

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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. )  
)

In the Matter of the Request for Suspension and )  
Modification of Federal Communications Commission ) Case No. TO-97-220  
Rules Regarding IntraLATA Dialing Parity. )  
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REPORT AND ORDER

Issue Date: March 12, 1998

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Rules Regarding IntraLATA Dialing Parity. )

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REGULATORY LAW JUDGE: L. Anne Wickliffe, Deputy Chief.

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## REPORT AND ORDER

### Procedural History

The Staff of the Commission (Staff) filed a motion on November 26, 1996, asking the Commission to establish a case for the purpose of investigating the continuation or modification of the Primary Toll Carrier (PTC) Plan when intraLATA presubscription is implemented in Missouri. The Commission did not take action on Staff's motion until June 27, 1997, when it established a case for the issues presented in Staff's motion and consolidated the new case with Case No. TO-97-220. In its June 27 order the Commission established a procedural schedule for consideration of issues surrounding the PTC Plan. The Commission also established an intervention deadline of July 14 for parties wishing to intervene who were not already party to TO-97-220. TCG St. Louis (TCG) and CompTel-Mo (CompTel) filed timely applications to intervene which were granted on July 28.

The Mid-Missouri Group (MMG) filed a Motion to Vacate April 1, 1998 Dialing Parity Implementation and Motion to Suspend Procedural Schedule and Continue Proceeding on September 16. Several parties filed responses to MMG's motion and the Commission denied the motion on October 9.

The Commission conducted an evidentiary hearing October 27 through October 31. The parties filed initial and reply briefs, and numerous late-filed exhibits which were requested by the Commission. Late-filed exhibits 54 through 92 were filed after the hearing; the Small Telephone Company Group (STCG) filed an objection to certain late-filed exhibits to which Southwestern Bell Telephone Company (SWBT), GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc. d/b/a Sprint f/k/a United Telephone Company of Missouri d/b/a Sprint (Sprint) filed replies. STCG filed a response.

MMG filed an Application for Extension on February 24, 1998, which will be addressed in the section entitled "Implementation of IntraLATA Presubscription by Secondary Carriers." STCG, SWBT, and MCI Telecommunications Corporation (MCI) filed responses to MMG's application.

### Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all of the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

I. Implementation of IntraLATA Presubscription by Secondary Carriers: Time for Implementation; Balloting and Customer Notification; Cost Recovery.

A. Schedule for Implementation:

The Commission's Report and Order in Case No. TO-97-220 (issued on May 22, 1997) granted to the members of the STCG and MMG an extension of time in which to comply with the Federal Communication Commission's (FCC) rules and Order regarding implementation of intraLATA presubscription. The Commission ordered that the FCC's implementation rules would be suspended as to these companies until the sooner of April 1, 1998, or the resolution of the issues surrounding Community Optional Service (COS) service and the PTC Plan, and establishment of an implementation schedule.

MMG filed a motion in Case No. TO-97-217 in September of 1997 asking the Commission to vacate this implementation schedule and the procedural schedule in TO-97-217 because the United States Court of Appeals for the Eighth Circuit had vacated the FCC rules regarding implementation of intraLATA toll dialing parity. That motion was denied. See Order Denying Motions to Vacate and to Suspend Schedule issued October 9, 1997. The Commission stated that the April 1 deadline was a Missouri-specific deadline not dependent upon the FCC's implementation schedule.

After the closing of the record and the filing of briefs in TO-97-217, MMG filed an Application for Extension. MMG's February 24, 1998, motion asks the Commission to find that the implementation schedule decided upon in TO-97-220 is no longer applicable or, in the alternative, grant an indefinite extension of time. MMG repeated the arguments made in its September motion and expressed a concern that the Missouri Commission is unaware that the FCC's attempt to impose a schedule upon intrastate implementation of intraLATA presubscription has been invalidated. MMG also argued that the Order Regarding Extension of Deadline in Case No. TW-97-333 which extends COS service until at least June 1, 1998, makes implementation of intraLATA presubscription by April 1 impracticable. MMG stated that implementation should be required until the Commission has resolved the issues surrounding the PTC Plan, expanded calling services, the Missouri Universal Service Fund, and rural protections. MMG made specific mention of pending cases TW-98-356 (established to consider calling scope issues) and TO-98-329 (established to consider issues involved in the implementation of the Missouri Universal Service Fund).

STCG, SWBT, and MCI filed responses to MMG's application for extension. STCG concurred in the request for extension asking that the deadline for implementation of intraLATA presubscription be extended until the issues surrounding COS and the PTC Plan have been resolved. STCG set out a list of issues that need to be resolved before intraLATA presubscription can be put in place. STCG proposed that, if the Commission needs further information before granting the request for extension, the parties could appear for oral argument on the motion.

