

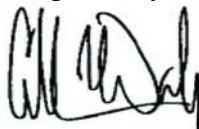
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Amendment)
To 4 CSR 240-3.545, Filing Requirements) **File No. TX-2010-0159**
For Telecommunications Company Tariffs)

STAFF REPLY COMMENTS

COMES NOW the Staff of the Missouri Public Service Commission and respectfully submits the attached Reply Comments in this rulemaking matter.

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 5th day of March, 2010.



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Reply Comments of the Staff of the Missouri Public Service Commission

The Staff of the Missouri Public Service Commission (Staff) filed comments on February 11, 2010 supporting the proposed rulemaking. On March 3, 2010 AT&T Missouri (AT&T) filed comments recommending additional revisions to this rulemaking. The purpose of these reply comments is to highlight and respond to AT&T's proposals so the Commission may more easily focus on areas of disagreement between AT&T and Staff.

Staff disagrees with AT&T's recommendation to establish a ten day time frame for tariff filings introducing or revising terms and conditions of competitive services.

AT&T proposes to insert language within this rule to allow a ten day time frame for tariff filings introducing or revising terms and conditions of individual competitive services where there is no resulting rate impact. AT&T provides various statutory citations suggesting the legislature's intent is to shorten deadlines for all tariff filings. Consequently AT&T is recommending a ten day rather than thirty day time frame for any tariff filing not creating a rate impact. Stated differently, AT&T is proposing the Commission allow ten day time frames for any tariff filings involving a competitive service.

In Staff's opinion, AT&T's proposal goes too far by allowing all other competitive service tariff filings to be filed on ten days rather than thirty days notice to the Commission. Absent a definitive statutory basis for determining the legislature's intent, Staff submits the public interest is best served by maintaining the thirty day requirement. Some tariff filings can be difficult to evaluate. Greatly shortening the time frames for such filings will undoubtedly make it more difficult for any party to evaluate a filing and determine whether to intervene or take some sort of action. In addition, once a tariff filing becomes effective the company no longer has the burden of proving the reasonableness of the filing. Such factors are important considerations especially since all of AT&T's services have competitive classification, including AT&T's switched and special access services.

Regardless of the issue of ten days versus thirty days for certain tariff filings, AT&T points out the proposed deletion of thirty day tariff filing requirements will create ambiguity and a gap in the Commission's rules. Upon further reflection, Staff agrees with this portion of AT&T's comments. The rulemaking's proposed deletions of two separate subsections of the Commission's existing rules relating to thirty day tariff filings

may generate some ambiguity. Therefore, Staff recommends the Commission retain the following slightly revised language of existing rule 4 CSR 240-3.545(18) because it will provide clarity over these other types of tariff filings:

(18) Except as otherwise provided in this rule, no tariff will be accepted for filing unless it allows the full thirty (30) days required by law from date of receipt until effective date.

If 4 CSR 240-3.545(18) is retained then subsequent sections to 4 CSR 240-3.545(18) will need to be re-numbered. In addition, if the Commission accepts Staff's recommendation then AT&T's proposal to alter the heading for Section 16 is unnecessary.¹

Staff disagrees with AT&T's recommendation to remove the phrase "must be offered in a nondiscriminatory manner" from the promotion requirements within Section 16 (D).

AT&T proposes to delete the phrase "must be offered in a nondiscriminatory manner" within Section 16 (D) pertaining to promotions. AT&T's rationale is primarily based on legal argument. AT&T acknowledges Section 392.200.3 prohibits any undue or unreasonable discrimination; however, AT&T points out Section 392.200.11 RSMo trumps this statute with the phrase "Notwithstanding any other provision of this section..." In this regard AT&T states Missouri law removes promotions from any potential discrimination analysis. Nevertheless, AT&T argues removing the phrase will not foreclose the opportunity for the Commission to examine whether promotions are subject to anti-discrimination analysis. AT&T appears to claim the Commission may later address the issue by presumably suspending a promotion.

Staff is uncertain why AT&T is raising this issue at this time. The phrase "must be offered in a nondiscriminatory manner" has been in Section 16 (D) of the Commission's rules for a number of years; certainly prior to the passage of House Bill No. 1779. Moreover, House Bill No. 1779 did not alter Section 392.200.11 RSMo. Regardless, AT&T fails to explain how its proposal might still allow the Commission to later address this issue. For example, AT&T's comments fail to mention Section 392.200.2 RSMo which states, "...Promotional programs for telecommunications services may be offered by telecommunications companies for periods of time so long as the offer is otherwise consistent with the provisions of this chapter and **approved by the commission...**" [emphasis added] AT&T's comments also fail to explain how the Commission might suspend a promotion if it can be filed on one day's notice as proposed by Section 16 (D). In Staff's opinion, the Commission should simply reject AT&T's proposal and retain the phrase in the Commission's rule.

Staff agrees with AT&T's recommendation to insert "available on an a la carte basis" within Section (16)(B).

¹ Conversely, if the Commission accepts AT&T's proposal then altering the heading as recommended by AT&T is appropriate.

AT&T is proposing to insert the phrase "available on an a la carte basis" within this section. AT&T is recommending the insertion of this phrase for clarity purposes. For instance, AT&T claims inserting the phrase will make it clear subsections A and B apply to only a la carte services while subsection C applies to package of services. Staff agrees with AT&T's proposal.

Summary

Staff disagrees with AT&T's proposal regarding a ten day requirement for all competitive tariff filings; however, Staff recommends the Commission retain a revised version of Section 18. If approved, subsequent sections of the Commission's rules will need to be renumbered. Staff disagrees with AT&T's proposal to eliminate the phrase "must be offered in a nondiscriminatory manner" within Section 16 (D) pertaining to promotions. Staff is agreeable to inserting the phrase "available on an a la carte basis" within Section 16 (B). Amended Attachment A contains a revised version of Staff's additional revisions for this rulemaking.

