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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 7th
day of July, 1998.

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-98-254</u>
)	
Cable & Wireless, Inc.,)	
)	
Respondent.)	

ORDER APPROVING STIPULATION

The Staff of the Commission (Staff) filed a complaint against Cable & Wireless, Inc. (CWI) on December 19, 1997, alleging that CWI had increased its rates in June or July of 1997 and failed to file tariff sheets reflecting those rate increases for approval until August.

CWI filed an answer on January 23, 1998, contesting portions of Staff's complaint. The parties met in a prehearing conference on March 10 and filed a Motion to Establish Procedural Schedule on March 18. The Commission set the case for hearing and established dates for the filing of testimony, but the parties filed a motion to suspend the procedural schedule and ultimately filed a Stipulation and Agreement on May 27. Staff filed Suggestions in Support of the Stipulation on June 23.

The terms of the Stipulation call for CWI to refund to customers \$9,783.71 allocated among the services which were affected by the rate increases described in the Staff's complaint in the following manner:

For Business First Basics:

Total accounts affected:	464
Total amount of refund:	\$8,361.42
Total amount per account:	\$18.02

For Business First International:

Total accounts affected:	6
Total amount of refund:	\$734.16
Total amount per account:	\$122.36

For Directory Assistance:

Total accounts affected:	686
Total amount of refund:	\$688.13
Total amount per account:	\$1.00

The \$9,783.71 represents the amount that CWI realized as a result of the rate increases which are the subject matter of this complaint. The parties agreed that CWI would make the refunds by issuing a credit to each account in the appropriate amount. In cases where an account is no longer purchasing service from CWI, CWI will send a refund check to the customer's last known address. Where refunds cannot be made within six months, the amount outstanding will be paid into the Public School Fund of the state of Missouri pursuant to Section 386.570, RSMo 1994. CWI shall also pay the sum of \$2,500 to the Public School Fund within ten days after the effective date of the order approving the Stipulation and Agreement.

The parties also agreed that, should the Commission accept the terms of the Stipulation, they would waive their rights to present testimony, cross-examine witness, present argument or written briefs, to have the transcript read by the Commission, and their rights for rehearing and judicial review.

The Commission has reviewed the Stipulation submitted by the parties, Staff's Suggestions in Support, and the official case file, and

finds that the Stipulation should be approved. The Commission finds that the customer refunds, totaling the amount that CWI realized as the result of the nontariffed rate increases, are adequate to compensate customers for any improper rate increases they experienced as a result of CWI's conduct. The Commission finds that the penalty of \$2,500 to be paid into the Public School Fund of the state of Missouri is adequate under the circumstances and that the Stipulation in general is an appropriate resolution of the issues of this case. The Commission finds, however, that no accounting or time frame has been established for the refunds. Accordingly, the Commission will require CWI to account for the refunds required by the Stipulation within 30 days of the effective date of this order. In order to protect any confidential information that may be required for the accounting, the Commission will also issue its standard Protective Order to govern this case.

IT IS THEREFORE ORDERED:

1. That the Stipulation of the parties filed on May 27, 1998 and attached to this order is approved.
2. That Cable & Wireless, Inc. shall comply with the provisions of the Stipulation approved in Ordered Paragraph 1.
3. That the Commission adopts the Protective Order attached to this order to govern this case.
4. That Cable & Wireless, Inc. shall file with the Commission a full accounting of the names, addresses, and amounts refunded to every customer under the protection of the Protective Order issued in this case. This accounting shall be filed with the Commission no later than 30 days after the effective date of this order.

5. That all procedural dates connected with this case are canceled.

6. That this order shall become effective on July 17, 1998.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray and Schemenauer, CC.,
concur.

Wickliffe, Deputy Chief Regulatory Law Judge

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

FILED

MAY 27 1998

**MISSOURI
PUBLIC SERVICE COMMISSION**

The Staff of the Missouri Public Service Commission)

Complainant,)

v.)

Cable & Wireless, Inc.)

Respondent.)

Case No. TC-98-254

STIPULATION AND AGREEMENT

I. Procedural History

1. On December 19, 1997, the Staff of the Missouri Public Service commission (Staff) filed a Complaint against Cable & Wireless, Inc. (CWI). In its Complaint, Staff alleged that CWI proposed a rate increase with the Commission on August 14, 1997 by means of tariffs with an effective date of September 13, 1997. Staff further alleged that CWI extended the effective date of the tariffs to October 3, 1997 but the rates sought to be increased by that filing had already been increased by the Company either on June 1, or July 1, 1997. The rates allegedly increased concerned three services: 1) Directory assistance; 2) Business First International (BFI) Dedicated Outbound and Dedicated Inbound services; and 3) Business First Basics Switched and Dedicated Inbound and Outbound services. On this basis, Staff alleged that CWI had violated §392.500, RSMo. 1994.

2. Notice of the complaint was sent to CWI on December 24, 1997 in which CWI was directed to file an answer on or before January 23, 1998. CWI timely answered the Complaint. On February 27, 1998, the Commission entered its Order Setting Early Prehearing Conference in which

it directed the parties to participate in a prehearing conference on March 10, 1998, and file a procedural schedule no later than March 18, 1998. The parties met as directed and filed a proposed procedural schedule on March 18, 1998. Pursuant to the proposed Procedural Schedule, Staff filed the testimony of Sherri L. Murphy April 7, 1998. The parties have discussed the issues subsequently and have entered a stipulation and agreement by which to fully settle and compromise the issues and resolve Staff's Complaint without hearing.

II. The Parties Have Reached the Following Stipulation and Agreement:

3. **Refund to Certain Customers.** CWI agrees to refund Nine Thousand Seven Hundred Eighty-Three and 71/100 Dollars (\$9,783.71) allocated between the three services which were affected by the rate increases described in the Complaint as follows:

For Business First Basics:

Total accounts affected:	464
Total amount of refund:	\$8,361.42
Total amount per account:	\$18.02

For Business First International:

Total accounts affected:	6
Total amount of refund:	\$734.16
Total amount per account:	\$122.36

For Directory Assistance:

Total accounts affected:	686
Total amount of refund:	\$688.13
Total amount per account:	\$1.00

4. **Manner of Refund.** The parties agree that in order to effect the refund, CWI will issue a credit to each account in the amounts stated above. In the event that accounts are no longer

purchasing CWI service, CWI will send a refund check to the last known address of the customer. The amounts of checks which are returned un-negotiated to CWI or which are not shown paid on the company's bank statements within 6 months of issuance will be added together, and that amount will be paid to the Public School Fund of the State of Missouri pursuant to §386.570 RSMo.1994 in a separate check.

5. **Payment to Public School Fund.** CWI shall pay the sum of \$2,500 to the Public School Fund within 10 days after the effective date of the order approving this stipulation and agreement.

III. General Matters

6. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

7. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to §536.080.1, RSMo 1994, to present testimony, to cross examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to §386.500 RSMo 1994 and to seek judicial review pursuant to §386.510, RSMo 1994. The parties agree to cooperate with each other in presenting this Stipulation and

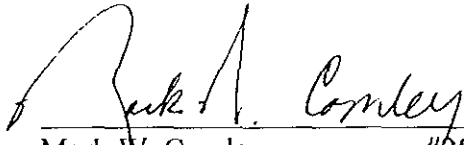
Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.

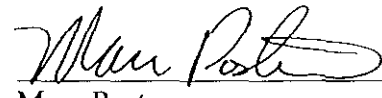
8. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

9. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure.

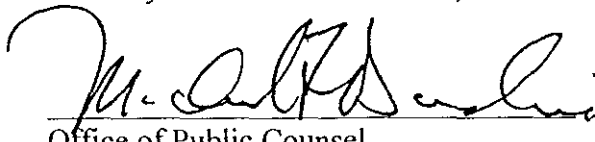
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving all of the terms of this Stipulation and Agreement.

Respectfully submitted,


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Attorney for the Staff of the Missouri Public Service Commission

PROTECTIVE ORDER

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized.

- C. Materials or information designated as HIGHLY CONFIDENTIAL may at the option of the furnishing party, be made available only on the furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off-premises and the designated information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.
- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgment so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting

on behalf of his/her employer. Such acknowledgment shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.

- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.
- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.
- G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.

- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.
- I. Within five (5) days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.
- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall

mean a single document, book or paper which consists of more than 150 pages.

- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.
- M. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten (10) days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first.
- O. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its Regulatory Law Judge rules that testimony was properly designated, then such testimony shall be

received into evidence, subject to any other objections being made and ruled upon, and kept under seal.

- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its Regulatory Law Judges, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its Regulatory Law Judges, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.
- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.
- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such

information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.

- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.
- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within ninety (90) days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- W. The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 1994. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public

Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.

- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B".

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____,
have been presented a copy of this Protective Order issued in Case
No. _____ on the _____ day of _____, 19____.

I have requested review of the confidential information produced in
Case No. _____ on behalf of _____
_____.

I hereby certify that I have read the above-mentioned Protective
Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 19____.

Signature and Title

Employer

Party

Address

Telephone

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:
 - A. An original plus eight (8) copies of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed.
 - B. One (1) copy of those pages which contain information which has been designated as Proprietary, with any Highly Confidential portions obliterated or removed, shall be filed in a separate envelope. The portions which are Proprietary shall be indicated as described in D, below.
 - C. One (1) copy of those pages which have been designated as Highly Confidential shall be filed in a separate envelope. The portions which are Highly Confidential shall be indicated as described in D, below.
 - D. Six (6) copies of the complete prefiled testimony to be filed under seal for the Regulatory Law Judge and Commissioners. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, ****Proprietary****. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before and after the Highly Confidential information, ****Highly Confidential****.

Any deviations from this format must be approved by the Regulatory Law Judge.

2. Three (3) copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A, 1.B and 1.C above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit __, Exhibit __P and Exhibit __HC.

RECEIVED

JUL 07 1998

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION