

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. **TC-2005-0174**

From: **Mick Johnson, Utility Operations Technical Specialist II**
Telecommunications Department

John Van Eschen/March 21, 2005
Utility Operations Division/Date

/s/ William K. Haas 03/21/05
General Counsel's Office/Date

Subject: Staff Report

Date: **March 21, 2005**

On December 17, 2004, Lula M. Fabyanic filed with the Missouri Public Service Commission a complaint against VarTec Telecom, Inc. (VarTec). The Complainant is seeking various forms of relief regarding her request for VarTec to move her phone service to a new location. A notice of the complaint was issued to VarTec Telecom, Inc. to respond to the complaint by January 19, 2005. No timely formal response was received. On February 3, 2005, the Commission issued an Order Granting Default and Directing Staff Investigation, in which, Staff was requested to file this Memorandum explaining if VarTec has violated any provision of its tariff, any order or rule of the Commission, or any statute. On February 10, 2005, VarTec filed a motion for reconsideration of the order granting default. On March 1, 2005, the Commission set aside the default.

This complaint centers on allegations VarTec did not install service in a timely manner. The Complainant cites two separate incidents. In the first incident the complainant states she contacted VarTec on April 21, 2003 to submit a move order. On or about June 23, 2003 the order was finally completed and the number was moved to the new location. As a gesture of goodwill VarTec waived the \$30.00 transfer fee and credited her account in the amount of \$200.00. In the second incident on September 16, 2004 the Complainant requested VarTec to move her phone service to another location; however service was not installed until October 11, 2004. The Complainant seeks the following relief in the form of a \$200 credit to telephone bill, plus restitution in the amount of \$500.

VarTec was granted a certificate of service authority to provide basic local telecommunications service on March 16, 2001 in Case No. TA-2001-363. The company has paid a portion of their current assessment, but its third quarter payment is overdue. Annual reports have been filed for 2002 and 2003. VarTec is what is commonly referred to as a reseller which means VarTec provisions basic local telecommunications service through facilities owned by another company. In this instance VarTec uses the facilities owned by SBC Missouri Inc. VarTec filed for Chapter 11 bankruptcy on November 1, 2004.

The Commission has established quality of service rules for the provisioning of basic local telecommunications service. These rules are contained in Commission rule 4 CSR 240-32. These quality of service requirements apply to all companies providing basic local telecommunications service regardless of competitive classification or whether the company is providing service through its own facilities or on a resale basis. Two rules are relevant to this complaint: The percentage of orders installed by a company within five days and the percentage of commitments met. These rules establish acceptable levels of services for these measurements. Each of these measures will be individually discussed.

Commission rule 4 CSR 240-32.080(5)(A)(1) establishes a service objective that a company will install ninety percent (90%) or more of orders for basic local telecommunications service within five working days. The rule does allow some exceptions where an order may not be counted in the company's results. For example if a customer causes the delay the company may disregard the order in its quality of service report results. Some other examples identified in this rule involve situations where the order is delayed through a declared natural disaster. The other rule relevant to this complain is Commission rule 4 CSR 240-32.080(5)(B)(1). This rule establishes a service objective that a company will meet ninety-five percent (95%) or more of commitments for installation of basic local telecommunications service. Identical exemptions apply to this rule as just previously described.

As these rules show, a company does not need to install every request for basic local telecommunications service within five working days. Likewise a company does not need to meet the commitment date for every order. If the Commission had expected this level of compliance the Commission's rules would need to reflect a service objective of 100% of orders would be installed within five working days and 100% of commitments be met. In this regard the Commission's current rules allow a company to still comply with the Commission's service objectives yet fail to install a particular customer's service in a timely manner or when promised to the customer.

These rules also establish what the Commission calls "surveillance levels". Surveillance levels identify a substandard level of performance. If a company fails to achieve surveillance level the company is expected to immediately investigate and take appropriate corrective action to achieve and maintain the Commission's service objective. The Commission has established surveillance levels of 85% or below for basic local telecommunications service orders installed within five days and 90% or below for meeting installation commitments.

Commission rules require any company providing basic local telecommunications service to submit a quarterly quality of service report. This report identifies the company's compliance with service objectives identified in Commission rules 4 CSR 240-32.080. VarTec's results for the past three quarters reveal the company has met surveillance levels for both measures for all three quarters with the exception that the company failed to meet surveillance level for installation commitments in the second quarter of 2004. VarTec met all service objectives for the final two quarters in 2004 and made a 100% for Installation Commitments both quarters.

VarTec officials claim two factors contributed to the delay in moving telephone service to the new location. One factor is the Complainant furnished incomplete and inaccurate information about the new address to VarTec. A second factor contributing to the delay is the location did not have existing telephone lines provisioned to the premises. The Complainant disputes the claim inaccurate information was provided to VarTec. From Staff's perspective it is somewhat difficult to assess this portion of the dispute. The address provided by the Complainant was forwarded by VarTec to SBC. On several subsequent occasions SBC's systems returned the order to VarTec claiming the address is invalid. When VarTec and SBC finally pinpointed the exact locations, SBC did need to install additional facilities at the customer's location in order to complete the order for VarTec. Service was finally moved to the new location on October 11th. Therefore it took approximately 25 days for service to be installed at the new location.

Commission rules contemplate the possibility of delays for installing basic local service. Commission rule 4 CSR 2403.550 in describing the type of information contained in a company's quality of service report requires a company to identify the number of orders for basic local telecommunications service held beyond 30 days, 60 days, 90 days and 120 days. Held applications are defined as an application for the establishment of basic local telecommunications service which a company has not satisfied within 30 days after the date the applicant desires service to begin. Technically the Complainant's order does not even qualify as a held application because service was ultimately installed in less than 30 days.

Staff is of the opinion that although it is unfortunate the Complainant's service request was not installed in a timely manner VarTech has not violated any Commission rules. Nevertheless the Complainant is requesting certain relief that is beyond the scope of the Missouri Commission. The Complainant is seeking amendments to VarTec's company policy to ensure a supervisor/manager is made aware of any situations where the customer has made two or more verbal complaints to the company. The Complainant wants the company to have a supervisor/manager on call at all times to assist customers in need. The Complainant wants a special team appointed to deal directly with customers that have special needs. These requests by the Complainant go beyond requirements typically applied by the Missouri Commission to any company providing telecommunications service. Financial costs of complying with these requests, if ultimately required by the Missouri Commission, could be significant. The Complainant is also seeking monetary relief. Specifically the Complainant is seeking \$500 in restitution. Such relief is not within the scope of the Missouri Commission.

Staff hereby respectfully submits this Memorandum for review by the Commission. It is Staff's recommendation after review of all of VarTec's written documentation that the company did not violate any Commission rules. This complaint should be dismissed.