

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 15th day
of April, 2009.

In the Matter of the Tariff Filing by Choctaw)	
Telephone Company to Establish a 15-day)	<u>File No. IT-2009-0366</u>
Due Date for Bills)	Tariff No. JI-2009-0655

ORDER REGARDING MOTION TO SUSPEND

Issue Date April 15, 2009

Effective Date: April 25, 2009

On March 16, 2009, Choctaw Telephone Company submitted a revised tariff sheet designed to reduce the due date for a subscriber's bill from 21 to 15 days after the bill is rendered. The effective date of the revised tariff sheet is April 16, 2009. The Staff of the Commission has filed a motion to suspend the tariff and Choctaw opposes the motion. Also, the Office of the Public Counsel filed suggestions in support of the motion.

Staff's Motion

On April 8, 2009, the Staff filed a motion to suspend the tariff sheet. Staff points out that Commission rule 4 CSR 240-33.040(5) provides in part that "if a telecommunications company does not expressly offer a preferred payment date plan, a customer shall have at least 21 days from the rendition of the bill to pay the charges stated." Staff, however, also points out that Choctaw elected to waive this Commission rule under Missouri law.¹

Nevertheless, Staff states that Sections 392.200, RSMo Cum. Supp. 2008, and 392.240.2, RSMo 2000, require that a telecommunications company's instrumentalities,

¹ Section 392.420 RSMo, Cum Supp. 2008.

facilities, charges, regulations and practices shall be just and reasonable. Staff indicates that these sections are not included in the list of statutes subject to waiver under Section 392.420. Staff opines that the change in Choctaw's billing cycle is unjust and unreasonable.

To its argument that Choctaw's proposed tariff change is unjust and unreasonable, Staff points out that the company has a late payment charge of \$2.55. Staff argues that if the company's due date is changed from 21 to 15 days, then those customers who pay from the 16th to the 21st day will see an increase of \$2.55 in their bill. Further, Staff argues that the Commission has held² that tariff filings made by ILECs to institute a late payment charge constitutes single-issue ratemaking. For these reasons, Staff moves the Commission to suspend the tariff and enter into a hearing.

Choctaw's Suggestions in Opposition

Choctaw points out that the Commission acknowledged the presence of competitors thereby justifying the waiver of certain rules including 4 CSR 240-33.040(5), the 21-day rule. Choctaw further states that tariff number JI-2009-0435, which became effective on January 11, 2009, contains a list of waived rules, including the 21-day rule.

Choctaw goes on to opine that the change from 21 to 15 days is reasonable considering the timeline for delinquent notices, disconnection periods and reconnection charges. Choctaw also notes that a number of companies and other states use a 15-day billing period and that its bill for electric service is due in 15 days.

With regard to Staff's assertion that the change in the tariff is single-issue ratemaking, Choctaw states that it already has the late fee in its tariff. The company argues

² *In the Matter of the Chapter 33 Tariff Filing of Miller Telephone Company*, Case No. TT-2001-257, 9 MPSC 3d 406, *et seq.*

that the *Miller* case, cited by Staff, does not apply because in that case, the company was attempting to introduce a late-fee through its tariff. Choctaw is not attempting to do that here.

In an effort to alleviate Staff's concerns, Choctaw offers to postpone the effective date of the tariff change in order to provide notifications to customers of the change in the delinquent date or to waive the late charge for a reasonable period of time.

Discussion

Section 392.420, RSMo Cum. Supp. 2008, states in 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 [certain statutes]. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, where an alternative local exchange telecommunications company is authorized to provide . . . services in an incumbent . . . company's authorized service area, the incumbent company may opt into all or some of the above-listed . . . waivers by filing notice of election with the commission . . . [.]

Commission rule 4 CSR 240-33.040(5), the 21-day rule, is included in the Commission's billing standards rules. On November 19, 2008, the Commission issued an Order Concerning Election of Waivers,³ in which the Commission acknowledged that Choctaw opted to waive 4 CSR 240-33.040(5). The Commission also directed that news outlets and legislatures be notified that the Commission no longer has jurisdiction to process complaints regarding billing rules.

The legislature has allowed companies such as Choctaw to opt into waiving the Commission's 21-day rule. The Commission acknowledged that Choctaw has opted to

³ See *Commission Case No. IE-2009-0157*.

waive the rule and in doing so specifically stated that the Commission does not have jurisdiction over complaints under the rule.

Finally, the *Miller* case Staff offers in support of its argument that Choctaw's actions constitute single-issue ratemaking is not applicable to Choctaw's proposed tariff revision. Staff's argument that Choctaw's actions constitute single-issue ratemaking holds no merit. As Choctaw points out, it does not propose a rate change. In light of this discussion, the Commission must deny Staff's motion to suspend.

Additionally, Staff has expressed concern with regard to those customers who may routinely make payments between the 16th and 21st day. The company has offered to postpone the effective date of the tariff change in order to provide notifications to customers of the change or to waive the late charge for a period of time. Because some customers may routinely pay between the 16th and 21st day and may not notice the change on the bills, the Commission encourages Choctaw to address this potential problem.

THE COMMISSION ORDERS THAT:

1. The Staff of the Commission's Motion to Suspend Choctaw Telephone Company, Inc.'s tariff, Tariff File No. JI-2009-0655, is denied.
2. This order shall become effective April 25, 2009.
3. This case shall be closed on April 26, 2009.

(S E A L)

Murray, Davis, Jarrett, and Gunn, CC., concur.
Clayton, Chm., dissents.

Jones, Senior Regulatory Law Judge

BY THE COMMISSION



Colleen M. Dale
Secretary