

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

In the Matter of a Proposed Amendment to     )  
Modify Financial Information Reporting     )     **File No. TX-2011-0099**  
Requirements     )

**STAFF COMMENTS**

COMES NOW the Staff of the Missouri Public Service Commission and respectfully submits the Comments of Mr. William Voight (Attachment A) and Mr. David Murray (Attachment B) in this rulemaking matter.

Respectfully submitted,



Colleen M. Dale  
Senior Counsel  
Missouri Bar No. 31624  
Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-4255 (Telephone)  
[cully.dale@psc.mo.gov](mailto:cully.dale@psc.mo.gov)

**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 3<sup>rd</sup> day of January, 2011.



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

In the Matter of a Proposed Amendment )  
To Modify Financial Information Reporting )  
Requirements ) Case No. TX-2011-0099

**Comments of the Telecommunications Department Staff  
(Staff) of the Missouri Public Service Commission**

If approved, this proposed rulemaking would alter the minimum financial requirements for companies applying to the Commission for a certificate of service authority to provide basic local telephone service in Missouri. The Commission's minimum financial requirements have been established pursuant to Missouri law, and are used with minimum technical and managerial requirements to protect the public interest by ensuring that telephone utility companies are qualified to provide basic local telephone service.

The most significant change to the existing rule involves changes in financial reporting requirements. However, the proposal would also codify the Commission's existing practice of requiring applicants to submit adequate documentation to demonstrate sufficient technical and managerial resources and abilities to provide basic telephone service. Such requirements are established pursuant to the basic local telephone certification process as outlined in Section 392.455 RSMo.

In terms of financial reporting requirements, the proposed rule would require the applicant to: (1) submit an affidavit from a company officer attesting to sufficient financial resources and affirming that it has not defaulted on financial obligations within the past three years; and (2), submit adequate documentation sufficient to demonstrate that the applicant possesses sufficient financial resources to provide basic local telephone service in Missouri. If the applicant does not have any experience, then the affiant must affirm that the company has access to capital sufficient for the operations of the new company.

### Background Information on the Existing Rule:

The Commission's financial information reporting requirements were included in legislation enacted by the General Assembly at the onset of basic local telephone competition, soon after passage of the landmark Federal Telecommunications Act of 1996. The existing rule applies only when a company seeks to provide basic local telephone service – it does not apply when companies want to provide long distance service. Since its inception, the existing rule has required prospective local telephone companies to submit historical financial information or, if such information is unavailable (as in the case of a new start-up company), the companies were required to submit 12 months of pro forma financial information. This information was then reviewed by the Commission's Financial Analysis Department. Similarly, existing processes require applicants to possess sufficient technical and managerial resources and abilities to

Case No. TX-2011-0099

Page 2 of 2

provide basic local service. These resources and abilities will continue to be reviewed by the Telecommunications Department. No change to the current practice is anticipated; rather, the proposed rule will codify existing practices for demonstration of technical and managerial credentials.

**Support for Approving This Rulemaking:**

The Telecommunications Department Staff supports the rule as proposed. Staff notes the continued deregulatory telecommunications policies endorsed by the Missouri General Assembly. For example, House Bill 1779 permitted Interconnected Voice over Internet Protocol (I-VoIP) telephone providers to become registered and provide telephone service in Missouri without any technical, managerial or financial test. Staff views the financial test rule modifications for local competitors as being consistent with the guidance provided by the Missouri legislature.

There should be minimal consumer impacts associated with the proposed rule change. Staff notes the Commission's snap back rule is designed to permit uninterrupted basic local telephone service in the event a reseller goes out of business.

**Recommendation:**

In conclusion, Staff recommends the Commission approve this rulemaking. The Staff believes conditions and circumstances have changed that warrant changes to the financial test rule.

**Comments:**

The existing financial requirements contained in 4 CSR 240-3.510 codified an internal procedure for administering the basic local telecommunications certificate application process.<sup>1</sup> These specific financial standards were drafted pursuant to Section 392.455(1), RSMo, which states the following:

- (1) A requirement that the applicant possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services

The term “sufficient” is subjective in its interpretation. Consequently, Staff’s initial goal was to set objective standards for a subjective requirement. At the time Staff developed the standard, an authoritative source provided published benchmarks for two primary financial ratios, debt to total capital and pre-tax interest, used to evaluate credit quality of telecommunications companies. The ratios codified in the rule were based on data published in 1999. In order to provide some flexibility in the requirement, the standard also included an alternative. If an applicant was able to demonstrate it had sufficient liquidity available to start operations (four months of operating expenses), then the Staff considered the applicant to have “sufficient” financial resources. At the time Staff developed these financial criteria, there was very little experience with the changing telecommunications industry.

Despite ensuring applicants for a basic local telecommunications certificate met this financial criteria, this has not prevented the insolvency of these companies. According to records contained in the Commission’s electronic filing and information system (“EFIS”) since 2005, at least 16 basic local exchange telecommunication companies have filed for bankruptcy. According to the Consumer Services Department, the Commission has not received any complaints regarding interruption of service or billing issues because of these bankruptcies. Consequently, Staff has learned not only that the current specific financial requirements do not prevent the possibility of insolvency, but the insolvencies themselves do not appear to have caused harm to the public.

Additionally, because the rule includes specific financial data based on benchmark financial ratios last published in 1999, Staff believes the current rule does not allow for the consideration of the dynamic nature of financial analysis. Although admittedly the proposed rule will lose the objectivity of having specific quantitative financial requirements, the proposed rule will focus more on issues that are a direct reflection of actual credit problems experienced by the applicant. Staff believes this proposed rulemaking will achieve the goal of preventing applicants with

---

<sup>1</sup> The current rule was established from Case No. TX-2003-0380. The current rule became effective November 30, 2004.

known credit problems from being allowed to conduct business in Missouri, but at the same time not creating burdensome barriers to entry to compete with other telephone carriers in Missouri.

Staff of the Commission supports the proposed rulemaking. The proposed rulemaking contains provisions that will screen companies and/or their owners for their financial capability in a reasonable manner. An applicant will be required to submit an affidavit signed by an officer of the applicant stating that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. The affidavit must also affirm that the applicant, its parent company, affiliates and principals have not defaulted on any of their financial obligations within the past three years. In the event an applicant and/or its parent company do not have historical credit experience, the applicant will be required to demonstrate sufficient access to capital to begin operations. All applicants must submit adequate documentation demonstrating the applicant has sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. These requirements are more general than the previous requirements; however, they still consider relevant information in determining if an applicant has “sufficient” financial resources. The proposed amended rule will focus on actual credit experience of not only the direct applicant, but that of its affiliates and its principals. This is more encompassing than the current rule, which focuses primarily on the financial statements of the direct applicant. Just as with the current rule, the proposed amended rule allows flexibility for those that may not have historical credit experience by allowing the applicant the opportunity to demonstrate sufficient access to capital.