



**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of an Investigation)

Concerning the Primary Toll Carrier) Case No. TO-99-254, et al.

Plan and IntraLATA Dialing Parity.)



REPORT AND ORDER

Issue Date: June 10, 1999

Effective Date: June 21, 1999

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of an Investigation)

Concerning the Primary Toll Carrier) Case No. TO-99-254, et al.

Plan and IntraLATA Dialing Parity.)

REPORT AND ORDER

BACKGROUND

This case was created on December 10, 1998, to investigate the issues of the Primary Toll Carrier (PTC) plan and IntraLATA Dialing Parity (ILDLP). The Commission considered similar issues in consolidated cases TO-97-217 and TO-97-220. The Commission has considered these issues together because one of the salient features of the PTC plan is the requirement that the Secondary Carriers (SCs) deliver all 1+ dialed intraLATA toll traffic to the PTCs. As a result, the implementation of ILDP necessarily requires at least modification, if not elimination, of the PTC plan. The Report and Order in consolidated cases TO-97-217 and TO-97-220 was reversed and remanded by the Cole County Circuit Court, largely on procedural grounds, and the Commission determined to address the issues in a new case, based upon evidence of record in the new case.

A procedural schedule was established, but then, on March 23, the Federal Communications Commission (FCC) issued an order that required, *inter alia*, all local exchange carriers (LECs) to file, no later than April 22, their plans for implementing intraLATA toll dialing parity. The FCC order also required that LECs whose plans have not been approved by a state commission by June 22 file their plans for implementing intraLATA toll dialing parity with the FCC on that date. Because of the FCC's March 23 order, the procedural schedule was revised and LECs submitted their plans for approval on April 22, or shortly thereafter.

The Commission consolidated all the LECs' ILDP filings with Case No. TO-99-254 et al., and held a hearing May 17-26.

FINDINGS OF FACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue. The Commission will address the issues, or groups of

issues, as they are set out in the list of issues prepared by the parties.

A. IntraLATA DIALING PARITY ISSUES

Because ILDP issues are discussed and resolved in Reports and Orders in each LEC's ILDP case issued simultaneously with this Report and Order, this Report and Order will only give a general overview of how those issues are resolved. Most of the decisions with respect to ILDP are being made in those Reports and Orders and are merely summarized here. A few issues that pertain more broadly are being addressed herein.

1. Customer Assignment Issues

Most of the ILDP plans provide that customers who do not choose an intraLATA toll carrier will be assigned to their interLATA carrier, or to the LEC or its affiliate. Only a few provide that such customers will continue to be served by the PTC. The Commission has generally approved the assignment of customers to

the LEC or its affiliate. For plans that call for the assignment of customers to their interLATA carrier, the Commission has approved those plans with the modification that the PTC continue to provide service for a short transition period. For plans that call for the continuation of the PTC plan, the Commission has approved those plans with the modification that the PTC continue to provide service for only a short transition period, after which customers who have not chosen an intraLATA toll carrier will be assigned to their interLATA carrier. Essentially, with the modifications ordered by the Commission, all customers will be assigned to the LEC or its affiliate as soon as possible, or they will be assigned to their interLATA carrier after a transition period.

2. Customer Notice Issues

Almost all the plans called for direct mailing of notice to customers, and the Commission approved that procedure. For the few that called for bill messages or bill inserts, or were not specific about the means used to notify customers, the Commission ordered modifications so that customers would receive notice by a separate mailing made within ten days of the effective date. The Commission modified most plans by requiring the LECs to use a notice tailored to the specific circumstances of its plan. The Commission directed SCs who will assign customers to their interLATA carrier if that carrier is willing to accept them to provide a notice that clearly explains AT&T Communications of the Southwest, Inc.'s (AT&T's) position. Since AT&T serves, on average, about seventy percent of the customers in SC exchanges, the Commission determined that it was important in the public interest that customers be given notice that specifically stated that they would not be assigned to AT&T, but that AT&T would provide service if the customer requested it of AT&T directly.

To give customers the most direct notice possible, the Commission encourages the PTCs to investigate the possibility of placing

"intercepts" on intraLATA toll calls placed by SC customers who have not chosen an intraLATA carrier during the last month of the transition period. An intercept would, before completing the call, inform the customer that the customer will not be able to complete the call as dialed after October 22, 1999, unless the customer chooses an intraLATA toll provider. Because there is no evidence on the record about the feasibility or the cost of using intercepts, the Commission will not order the PTCs to take this step, but the Commission will order them to investigate the possibility, and will urge them to take this step if possible.

3. Carrier Notice Issues

Almost all the plans provided that notice would be given to all interLATA carriers serving in the LEC's exchanges shortly after the plans were filed. AT&T was the only party that took the position that more than one notice was necessary. The Commission found that AT&T's stated reason for requiring additional notice was weak, and declined to accept it.

4. Cost Recovery Issues

Only a few LECs proposed to recover costs over anything other than total intrastate originating minutes. A few proposed to assess costs on terminating as well as originating minutes, and some parties suggested that costs only be

assessed on intraLATA originating minutes. Only one LEC and only one IXC suggested recovery over anything but a three-year period. The Commission approved all plans, some as filed and some with modifications, to recover ILDP implementation costs over three years over all intrastate originating minutes.

Southwestern Bell Telephone Company (SWBT) proposed to begin recovery of its implementation costs after they are known; all the other LECs plan to begin recovery almost immediately and true up the recovery rate when actual costs are known. The Commission approved both of these proposals. Any LEC that wants to delay the beginning of its recovery until after costs are known, and thus avoid a true up procedure, may do so.

5. PIC Change

The Commission approved PIC change charge waiver periods of 180 days and ordered modifications to those plans that proposed a shorter period. The Commission did not modify any plan to change the amount of PIC charges after the waiver period, nor did it modify any plan to require a single charge for changing an interLATA PIC at the same time as an intraLATA PIC. While both of these issues may merit review in a LEC's rate case or in an investigatory case, they need not be addressed as part of implementing ILDP.

It is not appropriate to address LEC business practices regarding PIC changes in this case. If any party has a specific complaint about a specific LEC's business practices, it may file a formal complaint with the Commission. If any party believes that rules regarding business practices are necessary, it may file a petition for a rulemaking with the Commission.

B. PTC PLAN ISSUES

1. Resolution of the PTC Plan

There was general agreement regarding the termination of the PTC plan. Very few parties, and none of the LECs, took the position that it could continue for very long. This accord should perhaps not be surprising, since the PTCs and SCs alike agreed, in the Conceptual Framework, that:

In the event that intraLATA presubscription is implemented, the affected parties will have the option of withdrawing from the Conceptual Framework and canceling the associated contracts.

In fact, the parties planned to end it after five years even if intraLATA dialing parity had not been implemented, but the Commission did not accept the five-year period.

The Commission finds that the PTC plan is incompatible with competition. The requirement that all 1+ intraLATA toll traffic be delivered to the PTC is obviously untenable in a competitive environment. Moreover, creating and maintaining a barrier to the PTCs' exit from a market they have been increasingly vocal about exiting is a hindrance to the development of competition.

The Commission need not, and does not, make a finding as to the validity of the PTCs' claims that they are losing money in providing intraLATA toll service to the SCs' customers. It is enough to find that the PTC plan is unworkable in a

competitive environment.

In order to minimize the disruption and confusion that some customers may experience, the Commission has ordered that the PTC plan continue in a modified fashion in certain SC territories for a short (90 day) transition period. Issues about how intraLATA toll will be originated are all resolved in the Reports and Orders approving LECs' ILDP plans.