SWBT stated that, since the Commission has control over the timing of intraLATA presubscription, it has the authority to extend the deadline on a sufficient showing. SWBT takes the position that MMG failed to make such a showing. SWBT opposed the indefinite extension of the current implementation deadline proposed by MMG, but stated that an extension until June 1, 1998, would be appropriate as it would coincide with the Commission's February 17, 1998 order. MCI opposes an indefinite extension of the implementation deadline but, like SWBT, would support an extension until June 1, 1998. MCI argued that Missouri customers deserve to have intraLATA presubscription, that MCI has been requesting it since 1987, and that it is time to move forward.

The Commission specifically questioned a number of the witnesses at the hearing in these consolidated cases about the practicality of the April 1 implementation deadline. Although SWBT's witness testified that the April date could be met, others, including Dr. Childers (Staff), Mr. Shannon (GTE), Mr. Harper (Sprint), and Mr. Schoonmaker (STCG), testified that the deadline is probably unrealistic given the delay in the elimination of COS and the implementation decisions that need to be made.

The Commission wishes to encourage the development of competition and customer choice in telecommunications in Missouri and finds that it is in the public interest for intraLATA presubscription to be implemented as soon as practicable. The Commission agrees that it is time to move forward. However, given the complications afforded by the continued existence of COS routes and the PTC Plan, and the possible lack of technical capacity on the part of some incumbent local exchange companies (ILECs), the April deadline should be modified. Accordingly, the Commission will set a new deadline for implementation that takes these factors into account and coordinates intraLATA presubscription with the phasing out of COS. IntraLATA presubscription must begin on June 1, 1998, and must be implemented in every exchange in the state, other than those whose basic local service is provided by SWBT, no later than December 1, 1998. Any company that cannot meet this deadline must request an exemption or extension of time from the Commission by application no later than June 15, 1998 and set out the reasons an exemption or extension of time is needed. Companies with exchanges participating in COS routes that will continue in existence after December 1, 1998, must request an extension of time by application no later than June 15 and set out the reasons an extension is needed and a date for implementation.

Each local exchange company (LEC), other than SWBT, that does not have an approved implementation plan for intraLATA presubscription shall submit such a plan to the Commission for approval no later than June 15, 1998. The plan will describe the company's proposed schedule for implementing presubscription, include an exemplar customer notice based on the notice approved by the Commission in Case No. TO-97-253, and a proposed method for recovering the costs of implementation.

B. Balloting and Customer Notification:

Dr. Childers testified on behalf of Staff that balloting might not be necessary if the Commission were to assign a carrier of last resort (COLR) for toll services and expressed some concern about the costs involved in balloting. Mr. Taylor (SWBT) also testified that balloting would not be necessary where there is a COLR in place. Mr. Ensrud (CompTel) and other witnesses expressed concern about the delay in implementing intraLATA presubscription that would result from the Commission's requiring balloting.

The Commission finds that balloting is not necessary in light of its decision to assign the carrier of last resort responsibility (see III. Replacement Mechanism below), and in light of the costs and delay that may be involved in using a balloting process. The Commission will require the use of a customer notice by separate mailing and will require each company to submit an exemplar customer notice for approval along with its implementation plan. The notice should focus the attention of customers on the change in service and should clearly explain the customer's options. An implementing company should either include a list of available and willing toll providers on the notice, or provide a toll-free number for customers to call to obtain a list of participating providers. Companies are referred for guidance to the following filings in

Case No. TO-97-253: the Report and Order issued May 6, 1997; the customer notice submitted by Sprint for Commission approval; and the Order Approving Form of Notice issued May 19, 1997.

### C. Cost Recovery:

The record includes some evidence on the costs associated with balloting which Mr. Taylor (SWBT) estimated to be approximately \$3.00 per customer. There is no specific evidence regarding the costs of customer notification which the Commission orders in lieu of balloting or on the costs of software upgrades. The issue of cost recovery has previously been resolved in relation to the intraLATA presubscription implementation plans of GTE and Sprint using a company-specific approach to implementation issues. In those cases, the Commission committed to handling cost recovery on a case-by-case basis. Therefore, the Commission finds that it need not make a generic ruling on the issue. The Commission will, however, permit the SCs to recover the appropriate costs associated with implementation of intraLATA presubscription by a method similar to that used in the GTE and Sprint cases, i.e., by a per-minute charge added to all intrastate minutes of use. Any party that objects to this method shall file a pleading setting out its objections no later than May 15. Each SC should present its projected costs and specific proposal for cost recovery in the implementation plan to be filed on June 15.

### II. Phasing Out of the PTC Plan.

Staff, Sprint, GTE, SWBT, AT&T Communications of the Southwest, Inc. (AT&T), and Fidelity Telephone Company (Fidelity) all maintain that the PTC Plan must be discontinued. MCI takes the position that the PTC Plan is not viable in its present form. STCG, MMG, CompTel, and the Office of the Public Counsel (OPC) argue that the PTC Plan should be retained with modifications.

