

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 30th day
of October, 2008.

In the Matter of Windstream Missouri, Inc.'s Tariffs)	
Filed to Adjust Rates and Rebalance Local Basic Rates)	<u>Case No. TT-2009-0134</u>
and Switched Access Rates Under Section 392.245,)	Tariff No. JI-2009-0198
RSMo, as amended by H.B. 1779.)	

**ORDER DENYING PUBLIC COUNSEL'S REQUEST
FOR SUSPENSION OF TARIFF**

Issue Date: October 30, 2008

Effective Date: November 9, 2008

Windstream Missouri, Inc., submitted a tariff revision (File No. JI-2009-0198) on September 15, 2008. That tariff submission purports to adjust Windstream's maximum allowable prices and current rates for basic local telecommunications service and service charges by the change in the Consumer Price Index (CPI) in accordance with Section 392.245.4(1)(a), RSMo.¹ Windstream also increases its access line rates by \$1.50 and offsets that revenue increase by decreasing its terminating intrastate intraLATA Carrier Common Line (CCL) access rate by \$.0137 per minute of use under a rate rebalancing as provided for in Sections 392.245.8 and .9. Finally, the tariff also increases rates for certain non-basic charges under Section 392.245.11.

On October 15, 2008, the Office of the Public Counsel filed a pleading stating an objection to the basic local rate increase proposed by Windstream and stating that "a brief

¹ All statutory references are to the Revised Statutes of Missouri, as supplemented and as amended by H.B. 1779, effective August 28, 2008.

30 day suspension of the [tariff's] effective date may be in order.”² Even though Public Counsel recognizes that “HB 1779, seems to give Windstream unbridled discretion to rebalance with or without any justification,” Public Counsel still argues that the Commission maintains authority under Section 392.185 to review the rate rebalancing and increases to determine if they are just and reasonable. Further, Public Counsel requests that the Commission conduct an investigation under Section 386.420.6 into “the reasonableness of the rebalancing and its impact on the ratepayers and the public interest and to determine if the IXCs carry out their obligation to pass this reduction in access rates through to their [Missouri] customers by a reduction in long distance rates.”³ Finally, Public Counsel requests that if the Commission takes no action regarding the investigation, that the Commission should not adopt an order approving the tariff.

Windstream and the Staff of the Missouri Public Service Commission each filed a response on October 23, 2008. Windstream and Staff both argue that the language of Sections 392.245.8 and 392.245.9 is unambiguous and that no Commission approval of this rate rebalancing is necessary. Furthermore, Staff argues that a suspension of this tariff would be inappropriate because in its opinion, after its review of the data including information on switched access usage, customer line counts, information from the U.S. Department of Commerce regarding the CPI, and a copy of the customer notice, Windstream has performed the necessary calculations correctly and the customer notice is adequate.

² *Office of the Public Counsel's Objection to Local Basic Rate Increase Under Rebalancing Statute*, (filed October 15, 2008) p. 6.

³ *Id.*

Staff also argues that legally, a suspension in this matter would be contrary to case law. Staff cites to the *SBC* case⁴ in which the Missouri Court of Appeals for the Western District rejected a similar argument regarding the reasonableness of rates by a price cap company. In that case, the Court stated that where a company is subject to price cap regulation under Section 392.245, the statute sets forth what is a just and reasonable rate. The Court specifically rejected the argument that the Commission could conduct “an independent just and reasonable analysis separate from its analysis concerning whether the proposed rate increases were in keeping with the statutory maximum allowable price,”⁵ set out in Section 392.245.11.

Also in its recommendation, Staff agrees with Public Counsel that the outcome of the rebalancing will be that “local rates will increase in order to replace lost revenue attributable to lower access rates, with little hope that reduced long distance rates will flow through to end users.”⁶ Staff recommends that rather than conduct an investigation as suggested by Public Counsel, that the Commission continue to conduct investigations into the ongoing status of competition as authorized in Section 392.245.5.⁷

The Commission has reviewed the objection and suggestions of Public Counsel and the responses of Windstream and Staff including its verified memorandum. The Commission agrees with Staff that under Section 392.245, and the holding of the *SBC*

⁴ *State ex rel. Southwestern Bell Telephone, L.P., d/b/a SBC Missouri v. Missouri Public Service Commission*, 173 S.W.3d 327 (Mo. App. W.D. 2005).

⁵ *Id.* at 331.

⁶ *Staff's Response to Office of the Public Counsel's Objection to Local Basic Rate Increase Under Rebalancing Statute*, (filed October 23, 2008) Appendix A, p. 3.