2. IntraLATA Toll Carrier of Last Resort

The parties spent a considerable amount of time and energy trying to pin down who had the IntraLATA Toll Carrier of Last Resort (ITCOLR) responsibility in the past, and when, if ever, that responsibility changed. However, almost no party took the position that designating an ITCOLR is necessary now. The evidence demonstrates that the three largest IXCs, as well as a number of smaller IXCs, are willing to serve customers in every exchange in the state. The Commission finds that it is not in the public interest to declare a carrier of last resort for intraLATA toll service. To require one carrier to be the carrier of last resort is not only unnecessary, it is anti-competitive. By definition, an ITCOLR bears a burden that none of its competitors do.

AT&T points out that, even though there are sufficient intraLATA toll providers now (or will be as soon as ILDP is implemented) to make an ITCOLR unnecessary, that situation might change if all these providers were to leave the market. The Commission finds that unnecessarily burdening a carrier now in an attempt to address that remote eventuality would likely do more harm than good. Furthermore, the parties that briefed the question of whether the Commission is required by statute to declare an ITCOLR all determined there was no such requirement.

3. If the PTC Plan is Eliminated

a. Network Issues

1. Signaling Protocol

The parties submitted considerable testimony regarding the capabilities of Feature Group "C" (FGC) and Feature Group "D" (FGD). FGC signaling protocol is, and has been for a long time, used across the country by LECs. FGD was introduced at the beginning of interLATA competition, and is used by IXCs. A small number of the SCs argue strenuously that all calls terminated to their customers, whether from IXCs or LECs, should, or must, be terminated using FGD. This group believes that FGD will give them more of the information they need to perform accurate billing.

In general, allowing SCs the opportunity to capture more information about the calls terminated to them is certainly a worthwhile goal. Nonetheless, there are a number of insurmountable problems with mandating the use of FGD.

First, it is not necessary for the implementation of ILDP or for the termination of the PTC plan. The evidence does not support a conclusion that requiring the conversion from FGC to FGD is mandated by either the termination of the PTC plan or the implementation of ILDP. Rather it shows that some LECs are dissatisfied with FGC in the current PTC environment, and will continue to be dissatisfied with it in a post-PTC environment. Furthermore, there is no

compelling evidence that the dissatisfaction is based on anything more than: 1. a distrust of the PTCs; 2. some preliminary analysis from which one might conclude that there is a discrepancy between the terminating minutes measured by a few SCs and those minutes as reported by the PTCs; and 3. perhaps a lack of business relationships with upstream carriers. There is no competent and substantial evidence that such a discrepancy, if any, between reported and measured minutes is substantial or widespread.

Second, there is evidence that by mandating the use of FGD and refusing to terminate calls passed using FGC, some SCs would not be able to complete all calls made to their customers. If the LECs do not convert to FGD, calls made to SC customers (for those few SCs that would demand FGD) would simply not be completed, and the calling customer would possibly get a message that the call could not be completed as dialed.

Third, the evidence clearly demonstrates that FGD as presently configured will not provide all the information the SCs want about calls terminated to them.

Fourth, the evidence shows that work is being done to improve FGC; there was not similar testimony with respect to FGD. Requiring a conversion to FGD may be a wasted investment, since FGC may in the future be enhanced to allow the SCs to capture the information they want. Currently neither FGC or FGD provide all the information sought, and it seems more likely that eventually FGC will provide more of it than FGD.

Finally, there is little concrete evidence about the cost of converting the LEC to LEC network to FGD, but what evidence there is certainly suggests that the cost will be great. The Commission will not order the industry to embark on a massive project to convert to another

standard, at an unknown cost, to achieve uncertain benefits and possibly cause tangible harm to customers trying to place calls.

2. Trunking Arrangements

Some of the SCs argued that separate trunk groups should be established for Metropolitan Calling Area (MCA) traffic, and other non-chargeable traffic. In the past, MCA traffic has been handled on a "bill and keep" basis, meaning that the originating carrier bills the customer making the call and keeps the revenue. Typically, no call records have been created, the calls have not been measured, and they have been placed on common trunks. The evidence reflects that, independent of any Commission mandate, some of the MCA traffic is now being placed on separate trunks.

