

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
May, 2012.

In the Matter of the Revised Tariff Filing of)	<u>File No. TR-2012-0298</u>
Choctaw Telephone Company)	Tariff No. JI-2012-0441

**ORDER DENYING PUBLIC COUNSEL'S
MOTION TO SUSPEND AND APPROVING TARIFF**

Issue Date: May 1, 2012

Effective Date: May 11, 2012

On March 14, 2012, Choctaw Telephone Company submitted a tariff to change its approved rates for local telephone service. Choctaw's tariff originally carried a May 1 effective date, but the company has since extended that effective date until July 1. The Office of the Public Counsel filed a motion on March 16, asking the Commission to suspend Choctaw's tariff. Public Counsel subsequently amended its motion on March 19.

Choctaw responded to oppose Public Counsel's motion to suspend on March 29. The Commission's Staff responded to Public Counsel's motion to suspend on March 30, contending that the rates proposed by Choctaw are just and reasonable. Staff advises the Commission to deny Public Counsel's motion to suspend and to either approve Choctaw's tariff or allow it to go into effect on its effective date. The Missouri Small Telephone Company Group¹ and FairPoint Communications Missouri, Inc., also filed pleadings on March 30 opposing Public Counsel's motion to suspend.

¹ The Small Telephone Company Group is an association of small, rural, telephone companies that are similarly situated to Choctaw.

As may be surmised from the involvement of the other telephone companies, the Commission's decision regarding Choctaw's tariff will have an impact beyond a single company. Numerous small rural incumbent local exchange telephone companies have, or will shortly be filing similar tariffs. These tariff filings have been necessitated by an order issued on November 18, 2011, by the Federal Communications Commission (FCC).

The FCC's order determined that many rural telephone companies have been using Federal Universal Service funding to subsidize artificially low end-user rates. For that reason, the FCC ordered that, effective July 1, 2012, it would "reduce, on a dollar for dollar basis, high cost loop support to the extent that a carrier's local rates are below a specified urban local rate floor."² The FCC's order set that local rate floor at \$10 per month for the period of July 1, 2012 through June 30, 2013. The rate floor will rise to \$14 per month on July 1, 2013, and may be further increased in subsequent years.³

Choctaw currently charges a monthly local rate of \$5.25, a rate that has been in effect since January 1, 1983. Thus, Choctaw must increase its local rate to at least \$10 per month by July 1, 2012, or, pursuant to the FCC's order, lose Federal universal service support.

Choctaw is an incumbent local exchange telephone carrier that serves approximately 416 telephone access lines in the single telephone exchange of Halltown. Historically, Choctaw was a monopoly service provider within its exchange and was regulated under a rate of return procedure by which the Commission would review the company's earnings and expenses and establish just and reasonable rates that the company could charge its customers. In recent years, competition has been allowed to

² *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., FCC 11-161, Paragraph 197, Page 76.

develop in the telephone industry and the legislature has accordingly modified the means by which companies such as Choctaw are regulated.

Section 392.200.1, RSMo (Supp. 2010) continues to require that every telecommunications company impose “just and reasonable” charges on its customers. Under the old system of regulation, Section 392.240.1, RSMo 2000 gave the Commission authority to review a telephone company’s earnings and expenses to determine whether the company was indeed charging “just and reasonable” rates. However, in 2008, the legislature modified Section 392.420, RSMo (Supp. 2010) to allow an incumbent local exchange company, such as Choctaw, to waive application of specified statutory provisions if the company was subject to competition within the exchange it serves. The statute specifically allows the company to waive application of the earnings review provision of Section 392.240.1.⁴ Choctaw exercised its right to waive application of Section 392.240.1 when it filed a notice of its waiver elections on March 12, 2012.

Even though Choctaw has waived the earnings review provision of Section 392.240.1, it has not, and cannot, waive the “just and reasonable” requirements of Section

³ *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., FCC 11-161, Paragraph 239, Page 88.

