

Memorandum

To: Official Case File
Case No. TE-2006-0415

From: Larry Henderson
Telecommunications Department

Date: July 10, 2006

Subject: Staff Recommendation to MCC's Application for Waiver

/s/ John VanEschen 07/10/06
Utility Operations Division/Date

/s/ William K. Haas 07/10/06
General Counsel/Date

MCC's Application

On April 25, 2006 MCC Telephony of Missouri, Inc. (MCC) filed an Application for Waiver of Commission rule 4 CSR 240-32.080(5)(A)(1). MCC states it is requesting the waiver because of factors beyond MCC's control. Specifically, MCC is contracting with Sprint Communications Company, L.P. (Sprint) to provide network interconnection, switching, numbering and other key inputs in initiating and providing MCC service. In addition, MCC claims a wide variance exists in incumbent local exchange company (ILEC) porting intervals. According to MCC's application, ILECs with long porting intervals jeopardize the ability of Sprint and MCC to meet service quality measurements for installation timeframes. As an alternative to the Commission's rule, MCC proposes to install 90 percent of orders for basic local telecommunications service within three business days of the time Sprint completes its provisioning work. This proposed alternative would exclude installations for ported telephone numbers.

The Commission's telecommunications quality of service standards

Any telecommunications company offering basic local telecommunications service is currently required to comply with the Commission's quality of service requirements as identified in Commission rule 4 CSR 240-32. This rule sets quality of service standards for basic local telecommunications providers. Specifically 4 CSR 240-32.080 establishes ten (10) categories for monitoring the quality of a company's telecommunications service. These categories monitor responses by a company to a customer's request for installation, repair and call interaction. In each category a service objective and surveillance level is established. The service objective is an acceptable level of service set by the Commission for a company to provide Missouri consumers. The surveillance level is a substandard level of performance by a company to the Missouri consumer. The surveillance level requires a company to take appropriate corrective action to achieve and maintain the Commission's service objective in each category.

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Commission rule 4 CSR 240-3.550 requires each company providing basic local telecommunications service to submit a quarterly quality of service report. The quarterly quality of service report is due within 45 days after the end of the quarter. These reports identify a company's results in meeting the ten categories of monitoring the quality of a company's telecommunications service. Attachment No. 1 is a copy of a form used by companies in compiling their quarterly quality of service reports. Additional information about compiling these reports is found on the Commission's web site at <http://psc.mo.gov/TelecoIndustryInfo.asp> under the heading "quality of service".

Commission rule 4 CSR 240-32.080(5)(A)(1)

Commission rule 4 CSR 240-32.080 (5)(A)(1) specifically establishes requirements for responding to customer requests for basic local telecommunications service. The service objective for this criteria is 90% or more of orders requesting service shall be installed within five (5) working days after the customer ordered service; or on or by the date requested if it is at least five (5) working days after the date the customer ordered service installed. If a company fails to install 85% of the basic service order request within five (5) working days, this area is considered in the surveillance level and the Commission requires immediate corrective action by the company.

It should be pointed out that Commission rule 4 CSR 240-32.080(5)(A)(1) allows a company to exclude certain order in calculating the company's result for installing service within five working days. For example, if a customer's action prevents a company from installing service within five (5) days then the company does not need to include the order in its result. Another example for excluding certain orders is if the area has suffered a declared natural disaster. Exclusions due to a natural disaster are usually isolated to a specific geographic area and have a specific date time stamp. A company may also request the Commission Staff's approval to exempt orders that meet a specific condition or unique situation. The procedure for making such requests with the Commission Staff are found at http://psc.mo.gov/teleco/IP_NEW_Exclusions.pdf.

Intervenors

On April 28, 2006 and May 1, 2006 the Office of the Public Counsel and the Missouri Independent Telephone Company Group (MITG), respectively, filed oppositions to MCC's Application for Waiver. OPC takes issue with MCC's request for a temporary waiver of compliance with this rule. OPC states MCC does not identify a proposed time for the waiver. Moreover, MCC has not stated a good cause to grant any type or length of waiver of compliance with the time standards for installation. OPC claims MCC is making vague and overbroad allegations for its request. MITG concurs with OPC's objections. In addition, MITG takes issue with MCC's claim that the issue of complying with the rule is beyond the control of MCC.

Staff's Understanding of MCC's Service

MCC was granted certification on May 15, 2005 to provide basic local telecommunications service in AT&T, Embarq, Spectra and CenturyTel's service areas.¹ MCC's tariff was approved and became effective on August 10, 2005. On approximately September 25, 2005 MCC initiated basic local service to its first customer in Missouri. By the end of the 4th quarter of 2005, MCC's customers had grown to ** ____ ** access lines in ** __ ** different Missouri rate centers or exchanges. MCC estimates that ** ____ ** of its orders for basic local service involve the porting of telephone numbers while ** ____ ** of orders do not involve porting.

In providing basic local telecommunications service MCC has entered into an agreement with Sprint for the provisioning of basic local telecommunications services. Sprint is certificated by the Missouri Commission to provide basic local telecommunications services and is classified as a competitive telecommunications company. Sprint provides various services to MCC in order to assist MCC with the provisioning of basic local telecommunications services. MCC and Sprint have entered into a Master Services Agreement which describes the services Sprint will provide to MCC. This agreement is considered by MCC and Sprint to be a confidential agreement and has not been filed with the Missouri Commission. The agreement is not Missouri-specific but rather applies on a nationwide basis where Sprint will provide its services wherever MCC offers service within the United States. In general, the agreement has Sprint providing MCC with interconnection, call routing, network transit and other services. Stated differently, customers are served by MCC's outside plant facilities with Sprint handling other aspects of providing basic local telecommunications service.

In responding to customer requests for MCC's basic local telecommunications service, MCC representatives take relevant information regarding the customer's request and then forward this information on to Sprint. Sprint representatives first attempt to validate the customer's information before proceeding with the order. Once validated, Sprint makes the necessary arrangements with the incumbent local telephone company, 911 authorities, number portability agency center, and other parties. Sprint's work is handled by a variety of different teams who appear to specialize in certain aspects of the service installation process. After Sprint completes its work the order is then returned to MCC for completion. MCC then makes a visit to the customer's premise to install and initiate service.

In discussions with Sprint officials, Sprint is allowed a maximum of ** ____ ** days to complete their work for orders involving non-ported numbers and ** ____ ** days for orders involving ported numbers. In response to a Staff data request for a copy of the contract between MCC and Sprint, MCC responded by providing a

¹ See Case No. LA-2005-0150, In the Matter of the Application of MCC Telephony of Missouri, Inc., for a Certificate of Service Authority to Provide Basic Local Exchange, Non-Switched Local Exchange and Interexchange Telecommunications Service in the State of Missouri and to Classify Said Services as Competitive.

redacted version of the agreement.² The agreement appears to identify specific time frames for completing various aspects of the service ordering process; however these time frames were not provided in the redacted version supplied to Staff. MCC officials state that they typically forward a service order request to Sprint on the same day. After an order is returned to MCC from Sprint, MCC officials indicate MCC wants three additional days to complete the order. Based on these claims, the overall time frame for MCC to install basic local telecommunications service is approximately ** _ ** days for non-ported numbers and ** __ ** days for ported numbers.

MCC's Compliance with the Commission's Existing Quality of Service Standards

Since initiating basic local telecommunications service in Missouri MCC has submitted one quality of service report and it is shown on Attachment No. 2. MCC's quality of service report was filed on April 26, 2006 and this report identifies the company's results for the 4th Quarter of 2005. Commission rule 4 CSR 240-3.550(5)(A) states that a company's shall file its quarterly quality of service report no later than 45 days following the end of each quarter. In this instance 4th Quarter 2005 Quality of Service reports were due February 15, 2006. Thus, MCC has failed to submit its quality of service report in a timely manner. In regards to subsequent reports, to date, MCC has not submitted its 1st Quarter 2006 Quality of Service Report which was due May 15, 2006.

MCC's quality of service report indicates ** _____ **customers requested basic local service and ** __ ** were installed within 5 days. This result is clearly below the Commission's service objective of 90% of basic local service requests will be installed within 5 days. In response to a Staff data request³, MCC indicates the average number of days to complete a typical order is ** __ ** days. The least number of days to complete an order was ** _ ** days for a non-ported number and ** __ ** days for a ported number. The most number of days to complete an order was ** __ ** days for a non-ported number and ** __ **days for a ported number.

Although not relevant to MCC's pending waiver application, MCC's other results contained in its first quality of service report are mixed. For example, MCC does meet the Commission's service objectives for three categories. MCC's results for these three categories are as follows with the respective Commission service objective in parentheses: ** _____ ** of installation commitments met (95% or more), ** _____ ** of customers reported trouble (6% or more), and ** _____ **of repair commitments were met (85% or more). In contrast, MCC clears ** _____ **of out-of-service trouble reports within 24 hours and fails to meet the service objective of 90%. Like wise, MCC's average time to answer a customer's call to the company's business office was ** __ ** seconds which fails to meet the Commission's service objective of answering customer assistance calls within 15 seconds.

² MCC's response to Staff Data Request No. 11.

³ MCC's response to Staff Data Request No. 9.

MCC did not report any results for the following five categories: % of operator assisted calls answered within 12 seconds, % of originated switched calls, % of local exchange switched calls, and the % of interexchange switch calls. In a follow-up data request response MCC indicates that no results were provided for these categories because "...MCC is a new entrant to the Missouri voice services market, and as MCC continues to roll-out its service, it continues to fine-tune certain practices. In response to not having that information for the 4th Quarter 2005 Report, MCC has reviewed its procedures and taken corrective actions to avoid a reoccurrence. MCC intends to report on compliance with these items in its 1st Quarter 2006 Quality of Service Report, with the exception of Originated Switched Calls...."⁴

Staff's Analysis of MCC's Application

Staff has reviewed MCC's Application for Waiver. MCC's justification for the waiver is that MCC has no control over the first step of a two-step ordering process. MCC states that the first step of the ordering process is solely handled by Sprint while MCC handles the second step of making a visit to the customer's premise to install and initiate service. To try and better understand MCC's process Staff has submitted data requests to MCC and Staff has had discussions with both MCC and Sprint officials. Staff also visited Sprint's facilities in Lenexa, Kansas to review Sprint's handling of service orders from MCC and other CLECs. Staff has also had discussions with Embarq and other ILEC officials to review how an ILEC handles porting requests.

In response to MCC's specific request for a waiver of 4 CSR 240-32.080(5)(A)(1), MCC claims that it has a unique situation and has no control over the first step of MCC's two-step ordering process. Staff specifically inquired through data requests how MCC defines its unique situation and how this situation is beyond MCC's control. MCC response is, "...MCC relies on its agreement(s) with Sprint respecting the manner and time intervals in which service orders are processed, and in this respect, the situation is unique, and not entirely within MCC's control."⁵ When Staff requested a copy of the MCC/Sprint agreement, Staff was provided with a redacted version which appears to delete specific time intervals for Sprint to complete certain tasks.

In Staff's opinion, it is unclear if MCC seriously contemplated how the agreement with Sprint will comply with the Missouri Commission's service objectives. The agreement does contain a generic reference to federal and state regulatory compliance and support. The agreement states, "Provider will be responsible for compliance with all federal, state and local regulatory requirements and service quality standards applicable to Provider's provision of the Services. As the retail service provider, Mediacom is responsible for complying with all federal, state and local regulatory requirements applicable to it...." Nevertheless, MCC and Sprint appear to have simply entered into a service arrangement that prevents compliance with certain Commission quality of service standards. Although Staff intends to separately address service orders involving porting, MCC can not install service within five days for non-ported service orders because the

⁴ MCC Response to Staff Data Request No. 2.

