



State of Missouri

John Ashcroft, Governor

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June 8, 1989

FILED

JUN - 8 1989

PUBLIC SERVICE COMMISSION

Mr. Harvey G. Hubbs, Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

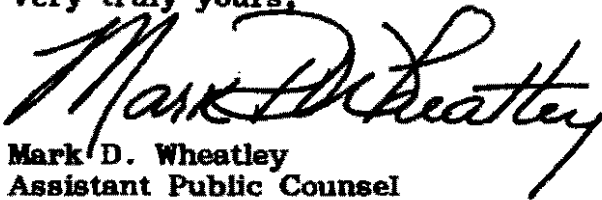
Re: International Telecharge, Inc.
Case No. TR-89-239

Dear Mr. Hubbs:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of the Response of the Office of the Public Counsel in Opposition to International Telecharge, Inc.'s Motion for Shortened Effective Date. Please "file" stamp the extra enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,


Mark D. Wheatley
Assistant Public Counsel

MDW:kl
Enclosures

cc: Richard S. Brownlee
Mary Ann Young

2.

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

In the matter of International)
Telecharge, Inc.'s tariff filing)
for operator services.)

Case No. TR-89-239

FILED

JUN - 8 1989

**RESPONSE OF THE OFFICE OF THE
PUBLIC COUNSEL IN OPPOSITION TO
INTERNATIONAL TELECHARGE, INC.'S
MOTION FOR SHORTENED EFFECTIVE DATE**

PUBLIC SERVICE COMMISSION

Comes now the Office of the Public Counsel (Public Counsel) and respectfully submits the following response in opposition to the Motion for Shortened Effective Date for Good Cause Shown filed by International Telecharge, Inc. (ITI) in the above-styled matter.

ITI has attempted to file with the Commission proposed tariffs for the provision of alternative operator services (AOS); however, the proposed tariffs contain no proposed effective date. The failure of ITI to state a proposed effective date for the tariffs is in violation of the provisions of Section 392.220.2, RSMo 1987 and the Commission's regulations contained in 4 CSR 240-30.010.

The provisions of Section 392.220.2 specifically state as follows:

. . . no change shall be made in any rate, charge or rental . . . except after thirty days notice to the Commission, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, charge or rental shall go into effect . . . (emphasis added)

Since the proposed tariff which ITI attempted to file does not contain a proposed effective date, the tariff filing should be rejected by the Commission. In this regard, it should be noted that representatives of ITI, including one of ITI's attorneys testifying as a witness, testified before the Circuit Court of Cole County, Missouri, in Case

No. CV189-506cc and expressed what could most kindly be regarded as great confusion regarding their understanding of tariff filings made with the Commission, including the meaning of effective dates of tariffs and extensions of such effective dates. As a result, allowing this company and its attorneys to file tariffs without stated effective dates would be very dangerous in that it would be impossible for the Commission and other parties to foretell what construction ITI and its attorneys may place upon the mere receipt of the tariff for filing. As a consequence, the Commission should require ITI to strictly comply with all applicable tariff filing requirements set forth in the Missouri statutes and the Commission's regulations.

The purpose of ITI's motion and proposed tariff filing is further obscured by the fact that, not only has ITI failed to state a proposed effective date, but that ITI has further asked that the unstated effective date be shortened. Regardless of the fact that it would be impossible to shorten a nonexistent effective date, it still should be noted that the provisions of Section 392.220.2 require that good cause be shown before the Commission may allow changes in rates without requiring thirty days notice. In this regard, ITI's motion fails to state any reasons which would constitute "good cause" and, therefore, for these additional reasons, the motion of ITI should be denied and the proposed tariffs rejected.

In paragraph no. 5 of ITI's motion, ITI and its attorney represent that the proposed tariffs are in compliance with the conditions contained in the Commission's Report and Order issued in Case No. TA-88-218. Such a statement is misleading for the reason that ITI's proposed tariff ignores the requirement imposed by the

Commission on Teleconnect, Dial U.S. and Dial U.S.A. regarding the billing and collection of location surcharges on local exchange company bills. At page 13 of the Commission's Report and Order in Case No. TA-88-218, the Commission stated as follows:

The Commission determines that only tariffed rates approved by this Commission for certificated providers should be bundled into a single charge on local exchange billings with disconnection for nonpayment. Location surcharges should not appear on the LECs' bills.

By ignoring this important requirement prohibiting the collection of location surcharges on local exchange billings, ITI is not only attempting to obtain authority which was denied it by the Commission in TA-88-218, but is attempting to obtain authority and privileges which exceed those granted to Teleconnect, Dial U.S. and Dial U.S.A. For this additional reason, the proposed tariffs of ITI again should be rejected by the Commission.

In paragraph 6 of its motion, ITI claims that its tariff filing is being submitted in order to comply with the Order Granting Partial Stay issued May 30, 1989, by the Circuit Court of Cole County, Missouri, in Case No. CV189-506cc, which is ITI's appeal of the Commission's Report and Order issued in Case No. TA-88-218. ITI's stated interpretation is misleading in that there is nothing contained in the Circuit Court's order which requires the Commission to accept for filing, consider or approve any new tariff proposed by ITI. The Circuit Court's order states only that the Commission's Report and Order is stayed. For ease of reference, a copy of the Circuit Court's order is attached hereto as Exhibit "A" and incorporated herein by reference.

Although Public Counsel maintains that the Circuit Court has exceeded its jurisdiction by including language in its order which might be construed as giving ITI authority to operate within the State of Missouri and purports to set rates, Public Counsel maintains that, even if the Circuit Court order is presumed valid, the Commission still may reject ITI's proposed tariff without violating the Circuit Court order.

In paragraph 6 of ITI's motion, ITI further states that "it was agreed" that ITI could continue its present business within the State of Missouri if it agreed to charge rates identical to AT&T and follow the conditions of the Commission's Report and Order, with the exception of the requirement regarding location surcharges previously discussed. Although Public Counsel is unaware as to the meaning of ITI's statement that "it was agreed", it should suffice to state that Public Counsel did not participate in any such agreement. Public Counsel continues to maintain that the Cole County Circuit Court exceeded its jurisdiction in entering its order as previously discussed and further maintains that ITI is presently unlawfully providing intrastate service in the State of Missouri.

In conclusion, Public Counsel respectfully submits that the proposed tariff which ITI attempted to file with the Commission should be rejected by the Commission as failing to comply with the applicable Missouri statutes and Commission regulations regarding such filings. In addition, since the proposed tariffs are substantially similar to the tariffs which the Commission rejected in Case No. TA-88-218, Public Counsel further suggests that the Commission reject the tariffs as not being in the public interest. As stated previously, nothing in the

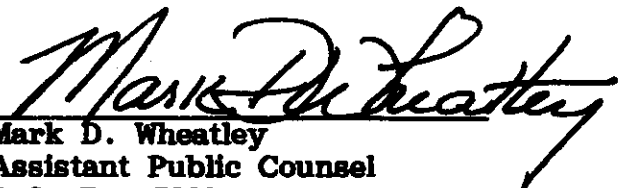
Cole County Circuit Court order requires that the Commission accept for filing or approve any tariff filed by ITI and, therefore, the Commission can reject ITI's proposed tariff without violating the Circuit Court order.

WHEREFORE, Public Counsel respectfully requests that the Commission issue its order rejecting the proposed tariffs filed by ITI on or about May 30, 1989; that, in the event the Commission does not reject the proposed tariffs, the Commission issue its order suspending the proposed tariffs in order to allow the Commission adequate time in which to determine whether the proposed tariffs are in the public interest; and that Public Counsel further respectfully requests such other and further orders and relief as to the Commission shall seem just and proper under the circumstances.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By


Mark D. Wheatley
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314/751-4857

I hereby certify that a copy of the foregoing has been mailed or hand-delivered to the following on this 8th day of June, 1989:

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Missouri Public Service Commission
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