⁴ In its motion to suspend, Public Counsel quotes a portion of Section 392.240, RSMo, but ignores the relevant portion of the statute. A portion not quoted by Public Counsel states:

Notwithstanding any other provision of law in this chapter and chapter 386, where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company’s authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected. In addition, where an interconnected voice over Internet protocol service provider is registered to provide service in an incumbent local exchange telecommunications company’s authorized service area under section 392.550, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected. ...

The preceding paragraph in Section 392.420 specifically lists 392.240.1 as a subsection that may be waived.

392.200.1. Thus, the Commission still must determine whether the revised rates Choctaw would charge under its revised tariffs are “just and reasonable”.

Public Counsel contends the only way the Commission can determine whether the rates Choctaw would impose are “just and reasonable” is to undertake an earnings review of the sort previously authorized by Section 391.200.1. Undertaking such an earnings review would fly in the face of the legislation that specifically allows Choctaw to elect to waive application of such a requirement. Furthermore, such a review is not necessary to determine whether the rates Choctaw would impose are indeed “just and reasonable”.

There is sufficient information available to the Commission to conclude that Choctaw’s revised tariff will result in “just and reasonable” rates. First, as the FCC found in its order, the local rates currently charged by Choctaw are far below the local rates charged by urban telephone companies. The FCC’s order requires Choctaw and similarly situated companies to raise those rates to an amount closer to average or lose USF funding.

Second, Choctaw will not see an overall increase in its revenues as a result of this tariff change. Staff’s recommendation explains that Choctaw intends to increase its residential and business base rates in two steps to meet the FCC’s required minimum rate. The residential rate will initially be increased to \$11.93 per month, rising a year later to the \$14 minimum required by the FCC. The business rate will also be increased to meet the \$14 minimum. Those changes will give Choctaw an extra \$18,817.20 in annual revenue. However, Choctaw will offset that extra revenue by decreasing charges for its MCA plan. That will reduce the company’s annual revenue by \$18,835.44, resulting in an overall annual revenue decrease of \$18.24. Again, since Choctaw will not receive a net increase in its revenues, the Commission concludes that the new rates are “just and reasonable”.

Third, even if an earnings review were undertaken, such a review would be unlikely to yield reliable information at this time. The problem is that the FCC's order does not just affect the small telephone companies' local rates. Another portion of that order requires the companies to reduce their intra-state access rates by July 1, 2012 and to move to a bill and keep regime for intra-MTA wireless traffic. These changes will have an impact on the revenue earned by the companies and would make a historical review of the companies' earnings essentially meaningless for determining their likely future earnings. Given these facts, the Commission concludes that these average rates are just and reasonable.

Choctaw has filed a tariff that will go into effect by operation of law on its July 1, 2012 effective date unless the Commission acts to suspend that tariff. This is a noncontested case and the Commission does not need to make findings of fact based competent and substantial evidence.⁵ After reviewing Public Counsel's motion and the responses filed by Choctaw, Staff, and the other interested telephone companies, the Commission concludes that Public Counsel's motion to suspend the tariff to allow time to conduct a further investigation, including an earnings review, is unnecessary and should be denied.

The Commission will approve Choctaw's tariff to take effect on July 1, 2012, the effective date chosen by the company. Furthermore, the Commission will deny Public Counsel's pending motion to compel discovery as moot.

The Commission will make this order effective in ten days to allow Public Counsel an opportunity to promptly seek rehearing and possible judicial review

⁵ *State ex rel. Public Counsel v. Pub. Serv. Comm'n*, 210 S.W.3d 344 (Mo App. W.D. 2006).

THE COMMISSION ORDERS THAT:

1. The Office of the Public Counsel's Amended Objection and Motion to Suspend is denied.

2. The tariff filed by Choctaw Telephone Company on March 14, 2012, assigned Tariff Tracking Number JI-2012-0441, is approved, as substituted, to become effective on July 1, 2012. The specific tariff sheets approved are:

P.S.C. Mo. No. 1

6th Revised Sheet No. 1, Cancelling 5th Revised Sheet No. 1
1st Revised Sheet No. 1.4, Cancelling Original Sheet No. 1.4

3. Public Counsel's Motion to Compel Discovery is denied as moot.

4. This order shall become effective on May 11, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge