS as a local or toll service, whether to allow aggregation or resale of COS, and how to integrate COS with future changes to the PTC plan present significant obstacles to any

consideration of a one-way COS proposal.

D. Elimination of COS in Missouri

With increasing implementation of intraLATA dialing parity, the incumbent local exchange companies (ILECs) will no longer be able to measure and report all toll calls from a petitioning exchange to a target exchange. It will, therefore, be increasingly difficult if not impossible for the ILEC to obtain the data necessary to perform the calling usage studies required to evaluate whether a prospective COS route meets the community of interest criteria. Retaining a mandated service that is not a necessary function of basic local service is inconsistent with the goal of a more competitive telecommunications environment.

As a result of the changes which pervade the telecommunications industry, retention of mandatory COS is no longer a reasonable option. Significant technological and accounting changes would be necessary to accurately record calling traffic. Even if the calls could be successfully tracked, the entrance of numerous companies into the marketplace would create an ever increasingly complex and burdensome bill processing system. An entirely new form of inter-company compensation would be necessary in order to ensure revenue neutrality. Anything less would maintain pre-existing barriers to competition.

Telecommunications customers throughout Missouri now have a variety of choices including OCA and MCA plans for reducing the costs of extended area calling. Various competitive entities as well as schools and libraries provide low-cost or no-cost internet or electronic mail service as an alternative communication network which was unanticipated and unthinkable when COS was initiated. Discounted calling cards are now widely available making it possible, for example, for students at school to call to their parents= home or work place in a more convenient and affordable manner. Cellular service now offers toll-free calling which not only crosses community boundaries but county and local access transport area (LATA) boundaries as well. Increasingly competitive pricing in the cellular market offers a new choice for many telecommunications customers. In addition to these recent innovations, entities such as MCI have acknowledged that competition will provide those services which are sought after. In fact, in response to the Commission's inquiry into the feasibility of LATA-wide services SWBT has indicated its desire to offer a LATA-wide service. The Commission will encourage SWBT and all interested telecommunication companies to pursue such tariffed services. The Commission will, upon receipt of those proposed tariffs, consider whether those tariffs should be provided as optional cost-based LATA-wide extended calling services.

In Public Counsel's opening statement, references were made to Aa covenant with the consumers@ to lower prices, and provide better service and more choices. Public Counsel went on to assert that the Commission has a duty to keep this promise, to fulfill this covenant and Aabove all, do no evil.@ The Commission finds no covenant to simply maintain the status quo. Furthermore, COS is scarcely used and the number of routes which qualify for COS service has steadily declined. Eighty-two new routes qualified for implementation in 1992 and only eight new qualified in 1996. As previously noted, only 13 percent of eligible customers in all approved COS routes have chosen to subscribe to COS. As a result, only one-half of one percent of all telecommunications customers in Missouri avail themselves of COS.

The Commission's obligation is to encourage improved, safer, and more affordable services. As expanded and enhanced telecommunications choices become available, consumers are in an increasingly better position to select the telecommunications services they need. MCI has stated that: A...carriers should be free to develop and market service alternatives.® The Commission will continue to encourage the introduction of new services to all citizens of Missouri. Although the proposals considered in this case were not suitable for mandatory implementation, this does not mean they would be prohibited. Telecommunications companies may offer additional choices including, but not limited to, LATA-wide extended calling plans or the selective use of 800/888 toll-free numbers where appropriate.

MMG has argued that instead of being priced to recover its cost and contribute to the cost of residential local service, COS has been priced below its cost. MMG goes on to argue that this not only violates the precepts of the present competitive movement, but also the precepts of residual pricing in that COS does not contribute to the costs of providing local service. Witnesses testified that SWBT has received COS revenues of \$1.6 million while incurring costs of \$6.9 million to provide COS. The prices were set in an environment where there was little intraLATA toll competition. MMG points out that this occurred in a rate-of-return environment and before mandated implementation of intraLATA dialing parity.

The uncontroverted evidence reflects that COS is a below-cost service. The effects of mandating this service at a below-cost rate are that: (1) the PTC must make up this subsidy from its other customers; and, (2) telecommunications competitors may be unable to obtain similar subsidies to compete for this traffic. Finally, there is no means test to establish the financial need of those customers who petition for COS.

