

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

In the Matter of a Proposed New Rule 4)
CSR 240-2.061)

Case No. TX-2005-0194

**COMMENTS OF THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and, pursuant to the Notice to Submit Comments published in the *Missouri Register* on April 15, 2005, submits the following comments:

I. INTRODUCTION

In the April 15, 2005, edition of the *Missouri Register*, the Missouri Public Service Commission (Commission) published its proposed rule, 4 CSR 240-2.061 – Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest. The purpose of the proposed rule is to implement a process for the Commission to entertain requests for expanded local calling area plans that provide toll-free or discounted calling within a community of interest.

On March 18, 2004, the Commission issued an order establishing a Task Force to investigate whether changes should be made to the Metropolitan Calling Area (MCA) Plan and to calling scopes in general, and if so, to identify what changes are needed. The Task Force members represented diverse groups including the public, the Commission's Staff, the Office of the Public Counsel, the Missouri Legislature and the telecommunications industry. The Commission directed the Task Force to evaluate the need to make changes to Missouri's calling scopes in general by focusing on key questions and topics. These questions and topics included:

(1) what type of calling scopes, prices and plans are desired by customers; (2) what changes, if any, should be made to the MCA plan; (3) what changes, if any, should be taken to expand calling scopes in rural areas; (4) the impact of alternative forms of communications; (5) local number portability and the MCA; and, (6) whether legislation is needed.

On September 29, 2004, the Task Force filed, in Case No. TW-2004-0471, the MCA/Calling Scope Task Force Final Report. Although the Final Report does not specifically address all of the questions presented by the Commission, the Report recommends a rulemaking and sets forth guidelines for outlining procedures for submitting calling scope petitions. Proposed rule, 4 CSR 240-2.061, incorporates these guidelines as more fully discussed below. The proposed rule is consistent with the Task Force Report. The proposed rule was shared with Task Force members and the industry in general for feedback prior to publication.

If the Commission determines there is a need for a process to entertain requests for expanded local calling area plans, Staff supports this rule as providing a sufficient process.

II. COMMENTS

4 CSR 240-2.061(1)

This section outlines the definitions applicable to the proposed rule. The definition of “community of interest” sets forth the definition anticipated by the Task Force Report, and includes a group of people connected by a common calling interest or need. The Staff supports this section of the proposed rule.

4 CSR 240-2.061(2)

This section of the proposed rule sets forth an application process whereby at least fifteen percent of the local exchange telecommunications service subscribers within the requesting exchange, or a governing body of a municipality or school district within the requesting

exchange, may submit a petition for an expanded local calling area plan. The Task Force Report recommends the process be initiated by a petition from these entities or by a petition from a telecommunications company. In drafting the proposed rule, “petition” was changed to “application” to provide consistency with other commission filing procedures (i.e., application for certificate of service authority, application for authority to merge or consolidate, application for waiver or variance). This change also provides consistency with commission rules that require filings to be made by a Missouri attorney and provides a means for the petitioner or applicant to be represented before the Commission.

This change in the Task Force recommended process resulted in corresponding changes to other recommendations later in the proposed rule. The requirement to obtain an attorney has resulted in the Office of Public Counsel (OPC) representing many of the requests currently pending before the Commission in other docketed cases and appears to have created some confusion in the process as OPC is being put in the position of verifying the continued need and want for a particular calling scope plan. Therefore, Staff supports the requirement that the application/petition be filed by a Missouri attorney, instead of a process where the petitioner is represented by the OPC which must represent the interests of all Missouri consumers rather than the interests of the customers in a petitioning exchange. This revision would empower a representative to appear before the Commission and negotiate on behalf of the applicants/petitioners.

The ability for a petition to be submitted by a telecommunications company was also removed during the drafting process at the suggestion of the telecommunications industry. Members of the industry that were also members of the Task Force suggested that by including this option in the proposed rule, existing statutory authority for filing similar proposals could be

interpreted as being circumvented. Telecommunications companies already have the authority to propose optional calling scope to address calling needs, so adding the option in this proposed rulemaking is not necessary.

The Staff supports this section of the proposed rule because a significant percentage of customers within an exchange, or elected officials within the exchange, must be interested in the expanded calling plan to initiate a petition, and because it ensures proper representation for the petitioners before the Commission.

4 CSR 240-2.061(3)

This section of the proposed rule identifies those items that shall be included with an application for expanded local calling area plans. The requirement at (3)(B) that the application include a statement explaining how the proposed plan will satisfy the objectives of the community of interest is a requirement added during the drafting of the proposed rule. The requirement will serve to provide the Commission with information, from the applicant's point of view, as to how the request will address the needs of a particular community of interest. Subsection (2)(F) was also added during the drafting of the proposed rule to clarify that only one signature per telecommunications subscriber is allowed on any petition attached to an application. This proposed language is consistent with the Task Force Report and the Staff supports this section of the proposed rule.

4 CSR 240-2.061(4)

This section was not recommended by the Task Force; however, during the drafting of the proposed rule, it was determined that clarification was needed to make sure those individuals signing a petition were cognizant of the purpose of the petition. This section requires each page of a petition to clearly identify: (1) a description of the plan, (2) the proposed price and terms of

the plan, (3) a statement as to whether the plan would be optional or mandatory, and (4) a statement as to the toll or local classification of the calling plan traffic and associated inter-company compensation. Staff supports this section because it provides some assurances that consumers are aware of the purpose of the petition.

4 CSR 240-2.061(5)

This section states the Commission will provide notice of the application to all incumbent local exchange telecommunications carriers in the affected area, all competitive local exchange telecommunications carriers except those providing prepaid local service and all interexchange telecommunications carriers (IXCs). The proposed rule also states that all notifications will include instructions on how to obtain a copy of the application. These provisions of the section are consistent with the Task Force Recommendation.

Due to the voluminous number of IXCs, the rule provides for notice to these carriers via the Commission's Electronic Filing and Information System (EFIS). Staff has discussed the requirement to provide EFIS notification to IXCs with the EFIS coordinator and the Data Center. To implement EFIS, several fields needed populating with information not readily available. In these instances, the EFIS workgroup entered mock information with the expectation that carriers would correct their information when using EFIS. There are many IXCs that have invalid contact information in EFIS. In this respect some IXCs may not receive notification.

The Task Force Report anticipated Commission notice would be provided within thirty days from the submission of the petition (or application). The intent of the Report was to provide specific timeframes for expeditiously processing requests for new or modified local calling scope area plans. Concerns were raised during the drafting of the rule about placing

deadlines on the Commission, so the 30-day requirement for Commission action was removed from the proposed rule.

Staff supports this section of the proposed rule.

4 CSR 240-2.061(6)

This section was not proposed in the Task Force Report, but is consistent with other Commission rules regarding intervention in a case. The requirement simply makes any incumbent local exchange carrier (ILECs) serving any exchange proposed to be affected by the application an automatic party to the case without having to request intervention. During initial discussions of the proposed rule language, it was suggested that this requirement should not be limited to ILECs, but should make all competitive local exchange carriers, incumbent local exchange carriers, wireless providers and VoIP providers parties to the case. Staff does not support this suggestion. The Commission does not have a means to easily identify where competitive carriers are offering service to determine which competitors would be impacted by the expanded calling scope proposal. Further, the Commission does not have a means to identify all potentially impacted wireless and VoIP providers offering service in the state. Staff supports this section of the rule as proposed.

4 CSR 240-2.061(7), 4 CSR 240-2.061(8) and 4 CSR 240-2.061(9)

These sections of the proposed rule discuss the conference to be held within sixty days of the filing of the application. The proposed rule contemplates that parties will determine if any modifications should be made to the application; will explore how the applications could be technically implemented in the most efficient manner consistent with the community of interest; and, will explore the appropriate intercarrier compensation. To lend guidance to the discussion, the rule states that any proposal involving a mandatory toll-free plan or the expansion of the

metropolitan calling area plan shall result in the parties exploring an intercarrier compensation arrangement that does not involve access charges. In Staff's opinion this provision does not prohibit the parties from exploring alternative intercarrier compensation arrangements for other types of proposals. Alternatively this provision does not require the parties to agree to alternative intercarrier compensation arrangements that do not involve access charges if the proposal involves a mandatory toll-free plan or expansion of the MCA. This provision simply places an expectation on parties to seriously consider intercarrier compensation arrangements that do not involve access charges if the proposal does involve a mandatory toll-free calling plan or the expansion of MCA. Finally, section (9) requires the applicant to file either a statement that the application remains unchanged or a filing that specifically identifies the modifications to the application as a result of the conference.

While these sections are generally consistent with the Task Force Report, the Report appears to anticipate that the parties would reach agreement on any changes during the conference. According to the Report, the petitioning party has the right to accept or reject any changes proposed to the petition/application and is required to notify the Commission and all other parties of the final petition to be considered. The proposed rule anticipates the parties will discuss the components of the petition and requires the applicant to file a statement that the application remains unchanged or alternatively, identify specific modifications to the application as a result of the conference. Staff supports this change from the Task Force Report as it provides an avenue for the applicant to notify the Commission and the parties of the final petition for consideration.

4 CSR 240-2.061 (10), (11) and (12)

Section (10) requires any party objecting to the applicant's final application filing to file such objections with the Commission within 10 days of the filing of the applicant's final application. Sections (11) and (12) require telecommunications companies to file illustrative tariffs within 90 days of the filing of the applicant's final application.

The illustrative tariffs are to identify all rate adjustments necessary to implement the applicant's proposal along with any supporting documentation for rate increases or when establishing new rates designed maintain revenue neutrality. These sections are consistent with the Task Force Report that require carriers to submit, within 90 days of a Commission request, statements of revenue and expense impacts as well as revenue neutrality requirements related to the petition. However, by requiring the parties to submit the information in the form of illustrative tariffs with supporting documentation, the Commission and all parties can see the actual impact to consumer rates necessary to recover any revenue and expense requirements.

In preliminary discussions, several parties oppose the submission of illustrative tariffs until such time as the Commission acknowledges the legitimacy of a proposal for consideration. In other words, the parties state that it is not productive to create illustrative tariffs for an application that has no merit. These parties suggest another step should be added between the filing of the applicant's final proposal and the filing of the illustrative tariffs whereby the Commission would make a determination as to whether the proposal was acceptable. Staff opposes this additional step. In Staff's opinion, the Commission cannot make an informed decision as to the acceptability of the plan without evaluating the proposals for maintaining any revenue and expense requirements. Therefore, Staff supports these sections and the filing of illustrative tariffs to implement the Task Force recommendation.

4 CSR 240-2.061(13)

This section of the proposed rule allows the Commission to hold public hearings and/or meetings in locations affected by the application. This section is consistent with the Task Force Report and Staff supports the proposed language as it allows the Commission to determine whether public hearings or meetings are necessary or beneficial.

4 CSR 240-2.061(14)

This section of the proposed rule gives the Commission the discretion to determine whether a hearing is necessary. Under the Task Force Report, a hearing would be mandatory. However, the Commission may determine after reviewing the illustrative tariffs and supporting documentation that it has enough information in the record to determine whether the calling scope proposal is appropriate. The Commission may also determine that an on-the-record presentation or briefing schedule would be more appropriate than a hearing. Staff supports the proposed rule language because it gives the Commission the flexibility to determine the appropriate method of proceeding with the application instead of requiring a hearing in all instances.

4 CSR 240-2.061(15) and (16)

Sections (15) and (16) provide guidance to the Commission for its final determination on the application. The Commission, in its findings, determines whether the proposed calling plan is just, reasonable, affordable and in the public interest. Consistent with the Task Force Report, the Commission will consider evidence on the competitive implications, revenue impacts and company and social costs associated with the proposal, balanced against the objectives of and costs to the community of interest. Based on evidence in the record, the Commission may modify the proposed rates, terms or conditions of the application. In initial feedback on the

proposed rule language, parties expressed concerns with the Commission modifying an application, stating the Commission did not have authority to modify an application without evidence in the record. To address this concern, Staff suggests the proposed rule language modified as follows.

(16) **Based on the evidence in the record**, [T]he commission may modify the proposed rates, terms or conditions in its decision on the application.

WHEREFORE, the Staff of the Missouri Public Service Commission respectfully submits these comments on the proposed rule.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ **Marc Poston**

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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 13th day of May 2005.

/s/ Marc Poston

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AFFIDAVIT OF NATELLE DIETRICH

STATE OF MISSOURI)
)ss.
COUNTY OF COLE)

Natelle Dietrich, being of lawful age and after being duly sworn, states that she is employed by the Missouri Public Service Commission as a Regulatory Economist III in the Telecommunications Department, that she participated in the preparation of and read the foregoing Comments of the Staff of the Missouri Public Service Commission, that she has knowledge of the matters set forth in the Commission, and that such matters are true to the best of her knowledge and belief.



Natelle Dietrich

Subscribed and sworn to before me this 13th day of May 2005.