Staff witness, Dr. Ben Childers, testified that intraLATA presubscription, by definition, allows customers to select their own carrier for 1+ intraLATA toll traffic. The PTC Plan, in contrast, requires the secondary carrier (SC) to route all 1+ intraLATA traffic to the PTC. Dr. Childers stated that this routing requirement is a critical part of the PTC Plan and that implementation of intraLATA presubscription would make the PTC Plan unnecessary. Dr. Childers believed that competition will replace this aspect of the PTC Plan, though it may not replace the carrier of last resort obligation. Dr. Childers stated that the original justification for the PTC Plan, and the benefits of the PTC Plan, will largely vanish with intraLATA presubscription.

Staff's proposal is set out in the Staff Report filed on February 5, 1997 (filed in Case No. TO-97-220). Staff recommends that the PTC Plan continue to exist in any given exchange until it is replaced by intraLATA presubscription. Staff would assign the carrier of last resort responsibility to the ILEC, as the ILEC currently has the responsibility of maintaining universal local service in its territory. Staff denominated its plan the Local Exchange Responsibility Plan (LERP).

Sprint's witness, Mr. Mark Harper, testified that the time is right for the Commission to reconsider the PTC Plan since the FCC has ordered all LECs to provide intraLATA presubscription by February 8, 1999. Mr. Harper pointed out that Sprint and GTE have already gained approval of intraLATA presubscription implementation plans for their service areas in Case Nos. TO-97-253 and TO-97-254, respectively. He testified that 33 Sprint exchanges already have intraLATA presubscription.

Mr. Harper stated that the Commission made a commitment to revisit the PTC Plan in light of intraLATA presubscription when it issued its initial Report and Order approving and implementing the Joint Recommendation/Conceptual Framework that established the PTC Plan. Mr. Harper testified that Sprint loses approximately \$600,000 per year in provisioning toll to small company exchanges.

GTE's witness, Mr. Shannon, testified that GTE agrees in general with the six conclusions Staff made in its report in Case No. TO-97-220: 1) that the Primary Toll Carrier Plan is not viable in the new environment of intraLATA presubscription; 2) that the ILEC should be responsible for providing intraLATA toll in its own exchanges; 3) that ILECs who may have difficulty attracting carriers to provide intraLATA service should be permitted to reduce their access rates through rate rebalancing; 4) that all carriers of interexchange traffic should pay the cost directly related to implementation of intraLATA presubscription, but not the cost of modernizing exchanges; 5) that two-way Community Optional Service (COS) cannot continue in a presubscribed environment; and 6) that the Commission should grant the maximum delay in implementing intraLATA presubscription that is afforded by the FCC rules.

SWBT's witnesses, Mr. Taylor and Mr. Rudloff, testified that the PTC Plan is not a satisfactory arrangement in the current telecommunications environment and that its continuance would prolong inefficient rate design. Mr. Cooper prepared a study designed to demonstrate the negative financial impact that serving as PTC has on SWBT's revenues. SWBT's position is that SWBT's basic local customers are subsidizing the cost of providing this service and the cost of toll calling for SC customers. SWBT maintains that elimination of the PTC Plan would enable the company to reduce toll rates to its own customers. Mr. Taylor testified that SWBT would flow through any savings from elimination of the PTC Plan to its customers as rate reductions. Mr. Taylor admitted that SWBT's own access rate reductions have contributed to its PTC Plan losses.

SWBT makes the argument that the PTC Plan imposes a competitive disadvantage on the PTCs by prohibiting them from bypassing SC exchange facilities, and by requiring the PTCs to purchase their billing and collection services from the SCs. According to the results of Mr. Cooper's study, billing and collection costs to SWBT are significant.

The SCs did not dispute the fact that the PTCs are operating at a loss in certain SC exchanges but pointed out that, overall, the PTCs enjoy a profit from carrying toll traffic. The SCs, though, maintain that they don't have adequate facilities to provide intraLATA toll themselves, can't afford to provide toll in their high cost exchanges, and are unable to average costs across a large enough customer base to absorb the additional costs.

The Commission finds that the weight of the evidence supports the conclusion that the PTC Plan is incompatible with a competitive environment, inconsistent with the implementation of intraLATA presubscription, and discriminatory in that it creates an unfair disadvantage to companies carrying PTC responsibility. The clear mandate of the Telecommunications Act of 1996, and of Senate Bill 507, is to establish a competitive environment in the telecommunications industry. The continuation of the PTC Plan is at odds with that goal, and with the goal of maximizing customer choice, an important benefit of the move to competition. The Commission finds that the PTC Plan must be phased out in favor of a more competitively neutral Originating Responsibility Plan (ORP). The details of the transition, and of the ORP will be addressed by a technical committee. At a minimum, the obligation that SCs must direct all 1+ intraLATA traffic to its PTC, the PTC's obligation to purchase billing and collection services from the SC, and the prohibition against the PTCs making arrangements that bypass SC facilities, must be eliminated as soon as practicable. The PTC Plan shall be phased out as recommended by the technical committee on a schedule that coincides with the implementation of intraLATA presubscription. The PTC Plan shall be eliminated in all exchanges without COS routes no later than December 1, 1998, and in all exchanges no later than February 28, 1999, except for those exchanges for which the Commission has granted an extension of time.

### III. Replacement Mechanism.

#### A. Originating Responsibility Plan and Carrier of Last Resort Obligation:

Staff proposed an alternative to the PTC Plan in the Staff Report filed on February 5, 1997 in Case No. TO-97-220. Staff recommended that the PTC Plan continue to exist in any given exchange until it is replaced by intraLATA presubscription. Staff believed the carrier of last resort responsibility for intraLATA toll should be assigned to the ILEC, as the ILEC currently has the responsibility of maintaining universal local service in its territory. Staff stated that it is unlikely that there would be any exchange where some interexchange carriers would not be willing to provide toll service, thereby avoiding any burden of carrier of last resort responsibility to the SC. Staff's witness, Dr. Childers, testified that the proposed LERP is not significantly different from what is generally referred to as an ORP (Originating Responsibility Plan). The reason for choosing a different name was to avoid "assumption[s]" being made by parties using the ORP terminology.

SWBT's witness, Mr. Taylor, described an ORP as fairly simple, consisting of an arrangement whereby the SCs are responsible for their own origination and toll network, relieving the PTCs of that responsibility. In addition, PTCs would not be required to purchase billing and collection services from SCs, and SCs would not be required to pass all 1+ toll traffic directly to the PTC. Mr. Taylor stated that the SC should establish its own toll rates, bill for its own traffic, and keep the revenue earned. He pointed out that the Commission would need to resolve certain other issues such as revenue neutrality, appropriate toll rates, and adjustments to other SC rates.

The Commission asked several witnesses at the hearing about the need to assure access to toll services for all customers. Dr. Childers (Staff) testified that it would be in the public interest to designate a COLR in order to insure access to emergency services. Mr. Jackson, testifying for MMG, argued that designation of a COLR is necessary until there is no reasonable chance that a customer could be denied toll service at rates comparable to those in urban areas. He took the position that the only solution would be to leave the COLR responsibility with the existing PTC.

In contrast, Mr. Shannon (GTE) stated that, even without a COLR, customers will be able to make intraLATA toll calls by using the 10XXX code of an interexchange carrier. Dr. Childers (Staff), Mr. Taylor (SWBT), Mr. Bliss (Fidelity), and Mr. Schoonmaker (STCG) all testified that interexchange carriers would be willing to provide intraLATA toll in the absence of a designated COLR.

Witnesses representing the intervening interexchange carriers were generally unwilling to provide absolute assurance that their companies would enter the intraLATA toll market in SC exchanges. The witness for CompTel, Mr. Ensrud, insisted that CompTel member companies would not enter an area to provide services where the route would be unprofitable due to high access rates. However, he also testified that there are CompTel members doing business in GTE and Sprint exchanges despite the high access rates in those areas. AT&T's witness, Mr. Pauls, was also unwilling to commit AT&T to providing service in every exchange and stated that it would be possible that in some exchanges there would be no carrier willing to provide toll service.

The SCs expressed an unwillingness to be designated COLR. Mr. Jones (MMG) testified that because the SCs are so much smaller than SWBT (the PTC for MMG members) they don't have the ability to absorb the losses from isolated exchanges that SWBT can absorb. He stated that the SCs don't have an adequate customer base over which to average their toll rates in order to balance out the unprofitable routes. Mr. Schoonmaker (STCG) testified that designating the SCs as COLRs for their exchanges would result in a need for increased toll revenue of approximately 41 percent, or \$5.81 per access line, per month in local revenue.

Although certain of the witnesses, most notably Mr. Schoonmaker, made a diligent effort to calculate the likely financial impact of eliminating the PTC Plan, there are many uncertainties that could affect the validity of the calculations. The parties attempted to quantify the impact of COS elimination but were unable to predict with certainty how much of the toll traffic over former COS routes would become regular toll traffic and how much would represent a drop in toll demand. There is no way to predict the likely subscriber rates for services designed to replace COS that may be offered by ILECs. In short, the Commission is not persuaded that designating the SCs as COLR for their local exchange customers would impose an undue financial burden on these companies or lead to an excessive increase in local revenue requirements.

GTE's witness pointed out that the term "carrier of last resort", which is defined in Section 386.020(6), RSMo Supp. 1997, has been incorrectly used by the parties. The statute restricts the meaning of this term to telecommunications companies which are obligated to provide basic local telecommunications services to all customers who request it in a particular geographic area. The Commission agrees with GTE that the term, though it has been useful to these discussions, is not accurate. Accordingly, the Commission will coin the term "intraLATA toll carrier of last resort" (ITCOLR) to refer to a carrier obligated by Commission order to provide toll services to a defined group of customers.

The Commission finds that the most effective replacement for the PTC Plan for the transitionally competitive environment that exists in Missouri is an Originating Responsibility Plan. It is in the public interest to ensure that all customers have access to intraLATA toll services. The Commission finds that a carrier should be designated as the ITCOLR which will bear the responsibility for making intraLATA toll service available to its customers. The ITCOLR will be assigned on a customer-specific basis, rather than an exchange-specific basis. That is, each ITCOLR, whether an ILEC or a CLEC, will be responsible for assuring that the customers who subscribe to its basic local services have access to intraLATA toll services. For the purposes of this case, the SC is the most appropriate carrier to undertake this responsibility since the SC already has an established relationship with the end-user customer. Accordingly, each SC will become the ITCOLR for its own basic local customers. The Commission believes that there will be interexchange carriers willing to enter the intraLATA toll market and that the SC will not in fact be required to provide toll services in most exchanges, if in any.

#### B. Methods for Secondary Carriers to Satisfy the COLR Responsibility.

Dr. Childers (Staff), Mr. Shannon (GTE), and others testified that there are a number of options for SCs to satisfy their ITCOLR responsibilities without actually having to prepare tariffs and carry the toll traffic themselves. These witnesses opined that most, if not all, exchanges would attract interexchange carriers willing to carry the intraLATA toll traffic. As an alternative, an SC could provide toll by means of a certificated interexchange affiliate, or could contract with its current PTC or an interexchange carrier to provide the services.

The Commission finds that a flexible approach to satisfying the ITCOLR obligation is appropriate. LECs that are unwilling to tariff and provide toll services directly should be able to submit an alternative plan to the Commission for approval. The ultimate goals are to maintain access to intraLATA toll services for all customers, to make intraLATA presubscription with its expanded choices available to as many Missouri customers as possible, and to encourage the development of a more competitive market in all aspects of telecommunications in the state.

#### C. Service Authority for Secondary Carriers to Provide IntraLATA Toll Services.

According to the Hearing Memorandum GTE and SWBT take the position that the SCs have the authority they need to provide interLATA and intraLATA toll services. MMG, CompTel, and OPC believe the SCs must obtain interLATA authority, and other parties expressed

uncertainty. Dr. Childers testified for Staff that, in his opinion, the SCs now have the necessary service authority to provide intraLATA services but might need certification to provide interLATA services.

Grants of authority to provide both intraLATA and interLATA services are within the purview of the Commission. It may well be that the SCs already have all the authority they need to provide intraLATA toll services. However, the changing telecommunications environment has blurred the traditional lines of distinction between interexchange, interLATA, intraLATA, basic local, and local exchange services and created uncertainty. In order to satisfy all parties that each SC is properly authorized to act as ITCOLR in the face of any future challenge, the Commission will require each SC to submit an application for an interexchange certificate of service authority.

Interexchange certification is subject to 4 CSR 240-2.060(4). Subsection (E) of that rule states that an applicant that has submitted the applicable information in another application may incorporate that information by reference. The Commission would expect that most, if not all, of the SCs already have the applicable information on file to support a grant of interexchange authority. In order to clarify the status of each company's authority, the Commission will direct each SC to submit an appropriate application concurrently with the submission of its implementation plan. The SC may request competitive classification as to its interexchange services. All applications will be submitted under this case number and must be served upon all parties.

#### IV. Issues to be Assigned to the Technical Committee for Resolution.

##### A. Establishment of Technical Committee.

The Commission will direct the establishment of a technical committee to consider the issues assigned to it in this order. Each PTC and SC shall assign, and each intervenor may assign, one or more representatives to the committee who will be responsible for participating in the meetings and preparation of joint pleadings. The company shall assign an individual fully authorized to commit the company to a position or settlement, and to execute any necessary documents in carrying out the work of the committee. The Commission Staff will carry the ultimate responsibility for the preparation and filing of joint pleadings, reports, recommendations, and requests for information or for decision from the Commission.

##### B. Schedule of Implementation Activities.

The Commission will adopt the implementation schedule set out in the ordered paragraph below. The Commission will also establish an informal referral process by which the technical committee may make inquiry, or request a decision, from the Commission in order to avoid delay in the implementation process. Should the committee need a speedy response from the Commission on any implementation issue the committee's Staff representative may make informal contact with the Regulatory Law Judge assigned to this case or the Chief Regulatory Law Judge to schedule an appearance before the Commission at a regular or specially scheduled agenda meeting. The Staff representative shall give 24 hours notice of the agenda appearance to all parties by fax transmission, followed by a paper copy.