The elimination of COS as a mandatory service offering in Missouri is supported by Staff, GTE, SWBT, CompTel-MO, MCI, United and AT&T. The Commission finds that COS is not necessary for the provision of local telecommunications service and that mandatory COS is inconsistent with the current competitive environment and acts as a barrier to entry for new CLECs. The entry of multiple competitive companies in the intraLATA market as a result of dialing parity will further complicate and undermine the effectiveness of COS. As summarized by Sprint-United: AThe PTC must make up the losses elsewhere, which harms its customers and its ability to compete and competitors will be unable to compete for this traffic...There is little dispute that when the PTC loses money in offering this service, its other customers must make up the difference.®

Any ongoing review and implementation of COS would be impractical with the involvement of multiple intraLATA competitive companies. Therefore, no new application for any type of COS will be accepted by the Commission and all COS studies which have been stayed by order of the Commission will be denied.

Inasmuch as the Commission is ordering the termination of COS, it is not necessary to specifically address issues regarding pricing mechanisms, mandated provision of COS by competitive LECs, and such other matters as may become moot by the issuance of this order. Where the parties were directed to discuss the inter-relationship between COS and the PTC plan, the parties have, for the most part, noted that those issues are being adequately addressed in Case No. TO-97-217, in re: The Continuation Or Modification of the Primary Toll Carrier Plan.

The current COS routes all have OCA as a viable alternative except for the routes in late-filed exhibit 43. The Commission encourages SWBT and the target exchanges for each of these routes to provide an optional cost-based extended calling plan. Because alternatives are readily available, or may soon become available, each COS route should be eliminated as ordered herein.

Late-filed exhibit 34HC, containing a listing of the top COS customers from both target and petitioning exchanges for United Telephone Company of Missouri d/b/a Sprint, SWBT and General Telephone Company (GTE), strongly suggests that a significant number of the COS minutes-of-use are used in accessing the internet. The Commission is concerned with the use of COS for internet access as shown by the evidence in this case. At the time COS was designed the internet was virtually unheard of and COS was not designed as a means of access to the internet. In order to address these concerns the Commission will open Case No. TW-98-155 to review other possible solutions for internet access.

The Commission Staff, assisted by all participants in this case, shall prepare a brief information brochure regarding the termination of COS in Missouri. This brochure shall be submitted for approval by the Commission and shall be included in the customer-s bill for each affected exchange.

III. Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission has jurisdiction of telecommunications companies and services pursuant to Chapters 386 and 392.

Section 392.470 provides in pertinent part:

The Commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with the provisions and purposes of this chapter...

The Commission concludes that mandatory COS has fulfilled and outlived its intended purpose. The Commission's principal interest is to serve and protect ratepayers, State ex rel. Crown Coach Co. v. Pub. Serv. Comm'n, 238 Mo.App. 287, 179 S.W.2d 123, 126 (1944), and as a result, the Commission cannot commit itself to a position that, because of varying conditions and occurrences over time, may require adjustment to protect the ratepayers. State ex rel. Chicago, Rock Island & Pacific Railroad Co. v. Pub. Serv. Comm'n, 312 S.W.2d 791, 796 (Mo. banc 1958). The Commission requires flexibility in exercising its [powers] to deal with changing and unforeseen circumstances. Id.

Senate Bill 507 as enacted at Section 392.185 provides that the provisions of this chapter shall be construed to, *inter alia*, allow full and fair competition to function as a substitute for regulation when consistent with the protection of rate payers and otherwise consistent with the public interest.@ The Commission concludes that eliminating mandatory COS is consistent with the public interest and the goal of competitive telecommunications.

IT IS THEREFORE ORDERED:

1. That community optional service in the State of Missouri shall be eliminated not later than March 31, 1998.
2. That all telecommunications companies currently offering community optional service shall notify all their customers that community optional service shall be eliminated in their exchanges.
3. That the participants to this case shall meet with the Commission staff to create one uniform notice to be sent to community optional service customers. Such proposed notice shall be submitted to the Commission for approval on or before November 17, 1997.
4. That Staff's motion to file its initial brief out of time is granted.
5. That all motions which have not previously been addressed are denied and all objections not previously ruled upon are overruled.
6. That the Commission in a subsequent order shall create Case No. TW-98-155 to review other possible solutions for internet access.
7. That all COS cases now pending before the Commission and stayed by previous order shall be denied and dismissed.
8. This order shall be effective on October 28, 1997.

BY THE COMMISSION

Cecil I. Wright

Executive Secretary

(S E A L)

Lumpe, Ch., Crumpton,

Murray, and Drainer,

CC., Concur.

Roberts, Chief Regulatory Law Judge