⁷ Staff also filed a motion requesting that it be allowed to correct an error in its recommendation. That motion is granted.

case, it is contrary to current law to suspend Windstream's tariff in order to conduct a separate just and reasonable analysis. Although Section 392.185 sets forth one of the purposes of Chapter 392 as ensuring reasonable rates,⁸ the statutory language is unambiguous as to how a company under price-cap regulation may rebalance its rates. Furthermore, the Court has clearly stated that if the rates meet the criteria as set out in the statute, no just and reasonable analysis by the Commission is necessary, nor is it authorized.

Windstream is a small incumbent local exchange company which has been granted reduced regulation under the provisions of the price cap statute.⁹ The rebalancing portion of Section 392.245 states in pertinent part as follows:

8. An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company first exercises its option to rebalance rates under this subsection. Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company first exercises its option to rebalance rates under this subsection.

9. Other provisions of this section to the contrary notwithstanding, the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the annual revenue loss resulting from its access service rate reduction by increasing each year its monthly maximum allowable prices applicable to basic local exchange telecommunications

⁸ Section 392.185.

⁹ Section 392.245.

services by an amount not to exceed one dollar fifty cents. . . . The total annual revenue increase due to the increase to the monthly maximum allowable prices for basic local telecommunications service shall not exceed the total annual revenue loss resulting from the reduction to intrastate access service rates.¹⁰

Windstream's rebalancing will increase basic local rates by \$1.50 per line for both business and residential customers and decrease its intraLATA terminating CCL charge to offset the increased revenue.¹¹ Windstream also proposes an increase in basic local rates by an additional 3.7108%, which is the amount Windstream calculated, and Staff verified, from a twelve-month moving average increase in the CPI as authorized in Section 392.245.4(1)(a).¹² Windstream's tariff will also increase rates for certain non-basic services and will implement directory assistance and billed number screening charges.¹³

The Commission acknowledges Public Counsel's objection, but finds that Windstream's proposed rebalancing, increases, and decrease in the intraLATA terminating CCL are changes authorized and allowed by Section 392.245.¹⁴ Thus, the objection is without merit. In addition, after reviewing the Staff recommendation, the Commission finds that Windstream has correctly calculated the rebalancing as set out in the statute. Therefore, the Commission shall deny the request to suspend Windstream's tariff.

¹⁰ Prior to the most recent revision of Section 392.245, Subsection 9 required that within one year after the rebalancing, the Commission must conduct an "investigation of the cost justification" for the rebalancing. That requirement was removed from the statute by H.B. 1779, effective August 28, 2008.

¹¹ *Staff's Response to Office of the Public Counsel's Objection to Local Basic Rate Increase Under Rebalancing Statute*, (filed October 23, 2008) Appendix A, p. 1.

¹² *Id.*

¹³ *Id.* at pp. 2-3.

¹⁴ And with regard to directory assistance, that service is deemed as competitive under Section 392.361.8, RSMo as amended by H.B. 1779.

Public Counsel also requests that the Commission conduct an investigation in order to review whether Missouri customers are receiving the benefits of the rate reductions for intraLATA terminating access rates by a corresponding reduction of long distance rates. Although many competitive services have been deregulated, the Commission maintains authority under Section 392.245.5 to investigate periodically (no more than every two years) the status of competition in the exchanges of price cap companies. In addition, Section 392.245.10 requires decreases in intrastate toll rates to be passed through to customers once such rate reductions reach a level making it practical to do so. The Commission agrees with Staff that reviews of the status of competition should continue on a regular basis as authorized by the statute. Furthermore, when making such a review, Staff should indicate whether the intrastate toll rates in an area subject to rebalancing have been altered since the rebalancing. Therefore, the Commission shall direct its Staff to conduct periodic reviews of the status of competition as authorized by Section 392.245.5.

THE COMMISSION ORDERS THAT:

1. The Motion to Amend Staff Response is granted.
2. The Office of the Public Counsel's Objection to Local Basic Rate Increase Under Rebalancing Statute filed on October 15, 2008, is overruled and the request to suspend the rebalancing tariff, File No. JI-2009-0198, is denied.
3. The Staff of the Missouri Public Service Commission shall continue to conduct investigations into the status of competition as authorized by Section 392.245.5, RSMo, and when reporting the results of its investigation, Staff shall include information on intrastate toll rates in areas subject to rebalancing as set out above.

4. This order shall become effective on November 9, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Jarrett, and Gunn, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge