

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of)	
MCC Telephony of Missouri, Inc.)	Case No. TE-2006-0415
For a Waiver of Compliance with)	
The Requirement of 4 CSR 240-240-32		

MCC TELEPHONY OF MISSOURI, INC.'S REPLY BRIEF

I. MCC has demonstrated good cause for waiver of the Commissions installation interval rule.

In its Initial Brief, Staff presented its understanding regarding the reasons for MCC's inability to meet the Commission's five-day installation standard; one portion of Staff's comment requires correction. Contrary to Staff's assertion, MCC never contended that "the contract [it entered into with its provider, Sprint] excuses MCC and Sprint from meeting the Commission's installation standard."¹ Rather, MCC has explained that it is operating under a unique business model which presents it with certain operational challenges as well as benefits. Mr. Henderson represented that he does not think that the Sprint/MCC model is unique and cannot see what operational challenges it may face that other companies do not.² On the other hand, Mr. Henderson testified that he is not aware of any other company operating under an arrangement similar to MCC's and Sprint's that has faster intervals than those found in the MCC/Sprint agreement.³

Furthermore, the necessity for on-site installation visits in all cases (ported and non-ported) certainly places MCC in a unique situation and provides good cause for granting its waiver

¹ Staff's Initial Brief, page 2.

² Staff's Initial Brief, page 3.

³ Hearing Transcript page 187, lines 13-20.

request. While MCC has demonstrated how the porting intervals of the ILECs contribute significantly to the difficulty in meeting the Commission's installation standard for ported numbers, it was never MCC's position that it would be able to meet the standard *but for* the ILEC's porting intervals. Instead, MCC has pointed to the reality that retail service quality guidelines must be cognizant of the carrier-to-carrier context within which service is provided to consumers; and that sufficient change has taken place in both technology and competition in the market to warrant an industry-wide reexamination of some of the Commission's rules governing service. This position is supported by the MITG companies and, to a certain extent, by Staff as well.

As a new entrant in Missouri and relatively new to providing voice services, MCC has had to adjust to different regulatory expectations. The fact that it faced some reporting challenges, does not call for Staff's gratuitous comment that "MCC is not interested in complying with the installation standard."⁴ In fact when, for all the reasons explained in this proceeding, MCC found itself unable to comply, it sought a waiver of this rule pursuant to the Commission's own authorized procedures. MCC did not wait for Staff to challenge its performance, but acted responsibly in initiating a proceeding when it realized that it was not meeting the five-day installation objective.

Finally, MCC must object to Staff's characterization of MCC's attitude towards its voice customers as "cavalier."⁵ To the contrary, MCC cares a great deal about the experience of its voice customers, as well as the experience of the video and data customers of its affiliates. MCC and its affiliates began offering the video/data/voice product bundles in response to consumer demand and with a significant interest in providing its customers these services at a high quality

⁴ Staff's Initial Brief, page 4.

⁵ Staff's Initial Brief, page 5.

and at a competitive price. Therefore, the meaning of Staff's comment that MCC "does not care if it loses a potential voice only customer"⁶ is not clear. It is MCC's understanding that the Commission's rules are intended to apply to voice service whether it is offered by itself or bundled with other services. If this understanding does not accurately reflect Commission intention, MCC would be grateful to receive a clarification. Thus while it is true, as Staff points out, that few customers opt for MCC's voice only offering, MCC is highly committed to providing voice services to all its customers. Mr. Craib's comment to which Staff refers in its Brief was purely a statement of the fact that customers are empowered with service choice and thus their choosing of MCC among other available options represents a preference for MCC's service despite the longer installation interval.

II. MCC complies with the installation requirement by meeting its installation commitments.

MCC has argued that the service installations are always scheduled with the participation of the customer and can be viewed as customer-requested dates for the purposes of the rule. In its Initial Brief MCC argued that, given a choice of service providers, customers choosing to purchase service from MCC, despite the longer installation interval, represents *customers setting installation deadlines which are acceptable to them*; and that this is analogous to customer *requested* deadlines. MITG argued in its Initial Brief that such an interpretation would render the installation rule "meaningless."⁷ MCC disagrees with this position. It is appropriate to reinterpret rules when the operational reality has changed so dramatically from the time the rules

⁶ Staff's Initial Brief, page 5.

⁷ MITG Initial Brief, page 3.

were promulgated. MITG acknowledges that significant change has occurred with the coming of competition in local service.⁸

III. The Commission should conduct a rulemaking to revise the Commission's quality of service rules.

MCC agrees with the position of MITG that the fact that the current rules “were created prior to the advent of local competition”⁹ warrants their reexamination. MITG provides a good summary of the different types of technologies and network arrangements now employed to deliver voice services and since the service quality guidelines were not originally designed with these different arrangements in mind, these rules are ripe for comprehensive review. Furthermore, given the interaction between carriers currently necessary to provision voice service in many instances, the absence of carrier-to-carrier guidelines makes the impact of retail service quality rules not fully provider-neutral. This issue, along with others presented by the competitive marketplace, would have to be addressed in an industry proceeding, as both Staff and MITG have agreed.

Conclusion

As it prayed in its application and in its Initial Brief, MCC Telephony of Missouri, Inc. respectfully requests that the Commission enter an order granting MCC a waiver of compliance from the provisions of 4 CSR 240-32.080(5)(A)1 or alternatively, find and determine that its installation practices fully comply with the requirements of the rule. Additionally, MCC suggests that the Commission open a proceeding to review 4 CSR 240-32.080(5)(A)1 and other service quality rules for industry participation.

⁸ MITG Initial Brief, page 5.

⁹ MITG Initial Brief, page 5.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 9th day of April, 2007 to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov; and Craig Johnson at Craig@csjohnsonlaw.com.

/s/ Mark W. Comley