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

PROPOSED AMENDMENT

4 CSR 240-3.545 Filing Requirements for Telecommunications Company Tariffs

PURPOSE: These amendments to sections (16) through (23) clarify certain effective dates and other administrative procedures for proposed tariff revisions, consistent with recent changes in the law.

(16) Requirements For Tariff Filings That Change Rates For Services.
~~[Pursuant to Section 392.500, RSMo.]~~

(A) The commission shall be notified at least ten (10) days in advance of a proposed increase in rates or charges or a proposed change in any classification or tariff resulting in an increase in rates or charges for a competitive telecommunications service ~~available on an a la carte basis.~~ **Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least ten (10) days after the tariff has been filed.**

~~[1. A proposed increase in rates or charges or a proposed change in any classification or tariff resulting in an increase in rates or charges pursuant to section 392.500 is defined as a rate increase to existing rates or charges for any competitive service.~~

~~2. No other tariff changes, except as directed by commission order or as allowed under section (19) below, are permitted on ten (10) day's notice.~~

~~3. Commission notice shall be in the form of a tariff filing with a proposed effective date that is ten (10) days after the tariff has been filed.]~~

(B) The commission shall be notified at least one (1) day in advance of a proposed decrease in rates or charges or a proposed change in any classification or tariff resulting in a decrease in rates or charges for competitive telecommunications services ~~available on a la carte basis.~~ **Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least one (1) day after the tariff has been filed.**

~~[1. A proposed decrease in rates or charges or a proposed change in any classification or tariff resulting in a decrease in rates or charges pursuant to section 392.500 is defined as:~~

~~A. A rate decrease to existing rates or charges for any competitive service;~~

~~B. A proposal to establish or revise a package of services involving a regulated intrastate service provided all regulated~~

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intrastate telecommunications services in the package are currently tariffed on an individual basis.

2. No other tariff changes, except as directed by commission order, are permitted on one (1) day's notice.

3. Commission notice shall be in the form of a tariff filing with a proposed effective date that is one (1) day after the tariff has been filed.]

(C) The commission shall be notified at least one (1) day in advance of either the introduction of a new package of services (as that term is used in section 392.200.12 RSMo Supp. 2008) or a change is made to an existing package of services. The commission shall be notified at least ten (10) days in advance of the elimination of a package of services. Commission notice shall be in the form of a tariff filing with a proposed effective date consistent with required commission notice.

[(C) A thirty (30)-day tariff filing is required to introduce or revise the terms and conditions of any competitive service available on an individual basis. A thirty (30)-day tariff filing is required to eliminate any package of services.]

(D) Promotions are those service offerings that provide a reduction or waiver of a tariffed rate for a limited period of time. New promotions or changes to existing promotions are allowed to go into effect after one (1) day prior notice to the commission. Promotions must be offered under tariff, and prior notification to the commission via a tariff filing is required. Promotions must have established start and end dates and must be offered in a nondiscriminatory manner.

(E) Changes of rates within a previously approved band of rates do not require tariff changes or prior commission notice.

(17) When a telecommunications company files a revised tariff or sheet(s) pursuant to a commission order the cover letter shall state that the filing is in compliance with the commission's order in Case No. ____ and shall indicate the location of the changes in the PSC Mo. No. ____.

(18) Except as otherwise provided in this rule, no tariff will be accepted for filing unless it allows the full thirty (30) days required by law from date of receipt until effective date.

[(19) Promotions are those service offerings that provide a reduction or waiver of a tariffed rate for a limited period of time. Promotions are allowed to go into effect after seven (7) days prior notice to the commission for competitive services and after ten (10) days prior notice to the commission for noncompetitive services. Promotions must be offered under tariff, and prior notification to the commission

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~~via a tariff filing is required. Promotions must have established start and end dates and must be offered in a nondiscriminatory manner.]~~

(19) ~~[(20)]~~ In the case of a change of name, the telecommunications company shall issue immediately and file with the commission an adoption notice substantially as follows: "The (name of telecommunications company) hereby adopts, ratifies and makes its own, in every respect as if the same had been originally filed by it, all tariffs filed with the Public Service Commission, State of Missouri, by the (name of telecommunications company) prior to (date) or the telecommunications company shall file a new tariff under the new name." Specific requirements for filings regarding company name changes are contained in Chapter 2 of the commission's rules in rule 4 CSR 240-2.060. In addition to filing the items in 4 CSR 240-2.060, applicant must notify its customers at or before the next billing cycle of any name change affecting customer recognition of the company and file a copy of that notice with the adoption notice.

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~~[(21) Tariffs sent for filing should be addressed to Secretary, Public Service Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102.]~~

(20) ~~[(22)]~~ ~~[Within six (6) months of the effective date of the rule, all]~~ **All** telecommunications companies shall update the commission's electronic filing system with the current name, address, telephone number and email address for the regulatory contact person within the telecommunications company ~~[This information shall be updated in the electronic filing system]~~ within ten (10) business days of when changes occur.

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(21) ~~[(23)]~~ Waivers regarding compliance with the requirements of this rule granted under previously used rule numbers such as 4 CSR 240-30.010(2)(C) will continue in effect unless otherwise ordered by the commission.

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Case No. TX-2010-0159

AFFIDAVIT OF John Van Eschen

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

John Van Eschen, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing these comments. Any facts therein are true and correct to the best of my knowledge and belief.



John Van Eschen

Subscribed and affirmed before me this 5th day of March 2010.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



NOTARY PUBLIC