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 INITIAL BRIEF

Introduction

On April 25, 2006, MCC Telephony of Missouri, Inc. filed an application for waiver of rule 4 CSR 240-32.080(5)(A)1 which provides as follows:

> Service objective-that ninety percent (90%) or more of such orders shall be installed, except for customer-caused delays, delays caused by a declared natural disaster or a specific exemption requested by a company and approved by the commission staff to address a unique situation or condition –
>
> A. Within five (5) working days after the customer ordered service; or
>
> B On or by the date requested if it is at least five (5) working days after the date the customer ordered service.

In support of its application MCC provided descriptions of its processes including the technical requirements of its service installation and a description of how MCC, in cooperation with its provider, Sprint fills orders for voice service. Commission Rule 4 CSR 240-32.010 provides for requests for waiver from specific requirements of the rules upon a showing of good cause.

On April 28, 2006, the Office of Public Counsel filed its objections and opposition to MCC's application for waiver; and on May 1, 2006 the Missouri Independent Telephone Company Group (MITG) filed an application to intervene. On July 11, 2006 Staff of the Missouri Public Service Commission submitted its recommendations that the Commission open a case to consider whether to make revisions to the Chapter 32 quality of service rules. This

recommendation was accompanied by a memorandum submitted by Larry Henderson of the Telecommunications Department of the Missouri PSC where he sets forth Staff's recommendations that the Commission open a separate case to consider revisions to the quality of service rules; and, in the event that the Commission should decide not to open such a case, he recommends that the Commission deny MCC's request.[1]

Direct, rebuttal and surrebutal written testimony was filed in this case and a hearing was held on January 25, 2007. At the end of the hearing, Judge Voss directed the parties to submit briefs on the original two issues: 1) Whether good cause exists for the Commission to grant MCC's request for a waiver of 4 CSR 240-32.080(5)(A); and 2) Should the Commission conduct a rulemaking to revise the Commission's quality of service rules. Judge Voss also directed the parties to submit briefs on the additional issue of whether a waiver is in fact necessary or whether the situation described by MCC falls into one of the exceptions anticipated by the rule.

I. Issue 1

A. Issue: Is there good cause for the Commission to grant MCC's request for a waiver of 4 CSR 240-32.080(5)(A)?

B. **MCC Position:** Yes. MCC has demonstrated that its ordering and installation process is justifiably different from the processes used by other types of carriers. The combination of its joint offering provider relationship with Sprint and the necessity of home installation visits for all customers presents MCC with a unique set of scheduling constraints. The intervals contained in the agreement establishing MCC's joint offering provider relationship with Sprint represent current operational requirements. The requested waiver should be granted

[1] Henderson memo, page 8.

in view of this situation so that MCC may continue to provide its voice service to consumers in Missouri, thereby supporting an expanded range of consumer choice and giving Missouri consumers access to advanced technological options. Doing so is clearly in the public interest.

C. Argument

MCC provides its voice service though a joint provider arrangement with Sprint. Because MCC must rely on Sprint to perform certain functions and Sprint must, in turn, rely on the losing carrier (in the case of a port) to complete certain steps before a number is ready for installation, the resultant process is somewhat more complex than was envisioned at the time the five-day installation rule was promulgated.[2]

The relationship between Sprint and MCC is set forth and described in the *Letter of Intent* executed by both parties and under which they currently operate. It has been the assertion of Staff in this case that the installation intervals described in this agreement are the result of an arbitrary decision between MCC and Sprint[3] and are not the direct result of the operational needs of these companies. There is no merit to Staff's assertion. It is in the direct financial interest of both MCC and Sprint to provide the quickest, most seamless service initiation possible, a fact noted favorably at hearing by one of the sitting Commissioners.[4]

MCC has also explained that its process is unique in that it requires a home visit by a technician to turn up service in *all* instances, regardless of whether the service involves a new installation or a porting of an existing number from a different carrier. MCC has explained that this must take place after all other steps have been completed and cannot be accomplished prior to or concurrently with any other work done on that order. The reason for this is that the

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[2] Processes of MCC and Sprint are described in detail in the direct testimony of Mark Trefry (Exhibit 3) and Darin Liston (Exhibit 5), respectively.

[3] Exhibit 6, Henderson Rebuttal, page 8: 11.

[4] See remarks of Commissioner Murray, Transcript 215:23. Citations to the transcript herein shall follow this form, "Transcript [page number]: [line number]." Citations to written testimony shall follow a similar format.

technician must test the service and have it fully operational before requesting that the customer acknowledge acceptance of the service. Since home visits are required, it has been the policy of MCC to schedule installations with a small time "cushion" allowing Sprint and MCC to make corrections to orders, if necessary, without always having to reschedule installations. This is done to minimize the inconvenience to the customer who would need to make arrangements to be present for the installation of service.[5]

Although MCC firmly believes that its technical model (including its relationship with Sprint and the requirement of on premise installation in all cases) places it in a position sufficiently unique to provide good cause for waiver of the installation interval rule, in its original application for waiver, MCC proposed an alternative benchmark. MCC proposed to install 90% or more of its orders within three business days following Sprint's completion of its installation activity. Since Sprint's activity would also encompass any necessary activity by a losing carrier in a porting situation, MCC feels that this is a reasonable service benchmark.

II. Issue 2

A. Issue: Should the Commission conduct a rulemaking to revise the Commission's quality of service rules?

B. MCC Position: Yes. The Commission should open a proceeding to review 4 CSR 240-32.080(5)(A)1 and other service quality rules in light of considerable changes in the competitive landscape as well as significant evolution in the technology used to deliver services.

[5] Exhibit 1HC, Craib Direct, page 5:7 and Exhibit 2, Craib Surrebuttal page 6:10.

Such a proceeding should be a forum for industry members to comment on the applicability and/or the need for revision of the existing regulations.

C. Argument

That portion of 4 CSR 240-32.080(5)(A)1 from which relief is sought in this proceeding was first promulgated by the Commission over thirty years ago.[6] At that time, telephone service was delivered by a monopoly over copper wire. At that time, also, there was no effective substitute for communication by land line telephony. Therefore, consumers could neither choose their provider nor the mode of communication. Mandating a five-day installation interval would have been driven by the consideration that from the time telephone service was ordered to the time it was installed, an individual was effectively without the ability to speedily access emergency services, not to mention meet more routine communications needs. Virtually every instance of service installation at the time the rule was conceived would have involved new installation to the customer's home, as there would not have been any porting situations in the monopolistic world of mid 1970's telephony. Thus on the one hand, customers had no option but to wait for service to be installed by the only local telephone company; while on the other hand, the entire installation process would have been within the control of the local telephone company. The monopoly would not have had to account for the installation intervals or systems of any other party (excepting the customer – whose potential to cause delays are acknowledged with explicit exceptions to the rule).

While the service quality rules have been reviewed on several occasions since 1975, the substance of the five-day installation interval requirement has not been modified.[7] The current

[6] Transcript 188:10.
[7] Transcript 188:14-189:11.

rules therefore, do not reflect the significant changes that have taken place in telecommunications market, with respect to both technology and market structure.

Currently, many instances of voice service installation involve porting numbers from a different carrier. In the case of a carrier such as MCC, there are three parties involved with each porting order (the ILEC, MCC and Sprint), the activities of which must be successfully coordinated. Even in instances where only two parties (CLEC and ILEC) must work together to effectuate a port, the existing intervals present problems. Most ILECS currently have porting intervals of five days and some take longer.[8] The only service quality standard for installation is the rule at issue in this proceeding which makes no distinction between retail and carrier-to-carrier installations. Even were all ILECS to consistently meet the five-day installation interval in a carrier-to-carrier scenario, this would leave no time for a CLEC to perform any operation either before or after the ILEC's work.[9] In the absence of carrier-to-carrier quality standards, the five-day installation rule places unfair burdens on CLECs. Any carrier-to-carrier standards would have to set up a porting interval that is shorter than any retail interval in order to allow the gaining carrier to perform any additional work that may be required before submitting a port request and after the losing carrier has completed its part.[10]

During the hearing, the fact that MCC is a facilities-based provider that must have technicians make a visit to the home in order to install service was discussed. Mr. Henderson stated that he believes that this is not a unique situation and that other carriers must make premise visits for installation, notably in the case of new construction.[11] It is critical to understand, and MCC has repeatedly stressed, that it must perform premise visits in all instances,

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8 Exhibit 2, Craib Surrebuttal, at 2.