The argument in favor of separating, or separately measuring, MCA traffic generally is that doing so will allow the SCs to more accurately measure their terminating traffic. Since MCA traffic is not currently separately delivered or measured, the SCs have no way of knowing what percentage of its traffic is MCA (for which it is appropriately not compensated under the present billing scheme).

Although placing MCA traffic on separate trunks may be economically beneficial to the SCs, the record is devoid of any hard evidence of the number of trunks involved or the cost of moving the MCA traffic to separate trunks. Furthermore, there is nothing inherent in the implementation of ILDP or the termination of

the PTC plan that requires a change to the current bill and keep arrangement for MCA traffic. Finally, the Commission notes that it has recently opened a case (Case No. TO-99-483) for the express purposes of investigating the continued provision of MCA service.

The Commission will not in this case require the changes necessary to separate MCA traffic at an unknown cost.

b. Actual Terminating Usage

Much of the traffic that is terminated to the SCs is carried over common trunk groups. Although the PTCs deliver this traffic, they do not originate all of it. Some of it is originated by other carriers upstream from the PTC, and it may be interstate or intrastate. Terminating traffic can be measured at almost all SCs' end office switches, but an SC will not have information about the call's jurisdiction or the identification of the responsible carrier.

Many of the SCs argued that they should be able to measure terminating minutes at the terminating end office, and bill the carrier that delivered that traffic to the terminating tandem or end office for any discrepancy between the minutes shown on the originating records and the measured minutes. As noted above, prudent business practices dictate that the SCs move toward acquiring more information about, and authority to bill for, calls terminated to them. However, there is a fundamental inequity in this residual billing scheme: Included in the minutes terminated to the SCs are some minutes of use for which the SCs are not entitled to be compensated. These include MCA traffic delivered over common trunks, interstate intraLATA traffic, and possibly Feature Group A traffic and calls that merely "transit" the PTC's network. Adopting this scheme would guarantee that some SCs will be over-compensated when there is little evidence that they are under-compensated under the present scheme.

However, the Commission will order the provision of standard "Category 11" records. This will provide the SCs better information about calls terminated to them. Any additional expense this will cause the PTCs is dwarfed by the elimination of the revenue losses they assert they are suffering under the PTC plan. Although the SCs generate Category 92-99 records for calls they originate to pass to the PTCs, they do not currently receive them. The PTCs propose to provide Category 92-99 records which would require the SCs to develop a system to bill using these records, or require the SCs to convert them to Category 11 records. 11-01 records are an industry standard, and all of the SCs currently use them. They are the records used in the carrier access billing system. The Commission finds that requiring the PTCs to provide industry standard 11-01 records is in the public interest, and will order these records to be provided by April 1, 2000.

c. Tariff/Contract Issues

Billing and Collection services are presently provided under tariff provisions. Some of the SCs would like to "detariff" these services as part of their tariff filing to implement ILDP and achieve revenue neutrality from the termination of the PTC plan. While detariffing may be beneficial to the SCs, it need not be done as part of this filing. Furthermore, while changes in the volume of billing and collection services resulting from the elimination of the PTC plan may be appropriate to capture in a revenue neutral filing, a voluntary reduction in the price of these services would not.

The joint provisioning of Private Line existed before the PTC plan was created; there is no reason that the termination of the PTC plan should also terminate this arrangement. While it may be beneficial to the SCs converting jointly provided private line to some other arrangement is not necessitated by, or even closely related to, the termination of the PTC plan or the implementation of ILDP.

Interstate intraLATA traffic, like MCA traffic, has in the past been generally treated as bill and keep, and like MCA traffic, there is nothing inherent in the termination of the PTC plan or the implementation of ILDP that requires a change to this arrangement. Like the other tariff/contract issues, it may be a good idea to move toward a different arrangement, but it need not be done as a part of this case.

3. Revenue Neutrality

The Commission has, in the LEC ILDP plan filings of the companies that sought revenue neutrality, proposed a mechanism that will allow them to achieve it. This mechanism is fair, and perhaps even generous, to the LECs. They will be allowed to implement a rate increase with virtually

no regulatory lag, based upon projections they admit are of questionable accuracy. If it turns out that the LEC did in fact need the revenue neutrality surcharge to continue to earn a reasonable return, it need not refund any of it. A refund will only be required if an audit indicates that the LEC would have earned a reasonable return without the surcharge. Even then, the only refund it will be required to make is the difference between what it collected through the surcharge and the amount it needed to collect to earn a reasonable return. This is almost a no-lose proposition for the LEC; the only way it will fail to earn a reasonable return is if its projections of revenue losses are too low. It is also a no-lose proposition for the LEC's customers; there is no way that the LEC can turn its revenue neutral filing into a windfall profit.

Each LEC that implements revenue neutrality should have some latitude to propose the rate design it believes is appropriate. The Commission will provide some guidance here. Since the express purpose of a revenue neutrality filing is to offset lost revenues by increasing rates, it would be inappropriate to lower any rates (except for those reductions resulting from the elimination of the CCL cap). Bringing interLATA and intraLATA access rates to, or closer to, parity is a worthwhile goal for most LECs, as is the elimination of the intraLATA Carrier Common Line rate cap. There seems to be little or no disagreement on the merit of these goals. In order to address concerns over their inability to identify the jurisdiction of calls, the SCs may want to first address any disparities between the terminating intraLATA and interLATA access rates. It may also be worthwhile to bring originating access and terminating access to, or closer to, parity. As discussed above, each LEC that requests revenue neutrality will file a general rate case as specified in the Report and Order approving its Report and Order once it has operated for a period of time after the termination of the PTC plan. In this rate case, all relevant factors and the LEC's entire rate design will be examined.

C. PROCEDURAL ISSUES

Exhibits 77, 94, and 95 were late-filed. Parties were given time to object to the admission of these exhibits, and no objections were made. Therefore, they

will be admitted.

The Staff of the Commission filed its brief late, along with a motion to accept it late. No party has been harmed by the late filing, and the motion will be granted.

As discussed above, many of the issues the SCs raise are not directly tied to the implementation of ILDP or to the resolution of the PTC plan. They are, nonetheless, important issues that will need to be addressed as competition develops. Accordingly, the Commission will establish a case to investigate signaling protocols, call records, trunking arrangements and traffic measurement.

CONCLUSIONS OF LAW

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

The parties to this case are generally 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 at issue was approved by the Commission by Report and Order issued October 23, 1987, in Case No. TO-84-222.

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 . . ."

IT IS THEREFORE ORDERED:

1. That the Primary Toll Carrier plan shall continue in modified form, as discussed in Reports and Orders approving local exchange carriers' intraLATA dialing parity plan, for a transition period of up to ninety days after July 22, 1999.
2. That the Primary Toll Carrier plan shall be terminated on October 20, 1999.
3. That, after April 1, 2000, any local exchange company may request that it be provided, without compensation, either industry standard Category 11-01 or 92-01 records for any calls terminated to it for which originating records are created and passed.
4. That the primary toll carriers shall investigate, and may implement, call intercepts as discussed herein.
5. That late-filed Exhibits 77, 94, and 95 are admitted into the record.
6. That the Public Service Commission Staff's motion to late file its brief is

granted.

7. That Case Number TO-99-593 is established to investigate signaling protocols, call records, trunking arrangements and traffic measurement.

8. That all motions not previously ruled upon by the Commission in this case are hereby denied and all objections not previously ruled upon are hereby overruled.

9. That this order shall become effective on June 21, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
Schemenauer, and Drainer, CC.,
concur and certify compliance
with the provisions of
Section 536.080, RSMo 1994.

Mills, Deputy Chief Regulatory Law Judge

Dated at Jefferson City, Missouri,

on the 10th day of June, 1999.

