

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

In the Matter of the Notice of Election of	)	
Windstream Missouri, Inc. for Waiver of	)	<b>Case No. IE-2009-0100</b>
Commission Rules and Statutes Pursuant to	)	Tariff File No. YI-2009-0201
Section 392.420, RSMo., as amended by	)	
HB 1779.	)	

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and for its recommendation in Case No. IE-2009-0100 states as follows:

1. On September 17, 2008, Windstream Missouri, Inc. (Windstream or the Company), filed notification with the Missouri Public Service Commission (Commission) that Windstream had elected to waive certain Commission Rules and RSMo statutory provisions pursuant to RSMo<sup>1</sup> Section 392.420.

2. Windstream has also submitted a tariff filing to identify these waivers in the Company's tariff. That tariff filing as been assigned Tariff File No. YI-2009-0201 and bears a proposed effective date of October 17, 2008.

3. Windstream's reference to RSMo Section 392.420 refers to the statute as revised by the passage of House Bill 1779, which became effective August 28, 2008.

4. The first sentence RSMo Section 392.420 authorizes the Commission in connection with the modification of a certificate interexchange service authority to suspend or modify the application of its rules and certain statutory provisions if such modification is otherwise consistent with the purposes of RSMo Chapter 392.

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<sup>1</sup> All references to RSMo refer to the Missouri Revised Statutes 2000, as currently supplemented.

5. The remainder of Section 392.420, as amended by House Bill 1779, states in relevant part:

In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, *where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected.*

(Emphasis added).

6. Windstream is an incumbent local exchange telecommunications company as that term is used in Section 392.420. Furthermore, in the attached Memorandum, labeled as Appendix A, Staff states its position that prior Commission cases, along with the most recent annual reports submitted by companies, adequately demonstrate that alternative local exchange telecommunications companies provide service in the Company's territory.

7. Staff further recommends that the Commission grant Windstream waivers consistent with RSMo 392.245.5(8), as amended by House Bill 1779, which states that "[a]n incumbent local exchange telecommunications company deemed competitive under this section...shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the commission. . ."

8. Although Windstream has not been deemed competitive under Section 392.245, Staff does not object to the waiver of the rules described in Section 392.245.5(8), and recommends the Commission grant the waivers under the first sentence of Section 392.420, because they are consistent with the purposes of Chapter 392.

9. Windstream is currently compliant in obligations relating to Commission assessment, Missouri Universal Service Fund, Relay Missouri, and the submission of an annual report.

**WHEREFORE**, Staff recommends that the Commission acknowledge Windstream's election to opt into the waivers listed in its Notice of Election for Waivers and either approve the Company's accompanying tariff filing, Tariff File No. YI-2009-0201, or allow the tariff to become effective by operation of law.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont

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Missouri Public Service Commission

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## **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of October, 2008.

/s/ Eric Dearmont

## Memorandum

To: Official Case File  
Case No. IE-2009-0100  
Tariff File No. YI-2009-0201  
Windstream Missouri, Inc.

Through: General Counsel

From: John Van Eschen  
Telecommunications Department

Date: October 3, 2008

Subject: Request for Waivers

Windstream Missouri, Inc. (Company), an incumbent local exchange telecommunications company, has filed a Notice of Election of Waivers pursuant to Section 392.420, RSMo, as amended by House Bill 1779, effective August 28, 2008. The Commission Staff (Staff) has no objections to the requested waivers identified in the Company's filing. This memorandum further explains Staff's review of the filing.

Two separate sections of the new legislation, Section 392.420 and 392.245.5(8), provide the genesis for waiving various statutes and Commission rules for telecommunications companies. Both sections are slightly different in terms of the circumstances surrounding their applicability. In addition both sections have slightly different descriptions of the types of rules covered by their provisions.

Section 392.420 RSMo authorizes the Commission, in connection with the issuance or modification of a certificate or service authority, to entertain a petition to suspend or modify the application of its rules and certain statutes. This section further provides that in the case of an application for a certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the Commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, and certain enumerated statutes. Where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's territory an incumbent may opt into all or some of the statutory and commission rule waivers by filing a notice of election with the Commission.

Section 392.245.5(8) RSMo indicates an incumbent local exchange telecommunications company with classification as a competitive company and all alternative local exchange telecommunications companies shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules

requiring the recording and submitting of service objectives or surveillance levels established by the Commission. This section does not address any statutes as described and identified in Section 392.420 RSMo.

Although the Company has not been deemed competitive under Section 392.245, the Staff does not object to the waiver of the rules described in Section 392.245.5(8). The Staff recommends the grant of these waivers under the first sentence of Section 392.420 because they are consistent with other provisions of and the purposes of Chapter 392.

In support of its filing, the Company states the Company is an incumbent local exchange telecommunications company "...in whose authorized service area numerous alternative local exchange telecommunications companies are authorized to provide local exchange telecommunications services." In Staff's opinion, prior cases along with the most recent annual report submitted by companies adequately demonstrate that alternative local exchange telecommunications companies provide service in the Company's territory.

The specific waivers requested by the Company comply with the type of waivers contemplated by the new legislation. These waivers and a brief description are as follows:

<b>Commission Rules (4 CSR 240-)</b>	<b>Brief Description</b>
3.550 (4) and (5)(A)	Held order records, Quality of service reports.
32.060	Engineering and maintenance
32.070	Quality of Service
32.080	Service objectives and surveillance levels
33.040(1) through (3) and (5) through (10)	Billing and payment standards
33.045	Clear identification and placement of charges on bills

<b>Missouri Statutes</b>	<b>Brief description of Commission's authority</b>
392.210(2)	Prescribe a system of accounts
392.240(1)	Determine reasonableness of rates
392.270	Determine valuation of property
392.280	Determine depreciation rates/accounts
392.290	Establish regulations regarding issuance of stocks, bonds and other indebtedness
392.300	Transfer of property and ownership of stock
392.310	Approval of issuing stocks, bonds and other indebtedness
392.320	Certificate of Commission to be recorded—stock dividends
392.330	Account for disposition of proceeds of all sales of stocks, bonds, notes and other indebtedness
392.340	Reorganization

Staff recommends the Commission grant to the company all of the waivers listed above. The Company has filed a proposed tariff, Tariff File No. YI-2009-0201, listing these same waivers. The Commission should approve this tariff filing. Staff has also investigated and concluded the Company is currently compliant in obligations relating to the Commission's assessment, Missouri universal service fund, Relay Missouri and the submission of an annual report.

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Case No. IE-2009-0100

**AFFIDAVIT OF John Van Eschen**

STATE OF MISSOURI )  
 ) ss:  
COUNTY OF COLE )

John Van Eschen, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying memorandum and that the facts therein are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
John Van Eschen

Subscribed and affirmed before me this 6<sup>th</sup> day of October 2008.



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942088

  
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NOTARY PUBLIC