9 Exhibit 2, Craib Surrebuttal, at 6-7.

10 Mr. Darin Liston described the time required for internal verification procedures involved with ported numbers at pages 5-7 of his direct testimony. Exhibit 6, Liston Direct.

11 Transcript 200:11-201:3.

whether new installations or ported numbers; and that it must have access to the home and cannot perform its work at any outside device. There was also a discussion at to whether it is possible or warranted to create a classification for rules purposes in addition to the current "facilities/non-facilities-based" distinction for a company such as MCC.[12] In fact, whether a company is a cable affiliated provider or not, an easy distinction can and should be made to differentiate a carrier that must perform installation visits in *all* instances from a carrier which is able to turn up a customer remotely much of the time.

The most significant question regarding the need for further rulemaking was raised at the hearing by Commissioner Murray, namely whether regulators still needed to be involved in the managing of operations details in light of the fact that competition exists and customers have provider choice. In fact, Mr. Henderson agreed that this was the policy issue that needed consideration and agreed also that given a competitive environment, a customer who decides to accept service from MCC despite the longer installation interval was making an affirmative choice in favor of that service.[13]

MCC urges the Commission to reexamine the service quality rules with the consideration that 1) the extent of porting necessitates the promulgation of carrier-to-carrier guidelines if the retail rules are to avoid disadvantaging CLECs; 2) unique situations, such as MCC's, exist and warrant attention; and 3) given the plethora of choice that exists for telecommunications services consumers in the form of competing traditional land-line companies and alternatives such as cell phones and IP-enabled vice services, the role of the Commission in regulating certain operational aspects needs to be revisited. Therefore, the rules are ripe for reexamination with industry participation.

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[12] Transcript 195:10; Transcript 203:4

[13] Transcript 216:7-216:12

III. Issue 3

A. Issue: By meeting 97.5% of its installations by the installation date to which MCC and its customer agree, has MCC complied with the requirements of 4 CSR 240-32.080(5)(A)?

B. MCC Position: The Commission's rule can be interpreted such that MCC's achievement of a 97.5% level of installations by the date MCC and its customer agree is rule compliant. It is wholly acceptable for the Commission to conclude that MCC's current practices fall within the "customer request" exception to the rule.

C. Argument

The rule requires that a carrier install 90% or more of orders for basic local service within five working days after the customer ordered service *or* on or before the date *requested* if it is at least five working days after the date the customer ordered service. As MCC has described, its ordering process is accomplished with the full participation of the customer, who must assist the customer service representative in scheduling an installation appointment that would be convenient for the customer.[14] Although MCC is not able to offer installation at intervals of five days or sooner, customers are apprised of this fact at the time of placing an order. Customers frequently request dates that are later than the first available installation date offered by the customer service representative. Such instances however, represent *customers setting installation deadlines which are acceptable to them*, and the Commission anticipated this type of situation when it promulgated rule 4 CSR 240-32.080(5)(A)1 and carved out the "customer

[14] Exhibit 3, Trefry Direct at 4

request" exception. What the Commission did not anticipate at the time the rule was promulgated was the emergence of the multiple provider market where a customer would have significant choice open to him or her in selecting a carrier. At the present time, customers do have abundant choice of providers. Potential MCC customers are informed, at the time of ordering, of MCC's installation intervals. When, given these facts, customers still choose to purchase MCC voice services; this is clearly an instance of *customers setting installation deadlines which are acceptable to them.*

The Commission can rightly find and determine that MCC's installation process is fully compliant with 4 CSR 240-32.080(5)(A)1.

Conclusion

Based on the above and foregoing, 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.

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 26th day of March, 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