##### C. Feature Group C Versus Feature Group D Signaling.

Some of the parties take the position that elimination of the PTC Plan will require a general change from the use of the Feature Group C (FGC) protocol to the Feature Group D (FGD) protocol. FGC is the protocol most commonly used by SCs in Missouri. FGC will transmit the calling number from the originating carrier to the terminating carrier, but will not transmit the carrier identification code (CIC). FGD technology has the advantage of passing along the carrier identification code which makes tracking and billing a simpler task. A LEC without FGD capabilities cannot track the origin of the traffic that terminates in its exchanges and must rely on traffic reports from originating carriers.

The testimony regarding the necessity of making a change to Feature Group D was contradictory. For example, Mr. Schoonmaker testified on behalf of STCG that elimination of the PTC Plan would require a general change from FGC to FGD. Mr. Jones testified on behalf of MMG that it would be a mistake to continue with FGC in a competitive environment.

On the other hand, Mr. Taylor (SWBT) testified that FGD is not necessarily a superior connection and that SWBT would continue to use FGC even after intraLATA presubscription is implemented. Mr. Taylor stated that FGC is adequate in a competitive, post-PTC Plan environment if used in conjunction with Signaling System 7 (SS7). Mr. Shannon (GTE) testified that a transition to FGD could be made after the PTC Plan is replaced or eliminated, and after intraLATA presubscription has been implemented. Mr. Shannon also stated that there are other options such as intraLATA toll/access compensation that may be more cost-effective.

Mr. Taylor and Mr. Shannon testified that deployment of SS7 throughout the entire network is necessary in order for FGD to transmit the CIC. Mr. Harper, of Sprint, testified to the contrary.

Mr. Taylor testified that SWBT currently provides a PTC-to-PTC settlement function to facilitate the transfer of information among the PTCs without the necessity of FGD. He stated that SWBT would be willing to provide the same service to all LECs if the PTC Plan is eliminated. SWBT would perform this service at no cost to the LECs since the cost of this function is already being recovered in toll rates.

The Commission agrees with Mr. Schoonmaker and Mr. Shannon's recommendation that the testimony on the record is not adequate to support a decision regarding whether to move to FGD. Further, this is the type of issue best resolved by the technical and engineering experts who work with the companies' networks on a regular basis. Accordingly, the Commission will assign the task of determining whether a move to FGD is necessary to the technical committee. The committee will also consider other alternatives and recommend to the Commission how any proposed transition should take place. The committee shall include its recommendations on Feature Group protocols in the report to be filed on May 15, 1998.

##### D. Elimination of Originating (T/O) Ratios in Favor of Billing Terminating Access Charges on the Basis of Actual Terminating Minutes.

STCG's witness testified that moving from terminating to originating ratios toward recording usage on the basis of actual minutes of use (MOU) would provide an overall benefit. According to the Hearing Memorandum, GTE, SWBT, MCI, STCG, MMG, and CompTel all support such a move. Staff's witness proposed that this issue be taken up by the technical committee.

The Commission finds that the use of actual MOU would improve the process and should be adopted as we move toward a more competitive environment. The technical committee should include in its report to the Commission its recommendation on how to achieve a transition to recording traffic on an MOU basis.

##### E. Private Line Services and Compensation for Those Services.

Mr. Jones (MMG) and Mr. Taylor (SWBT) testified that the 911 and private line provisions that are a part of the PTC Plan could operate as stand-alone contracts outside the PTC Plan without significant modification. Other parties take the position in the Hearing Memorandum that these issues should be worked out by the technical committee.

The Commission finds that there is insufficient evidence on the record to determine how these private line services contracts should be treated in the future. Therefore, this issue will be assigned to the technical committee. The committee should include in its report to the Commission its recommendation on which of the ancillary contracts or addenda associated with the PTC Plan can and should be retained, what

modifications need to be made to those contracts, what process should be used to make the modifications, and what additional provisions for intercompany compensation are necessary.

F. Other Issues to be Assigned to the Implementation Technical Committee for Resolution: Points of Interconnection Between Incumbent LEC Networks; IntraLATA V&H Data Base; Estimated Financial Impacts on the LECs; Revenue Neutrality.

The issues of points of interconnection between ILEC networks and intraLATA V&H data base are among the types of issues best resolved by the technical and engineering experts who work with the companies' networks on a regular basis. Accordingly, the Commission will assign these issues to the technical committee to prepare its recommendations. The committee should also consider the issues of toll pricing flexibility, whether the Commission should establish a procedure to relieve an ITCOLR of its responsibilities, and what criteria should apply to a request to be relieved of those responsibilities. The committee should consider to what extent revenue neutrality is desirable and achievable, bearing in mind the necessity of eliminating the requirement that PTCs purchase billing and collection services from SCs. The committee shall include its recommendations on these issues in the report to be filed on May 15, 1998.

#### V. Access Reform and Rate Rebalancing.

There was extensive, varied, and conflicting testimony regarding the level of SC access rates, the level and sources of subsidization being provided by one customer group to another, and the need for and best method of rate rebalancing. Mr. Schoonmaker (STCG) testified that the Commission should undertake rate rebalancing before the PTC Plan is replaced. Dr. Childers (Staff) testified that the Commission should not attempt to resolve access reform and rate rebalancing in this case because of the varied issues involved. Mr. Shannon's (GTE) position was that, although the Commission should identify and take some initial steps to address access reform and rate rebalancing, he was not sure the Commission could come to any resolution in this case. Ms. Meisenheimer (OPC) questioned the subsidization concerns raised by other parties and brought out the issue of affordability. Mr. Taylor (SWBT) pointed out that rate rebalancing under Section 392.245, RSMo Supp. 1997 is available to SCs but admitted that all the SCs are currently subject to rate of return regulation so the procedure is not yet an option for them. Mr. Pauls's (AT&T) discussion during cross-examination of possible solutions to these issues highlights their complexity and the need for further development of the facts and issues.

The Commission finds that this case is not the appropriate vehicle by which to address access reform and rate rebalancing. The issue of access rate levels may find a resolution in the rate flexibility available to the SCs once they have received interexchange authority and are participants in a competitive market. To what extent the problem will be thus resolved is speculative and any Commission proceeding directly affecting access rates would be premature. The Commission finds that the existing rate of return regulation mechanism for LECs is adequate to address any problem of over or underrecovery that may arise in the wake of elimination of the PTC Plan. An SC that experiences revenue losses impacting its provision of basic local service has access to the Commission's procedures for relief. On the other hand, the market acts as a control mechanism in and of itself for the regulation of rates for competitive services. Once the Commission has taken steps to implement the level playing field required to create a competitive environment, the market will begin to exercise control over access rates as envisioned by the Missouri and federal legislatures.

#### VI. Objection to Late-Filed Exhibits

Sprint, SWBT, and GTE submitted late-filed exhibits demonstrating the financial impact of the elimination of COS on their operations in response to a Commission request. Those exhibits were numbered 63HC (Sprint), 65HC (SWBT), and 66 and 66HC (GTE). STCG filed an objection on December 9, 1997 on the grounds that the exhibits appear to have been prepared by someone not a witness and not subject to cross-examination, and that the material was not subjected to cross-examination and therefore does not constitute competent and substantial evidence. STCG also complained that the exhibits are not comparable to similar exhibits already admitted on behalf of STCG (Exhibits 51 and 52) because the underlying assumptions have been altered. STCG submitted an additional exhibit of its own (Attachment A to its December 9 pleading), and asked the Commission to accept it into evidence in the nature of rebuttal if the Commission should choose not to sustain the objection to Exhibits 63HC, 65HC, 66, and 66C.

GTE filed a reply to STCG's objection on December 12 arguing that the objection was out of time and that late-filed exhibits are of necessity not subjected to cross-examination. GTE stated that, if Exhibits 66 and 66HC are to be excluded from the record, all the late-filed exhibits should be excluded. GTE also stated that these exhibits were prepared under the direction of Mr. Gerald Shannon who submitted prefiled testimony and testified for GTE at the hearing. GTE stated that it never agreed with the assumptions employed by STCG and that these differing assumptions were a reason for the Commission's request for Exhibits 66 and 66HC. GTE objected to STCG's rebuttal exhibit on the grounds that it is untimely filed and its admission would be unfair.

SWBT filed a reply on December 19, also arguing that STCG's objection was untimely and repeating GTE's argument that all late-filed exhibits are immune to cross-examination. SWBT pointed out that STCG cited to no supporting authority for its objection. SWBT stated that all three of the companies submitting the objected-to exhibits provided the documents through a company representative with personal knowledge of the information requested by the Commission. SWBT also argued that the Commission, in requesting these exhibits, never indicated its acceptance of any assumptions employed by STCG. SWBT argued that the Commission is capable of taking into account the differences in assumptions when weighing the evidence presented.

STCG filed a reply arguing that their objection was not untimely and essentially repeating the arguments set out in its objection.

The Commission will consider STCG's objection without regard to the issue of timeliness because of the sheer volume of late-filed exhibits in this case, and because the Commission's rules are virtually silent on the issue of late-filed exhibits. The Commission will note that late-filed exhibits are served upon all parties at the time of submission and the exhibits in question here were submitted on November 21.

The late-filed exhibits to which STCG objects were provided at the request of the Commission. The Commission appreciates the limitations of the material presented in terms of its not having been subjected to cross-examination but, as discussed by GTE and SWBT, it is inherent in late-filed exhibits that they are not subject to cross-examination. The Commission wishes to retain its ability to request information after the close of hearing as permitted by its rules. See 4 CSR 240-2.130(14).

The Commission also appreciates the fact that these exhibits are not strictly comparable to STCG's Exhibits 51 and 52. The parties were not instructed to prepare these exhibits using STCG's assumptions. The Commission finds that Exhibits 63HC, 65HC, 66, and 66C should be admitted into evidence and STCG's objection will be overruled. The Commission has taken STCG's objection regarding their sufficiency into consideration in evaluating the weight that material should be given. The Commission also finds that Attachment A to STCG's motion shall be denominated Exhibit 93HC and admitted into evidence as a means of making it easier for the Commission to compare the parties' positions. GTE's objection to this rebuttal exhibit is overruled.

Conclusions of Law

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

The parties to this case are all certificated telecommunications service providers within the state of Missouri, subject to the Commission's jurisdiction under Section 386.250(2), RSMo Supp. 1997. The Primary Toll Carrier Plan (PTC Plan) which is the subject matter of this case was approved by the Commission by Report and Order issued October 23, 1987, in Case No. TO-84-222. The Commission specifically rejected a five-year term provision and directed that the PTC Plan would remain in effect until the Commission ordered otherwise.

The Federal Telecommunications Act of 1996 and Sections 392.185 and 392.455, RSMo Supp. 1997, were designed to institute competition in the telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996, states that "the provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunications services; . . . (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri; . . . (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest . . ."

The Commission has conducted an evidentiary hearing and admitted evidence to the record that supports its findings of fact. In accordance with those findings, the Commission determines that the PTC Plan is no longer appropriate in the emerging competitive telecommunications environment and should be replaced with an alternative to be denominated an Originating Responsibility Plan. The Commission determines that the PTC Plan must be phased out in an and reasonable fashion and will direct the formation of a technical committee to make recommendations regarding the transition period and needed mechanisms.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 54 through 93HC are admitted into evidence.
2. That implementation of intraLATA presubscription must begin for all Missouri local exchange carriers on June 1, 1998, and must be implemented in every exchange in the state, other than those whose basic local service is provided by Southwestern Bell Telephone Company, no later than December 1, 1998. Any company that cannot meet this deadline must request an exemption or extension of time from the Commission by application filed no later than June 15, 1998 and set out the reasons an exemption or extension of time is needed. Companies with exchanges participating in COS routes that will continue in existence after December 1, 1998, must request an extension of time by application no later than June 15 and set out the reasons an extension is needed and a date for implementation. In no event will an extension be granted beyond February 28, 1999.
3. That each local exchange company, other than Southwestern Bell Telephone Company, that does not have an approved implementation plan for intraLATA presubscription shall file such a plan for approval no later than June 15, 1998. The plan must describe the company's proposed schedule for implementing presubscription in its exchanges, include a customer notice as described in this order, a proposed method for cost recovery, and an application for a certificate of interexchange service authority.
4. That the Primary Toll Carrier Plan shall be discontinued as described in the body of this order and in accordance with the schedule set out in Ordered Paragraph 7.
5. That a Technical Committee is established to consider issues and make recommendations to the Commission regarding the implementation of intraLATA presubscription and an Originating Responsibility Plan in accordance with the schedule set out in Ordered Paragraph 7, and as described in the body of this order.
6. That each PTC and SC shall assign, and each intervenor may assign, one or more representatives to the Technical Committee who will responsible for participating in the meetings and preparation of joint pleadings. Each company shall assign an individual no later than March 24, 1998, who is fully authorized to commit the company to a position or settlement, and to execute any necessary documents in carrying out the work of the committee.
7. That the Technical Committee shall meet, and implementation of this order shall take place on the following schedule:

Technical Committee members named	March 24, 1998	
First Technical Committee Meeting	March 30-31, 1998	
Initial Report to the Commission filed	May 15, 1998	
Each company's plan for implementing intraLATA presubscription filed	June 15, 1998	
All requests for exemptions or	June 15, 1998	extensions of scheduled deadlines
Response from the Commission issued	June 15, 1998	
Final Report to the Commission filed	July 15, 1998	
Final Order issued	September 1, 1998	
Final deadline for implementation of intraLATA presubscription and the ORP for companies with no COS routes	December 1, 1998	
Final deadline for implementation of intraLATA presubscription and the ORP for all companies	February 28, 1999	

8. That any party objecting to the recovery of the costs of implementing intraLATA presubscription by means of a per-minute charge on all intrastate minutes of use shall file a pleading setting out its objections no later than May 15, 1998.

9. That this Report and Order shall become effective on March 24, 1998.

BY THE COMMISSION

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

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

Dated at Jefferson City, Missouri,  
on this 12th day of March, 1998.