⁵ MCC Response to Staff Data Request No. 15.

contractual arrangement between MCC and Sprint allows Sprint to complete its work within ** ____ ** days. Such a time frame makes it difficult for MCC to install service within five days if MCC indeed requires an additional ** ____ ** days to initiate service once the order is received back from Sprint.

Porting

The porting of telephone numbers refers to number portability. According to FCC rule 47 CFR 52.21(l) number portability refers to the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another. In general, the porting of a telephone number is initiated by the customer's new provider of basic local telecommunications service by sending a porting request to the customer's existing provider. The customer's existing provider responds by sending a Firm Order Confirmation (FOC) back to the customer's new provider. The FOC is essentially an acknowledgement and assurance that the request will be accommodated by a certain date. The date identified in the FOC is the date the customer's existing provider will have made the necessary porting arrangements. The new provider can then take the appropriate steps to activate the port.

The FCC has not established specific rules outlining time frames for the industry to complete porting requests. Instead, time frame guidelines appear to be established by the industry. For example, the May 3, 2004 North American Numbering Council (NANC) Report & Recommendation on Intermodal Porting Intervals prepared for the NANC by the Intermodal Porting Interval Issue Management Group is the document cited by MCC and Sprint as providing national standards for establishing deadlines or time frames for handling porting requests. This document states, "[t]he current industry agreed porting interval for wireline service is four (4) days for simple ports. This includes a maximum of one (1) day for the exchange of the Local Service Request (LSR) and the Firm Order Confirmation (Port Response) between the old service provider and the new service provider, and three (3) days to accomplish the port of the telephone number from the old service provider to the new service provider." In this respect the time frame for completing a porting request is typically four days.

Staff has not been able to fully substantiate MCC's claim that ILECs have a wide variance in porting intervals. In response to a Staff data request, MCC indicates AT&T, CenturyTel, Spectra and Embarq all share the same porting intervals. In contrast to the four day time frame identified by the May 3, 2004 NANC Report, MCC claims these companies have a LSR to Port interval of 5 business days. MCC's response indicates some CLECs have a LSR to Port interval of 7 business days. MCC states, "...these intervals are based on a number of factors including industry guidelines, the transport medium and carrier type."⁶ Staff discussions with various ILECs appear to slightly conflict with MCC's reported porting time frames. For example, Embarq officials state that porting can be accomplished within a total of four days which is consistent with the NANC Report. AT&T does track its wholesale performance and AT&T's wholesale

⁶ MCC Response to Staff Data Request No. 6.

performance results are posted on AT&T's web site. AT&T's results suggest AT&T is completing CLEC wholesale requests in a timely manner.

In Staff's opinion, porting can potentially make it more difficult for a carrier to initiate service within five working days. Initiating service for a customer that involves porting the customer's telephone number can be accomplished within five days; however Staff anticipates that most orders would be completed on the fifth day. Although porting makes the ordering process more complex, a reasonable question is whether an order involving porting should even be held to the same standard as an order that does not involve porting. From a policy perspective porting pertains to a situation where the customer is already receiving telephone service from an existing provider and is simply switching carriers. In contrast, a non-porting order may pertain to a situation where the customer does not have any service. Whether such a distinction is relevant in determining the application of certain Missouri Commission's rules deserves further consideration.

Other Considerations

The Commission should be aware that other considerations may moot or eliminate the need for the Missouri Commission to make a decision in this proceeding. As the Commission is aware, pending Case No. LT-2006-0162 pertains to Time Warner Cable Information Services, LLC d/b/a Time Warner Cable's tariff filing to withdraw its Digital Phone service from its tariff. Time Warner's Digital Phone service is a local voice service provided to residential customers using Voice over Internet Protocol (VoIP) technology. Time Warner contends its Digital Phone service is similar to the VoIP service provided by Vonage and the Federal Communications Commission preempted state commission authority over Vonage's services.⁷ Time Warner's position is essentially the FCC's decision preempts a state commission from enforcing any sort of regulation on VoIP based service provided by cable TV companies. Although MCC has not yet claimed its services are similar to Time Warner's Digital Phone service, such comparisons might ultimately be made. If the Missouri Commission agrees with Time Warner in Case No. LT-2006-0162, MCC could potentially take the same action of Time Warner. If that happens, MCC would not be expected to comply with any of the Missouri Commission's quality of service requirements.

Another consideration is federal legislation. Pending federal legislation is currently being debated and if passed may impact a state commission's authority over local voice service offered by cable TV companies using VoIP technology. For example, some versions of the federal legislation attempt to ratify and further clarify the FCC's Vonage decision. Depending on if and what version of federal legislation ultimately passes, such action may have implications on a state commission's authority over cable TV companies offering a local voice service.

⁷ See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) released on November 12, 2004.

Staff Recommendation

Staff recommends the Commission ultimately decide MCC's waiver request through a new and separate case intended to consider revisions to the Commission's quality of service standards. Such a case could be similar to pending Case No. TX-2006-0444 regarding the considerations of revising 4 CSR 240-29.040. The case would allow the industry and other parties to submit input and feedback. A draft order establishing such a case, along with a draft list of questions for parties to respond to is shown on Attachment No. 3. In this respect, the Commission will consider the implications of its quality of service rules on all carriers versus making an exception solely for MCC. In addition, consideration may also be given to the reasonableness of establishing certain wholesale rules, such as the establishment of a time interval for a carrier to respond to another carrier's porting request.

If the Commission agrees to establish a separate case, the significance of making a decision in this proceeding is diminished. Although Staff is aware the Commission prefers to keep cases moving, the Commission is not under a deadline to respond to MCC's waiver request. The Commission could simply delay issuing any sort of decision either granting or denying the waiver request. The delay could depend on a couple of factors such as: (i) until the Commission resolves if and how the Commission's quality of service requirements should be revised in a separate proceeding, (ii) if the Commission agrees with Time Warner in Case No. LT-2006-0162, or (iii) federal legislation gets enacted that limits or negates state commission authority over cable TV companies offering VoIP services.

If the Commission prefers not to delay making a specific decision to either approve or deny MCC's waiver request, Staff recommends the Commission deny MCC's request. MCC has failed to submit its quarterly report on a timely basis and the only report submitted has been incomplete. In this regard, Staff questions if MCC intends to comply with any of the Commission's quality of service requirements. Nevertheless, MCC has provided minimal justification for the waiver request. Essentially MCC claims the waiver request is justified because MCC has a unique situation and cannot control the process once it hands the order over to its partner, Sprint. When Staff requested a copy of the MCC/Sprint agreement, Staff was provided with a redacted version which appears to delete specific time intervals for Sprint to complete certain tasks. Waivers of the Commission's quality of service rules should not automatically be granted based solely on the fact the company has contracted certain duties of the ordering/provisioning process to other parties. Denial of MCC's waiver request will send a signal to other carriers that the requesting carrier has the burden of demonstrating why a waiver of a Commission rule should be granted. For instance 4 CSR 240-32.010(2) states, "For good cause, application may be made to the commission for the modification of any rule in Chapter 32 or for temporary or permanent exemption from its requirements." In this instance, MCC has failed to demonstrate good cause and has deliberately chosen to deny full access to requested information relevant to MCC's application.

In summary, Staff recommends the Commission establish a separate proceeding to consider possible amendments to the Commission's quality of service standards. Staff's preferred recommendation is for the Commission to delay making a decision to approve or deny MCC's waiver request. If the Commission desires to make a specific decision to approve or deny MCC's request for a waiver of 4 CSR 240-32.080(5)(A)1, Staff recommends the Commission deny the request.

QUARTERLY QUALITY SERVICE REPORT

COMPANY:

DATE:

Number of Exchanges:

Quarter Reporting

SERVICE ITEMS	Objective Level	ITEM BASE	Number meeting Objective	Item results	Surveillance Level
Basic Service Orders with in 5days	> 90%	<input type="text"/>	<input type="text"/>		< 85%
Installation Commitments	>95%	<input type="text"/>	<input type="text"/>		< 90%
OPERATOR ASSISTED CALLS	100% < 12 SECONDS	<input type="text"/>		<input type="text"/>	> 14 SECONDS
CUSTOMER ASSISTED CALLS	< 15 SECONDS	<input type="text"/>		<input type="text"/>	> 20 SECONDS
ORIGINATED SWITCH CALLS	>98% < 3 SECONDS	<input type="text"/>	<input type="text"/>		< 97.4% < 3 SECONDS
LOCAL EXCHANGED SWITCHED CALLS	> 98% COMPL.	<input type="text"/>	<input type="text"/>		< 95%
INTEREXCHANGED SWITCH CALLS	> 98% COMPL.	<input type="text"/>	<input type="text"/>		< 95%
CUSTOMER TROUBLE REPORT RATE LINES	< 6 REPORTS PER 100 ACCESS	<input type="text"/>	<input type="text"/>		> 8 REPORTS PER 100 ACCESS LINES
CLEARING TIME OOS TROUBLE	CLEARED < 24 HOURS	<input type="text"/>	<input type="text"/>		< 85%
REPAIR COMMITMENTS MET	> 90% MET	<input type="text"/>	<input type="text"/>		< 85% MET
HELD SERVICE ORDERS > 30DAYS				<input type="text"/> 0	MONITORING
HELD SERVICE ORDERS > 60DAYS				<input type="text"/> 0	
HELD SERVICE ORDERS > 90DAYS				<input type="text"/> 0	
HELD SERVICE ORDERS >120DAYS				<input type="text"/> 0	

Attachment 2

Is Deemed

Highly Confidential

In its Entirety

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

In the Matter of Possible Amendment)	Case No.
To Section 4 CSR 240-32)	

NOTICE OPENING NEW CASE, INVITING COMMENTS

Issue Date:

This case is opened to determine whether amendments should be made for 4 CSR 240-32. This chapter of Commission rules generally establishes quality of service requirements for providers of basic local telecommunications services. If such amendments are deemed necessary, the amendments will be filed pursuant to this case. Although interested persons would have an opportunity to submit comments on any proposed rulemaking, the Commission seeks information prior to proposal of such an amendment.

Therefore, the Commission invites any interested person to file comments concerning this matter. Although any interested person is invited to provide comments on any aspect of 4 CSR 240-32, the Commission specifically seeks the following information:

1. Should the Commission revise and/or eliminate any of the requirements contained in 4 CSR 240-32? If yes, please identify how the Commission's rules should be altered.
2. Should the Commission maintain the same quality of service requirements for both competitive and noncompetitive classified telecommunications companies? If no, identify how the Commission's rules should be altered.

3. Should the Commission maintain the same quality of service requirements for non-competitively classified telecommunications companies in exchanges where competitive status has been granted versus non-competitive exchanges? If no, please identify how the Commission's rules should be altered.
4. Should the Commission maintain the same quality of service requirements of 4 CSR 240-32.080(5)(A) for installation orders involving porting of telephone numbers? If no, please identify how the rule should be altered.
5. Should the Commission establish wholesale requirements that place deadlines for carriers to complete wholesale ordering processes such as handling porting requests? If yes, please identify how such a rule would be structured.

IT IS ORDERED THAT;

1. The deadline for the filing of comments is *[provide parties with a minimum of 30 days to submit comments]*.

BY THE COMMISSION

Colleen M. Dale

Secretary

(SEAL)

TONI M. CHARLTON
Notary Public - State of Missouri
My Commission Expires December 28, 2008
Cole County
Commission #04474301