

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

In the Matter of the Application of MCC)
Telephony of Missouri, Inc. for Waiver of)
Compliance with the Requirement of) **Case No. TE-2006-0415**
4 CSR 240-32.)

THE OFFICE OF THE PUBLIC COUNSEL’S REPLY BRIEF

The Office of the Public Counsel continues to oppose MCC Telephony of Missouri, Inc.'s waiver application to avoid compliance with 4 CSR 240-32.080(5)(A) 1 related to the long-standing standards for timely service installation. Public Counsel’s position has not changed since its prehearing statement of position because MCC has not adduced competent and substantial factual evidence at the hearing that can reasonably be deemed “good cause” to support the open ended waiver. MCC’s application did not state good cause and its evidence does not constitute good cause. The arguments in its brief does not provide justification or sufficiently make the case for a “good cause” waiver.

MCC points to the Letter of Intent between MCC and Sprint as the basis for the waiver since that letter is the contractual means MCC uses Sprint to install service for MCC. It is difficult to understand how the joint agreement between these two companies gives rise to “good cause” for this deviation from the PSC’s established service quality standard. As shown at MCC’s brief (p. 3-4), MCC made a business decision to use Sprint as a surrogate for its own installation service and apparently came into the Sprint agreement with its eyes wide open. It knew or should have known of the 5-day installation rule. It knew or should have known the ability of its contractor or joint venture partner to comply with this elementary quality standard. MCC’s “unique”

installation process is not “good cause” for a blanket, unlimited waiver. In its initial brief, Staff sufficiently refuted MCC’s effort to make all MCC installation times a “customer requested time” to avoid the standard. The PSC should not accept MCC’s charade.

The record lacks competent and substantial evidence that the variance or waiver from the strict application of this rule is reasonable, just and not contrary to the public interest.

The special circumstances that MCC cites as reason for the waiver are those it brought on itself when it selected its method of installation to compete in the arena. Because it chose the wrong weapons or ally to help it compete is not “good cause” to essentially rewrite the rule for it. MCC’s own plight is of its own making and without some compelling reason—which has not been supplied,—its waiver should be denied. *See, USCOC of Greater Iowa, Inc. v. Zoning Board of Adjustment of the City of Des Moines*, 465 F.3d 817, 824 (8th Cir. 2006).

Public Counsel asks the Missouri PSC to deny the waiver so that the rule’s “spirit . . . shall be observed, public safety and welfare secured and substantial justice done.”(as discussed pertaining to zoning variances in *Matthew v. Smith*, 707 S.W.2d 411 (Mo banc 1986).

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Michael F. Dandino

BY: _____

Michael F. Dandino (24590)

Deputy Public Counsel

P.O. Box 2230

Jefferson City, MO 65102

(573) 751-4857

(573) 751-5559

Fax (573) 751-5562

Email: mike.dandino@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was emailed, mailed or hand-delivered this 6th day of April, 2007 to the attorneys of record:

Office General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

William Haas
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
William.Haas@psc.mo.gov

Mark W Comley
MCC Telephony of Missouri, Inc.
601 Monroe Street., Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
comleym@ncrpc.com

Craig S Johnson
Missouri Independent Telephone Group (MITG)
1648-A East Elm
Jefferson City, MO 65101
craig@csjohnsonlaw.com

/s/ Michael F. Dandino
