

**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    )       Case No. TE-2006-0415  
the Requirements of 4 CSR 240-32.                        )

**STAFF’S INITIAL BRIEF**

COMES NOW the Staff of the Missouri Public Service Commission and for its brief states:

**Introduction**

MCC Telephony of Missouri, Inc., filed an application with the Commission requesting a waiver of compliance with the requirements of 4 CSR 240-32.080 (5) (A) 1 related to time standards for installation of service. This rule provides, in part:

(5) The service objectives, surveillance levels and monitoring criteria for the following categories are:

    (A) Orders for basic local telecommunications service –

        1. Service objective – that ninety percent (90%) or more of such orders shall be installed, except for customer-caused delays, delays caused by a declared natural disaster or a specific exemption requested by a company and approved by the commission staff to address a unique situation or condition –

            A. Within five (5) working days after the customer ordered service; or

            B. On or by the date requested if it is at least five (5) working days after the date the customer ordered service.

Commission Rule 4 CSR 240-32.010(2) authorizes, for good cause, an application for temporary or permanent exemption from the requirements of a rule in Chapter 32.

In the List of Issues, the parties proposed the following two issues for the Commission’s determination:

**Issue 1:** Is there good cause for the Commission to grant MCC's request for a waiver of 4 CSR 240-32.080(5)(A)1?

**Issue 2:** Should the Commission conduct a rulemaking to revise the Commission's quality of service rules?

At the hearing, an additional issue was raised.

**Issue 3:** When a customer agrees to an installation date more than five working days after the customer ordered service, has the customer requested that installation date?

### **Argument**

**1. MCC has not demonstrated good cause for a waiver of the Commission's service installation standard.**

MCC claims an inability to meet this standard due to two factors: (1) MCC has contracted with Sprint, the CLEC (competitive local exchange carrier), to provide network interconnection, switching, numbering and other key inputs to MCC's service; and the contract does not require Sprint to meet the installation standard; and (2) ILECs' (incumbent local exchange carriers') long porting intervals jeopardize MCC's ability to meet this standard.

The Staff disagrees with MCC's contention that the contract excuses MCC and Sprint from meeting the Commission's installation standard. The contract provides \*\*HC \_\_\_\_\_

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\_\_\_\_\_ HC\*\* (Craib Direct, Ex. 1, CC

Schedule 1, p. 9). Regardless of one's interpretation of this contract, a public utility, such as

MCC, cannot contract around regulation by the Commission. *May Department Stores v. Union Electric Company*, 107 S.W. 2d 41 (Mo. 1937).

MCC witness Craib refers to what he calls the obvious truth that were MCC and Sprint able to provision customers at shorter intervals without adding costs so significantly as to make the service unaffordable and therefore undesirable to the customers, they would gladly do so. (Craib Surrebuttal, Ex. 2, p. 5). Although Mr. Craib testified that the installation interval was a negotiated item, he did not know the additional cost to MCC to comply with the Commission's installation standard. (Tr. 103, 54).

MCC witness Craib opines that MCC's service is unique and that certain aspects of the installation process are indeed outside of its control. (Craib Surrebuttal, Ex. 2, pp. 1-2). Mr. Craib explained that it requires two companies, MCC and Sprint, to coordinate their processes. (Tr. 45-46).

Staff witness Henderson, who has 38 years of technical experience within the telecommunications industry, testified that arrangements where one company assists another company in completing a service order are not unique. (Henderson Rebuttal, Ex.6, pp. 8, 10-11). Other LECs perform the same steps that MCC and Sprint perform in installing service. (Liston, Tr. 164-66). Moreover, MCC does not explain how the coordination between it and Sprint differs from the coordination between two departments within the same company.

MCC next blames a wide variance in ILEC porting intervals for its inability to meet the Commission's installation standard. (Application for Waiver, p. 3). MCC witness Liston testified that the industry has agreed on five business days to port a number. (Tr. 177). Information provided by MCC shows that all five ILECs listed by it have porting intervals of

five business days.<sup>1</sup> (Craib Surrebuttal, Ex.2, CC Schedule 2, MCC Response to Staff Data Request No. 6). Even if ported numbers are excluded from MCC's results, MCC doesn't meet the Commission's installation standard. (Henderson Rebuttal, Ex. 6, p. 8; Craib, Tr. 44). So, ported numbers are not the problem.

Why then doesn't MCC meet the five-day installation standard? One, MCC has too few installation technicians. After taking the customer's ordering information, MCC's customer services representative offers the customer the earliest possible time slot that a technician is available to complete the installation. (Trefry Direct, Ex. 3, p. 4). MCC does not have a maximum length of time that an installation may be delayed because of the unavailability of a technician. (Trefry, Tr. 129). Two, MCC processes ported numbers in two series of five day periods rather than running the two five day periods in parallel. (Trefry Direct, Ex. 3, pp. 2-3; Liston Direct, Ex. 5, pp. 4-9; Liston, Tr. 156-60). Three, from MCC's poor performance in meeting other Commission quality of service standards (Henderson Rebuttal, Ex. 6, pp. 13-17), one could conclude that MCC is not interested in complying with the installation standard either. Four, and most importantly, MCC has not attempted to meet the installation standard. The contract provides that **\*\*HC** \_\_\_\_\_

\_\_\_\_\_ **HC\*\*** (Craib Direct, Ex. 1, CC Schedule 1, p. 72).

**\*\*HC** \_\_\_\_\_

\_\_\_\_\_ **HC\*\*** (Craib, Tr. 65-66).

Why wouldn't MCC attempt to meet the five-day installation standard? One, the reality of the situation is that it is costly for any company to maintain the Commission's service

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<sup>1</sup> Of eight CLECs identified by MCC, two have porting intervals of seven days, one has a porting interval of six days, four have porting intervals of five days, and one has a porting interval of three days.

objective for installing service. (Henderson Rebuttal, Ex. 6, p. 9). If MCC can save money on installation costs, it will have a competitive advantage. (Henderson, Tr. 215-16). Two, MCC does not see itself as a basic local telecommunications company. A very low percentage of brand new customers order MCC's telephony service but do not take Mediacom's cable television service. (Craib, Tr. 39-40). The majority of people who take MCC's telephony service are existing customers already taking Mediacom's cable television service. (Craib, Tr. 39). MCC and Mediacom offer a bundled package of video, data and voice. (Craib, Tr. 41). Most people try the bundled package because of its price. (Craib, Tr. 114). Finally, Mr. Craib stated that if the installation interval is unacceptable, the customer need only hang up the phone and have no other dealings with MCC's voice offering. (Craib Surrebuttal, Ex. 2, p. 2). A company struggling to win a share of the telecommunications market would not have such a cavalier attitude.

If MCC's request for a waiver of the installation standard is waived, then ILECs and other CLECs will follow suit. (Henderson Rebuttal, Ex. 6, p. 9; Tr. 195-96). Then, to whom will a customer turn for prompt installation of this essential service?

In summary, MCC's attitude that it does not care if it loses a potential voice only customer does not demonstrate good cause to waive the Commission service installation standard.

## **2. The Commission should conduct a rulemaking to consider revising the quality of service standards.**

The Commission's quality of service standards were last reviewed in 2004. The Commission should explore whether the service objective for installing service should be revised, whether a different standard should be established for competitive situations, whether

service orders involving porting a telephone number warrant a different service standard, and whether to establish minimum porting time frames. (Henderson Rebuttal, Ex.6, pp. 12-13). Although the ILECs are meeting the industry agreed upon standard for porting numbers in five days, three of eight CLECs identified by MCC do not meet that standard (Craib Surrebuttal, Ex.2, CC Schedule 2, MCC Response to Staff Data Request No. 6), which could conceivably cause a company to fail to meet the Commission's objective that 90% or more orders for basic local service shall be installed within five business days.

**3. When a customer accedes to an installation date beyond the five-day window, the customer has not requested that installation date.**

The Commission's installation standard requires MCC to install 90% or more of orders for basic local service within five working days after the customer ordered service *or* on or before the date *requested* if it is at least five working days after the date the customer ordered service.

At hearing, MCC witness Craib suggested that a customer who agrees to an installation date beyond the five-day window has *requested* an installation date beyond the five-day window. (Tr. 96).

The Staff disagrees with the suggestion. When a customer is placing an order for service, MCC does not inform the customer of the Commission's installation standard. (Craib, Tr. 57, 96). When a customer is placing an order for service, MCC does not offer an installation date within the five-day window. (Trefry, Tr. 132). When a customer is placing an order for service, MCC offers the customer an installation date based on MCC's schedule and convenience. (Trefry Direct, Ex.3, p. 4; Craib, Tr. 98).

Where MCC offers a customer a “take it or leave it” installation date beyond the five-day window, the customer cannot be said to have requested that installation date.

### **Conclusion**

WHEREFORE, the Staff recommends that the Commission deny MCC’s application for a waiver of 4 CSR 240-32.080(5)(A)1.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23<sup>rd</sup> day of March 2007.

/s/ William K. Haas