

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

In the Matter of the Tariff Filing of First)	Case No. TT-2008-0132
Communications, LLC, Concerning Monthly)	Tariff File No. JX-2008-0217
Recurring Charges and New Billing Fee)	

**STAFF’S RESPONSE IN OPPOSITION TO
PUBLIC COUNSEL’S MOTION TO SUSPEND**

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

1. On October 29, 2007, the Office of the Public Counsel filed objections to a tariff and the corresponding customer notice filed by First Communications, LLC, adding monthly recurring charges to several of its calling plans.

2. On October 30, the Commission directed that any responses to Public Counsel’s motion shall be filed no later than November 2.

3. The Staff recommends that the Commission allow the rate increases to take effect by operation of law.

4. Public Counsel’s motion states that “[t]he tariff by failing to provide any details of the reason for the charge fails to provide the Commission with information on which it can determine whether or not the charge is just, fair, and reasonable, is not discriminatory or otherwise conflicts with the provisions of Public Service Commission telecommunications rules or statutes.”

5. First Communications is a competitive telecommunications company offering competitive telecommunications services. See Case No. TA-2007-0067.

6. Prior to amendment in 2005, Section 392.500 RSMo 2000 read:

Except as provided in section 392.200, proposed changes in rates or charges, or any classification or tariff provision affecting rates or charges, for any competitive telecommunications service, shall be treated pursuant to this section as follows:

(1) Any proposed decrease in rates or charges, or proposed change in any classification or tariff resulting in a decrease in rates or charges, for any competitive telecommunications service shall be permitted only upon the filing of the proposed rate, charge, classification or tariff after one day's notice to the commission; and

(2) Any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for any competitive telecommunications service shall be permitted ten days after the filing of the proposed rate, charge, classification or tariff and upon notice to all potentially affected customers through a notice in each such customer's bill at least ten days prior to the date for implementation of such increase or change, or, where such customers are not billed, by an equivalent means of prior notice.

7. Senate Bill 237, enacted in 2005, amended the introductory clause of Section 392.500 RSMo Supp. 2006 to read, "Except as provided in subsections 2 to 5 of section 392.200 ..."

8. Subsection 1 of Section 392.200 provides that charges made by a telecommunications company shall be just and reasonable.

9. Following the amendment of Section 392.500, the Commission no longer conducts a separate just and reasonable analysis of proposed increases in rates for competitive telecommunications services.

10. Subsections 2 and 3 of Section 392.500, which prohibit undue discrimination, continue to apply to proposed increases in rates for competitive telecommunications services.

11. First Communications' proposed increases in rates apply equally to whomever subscribes to the calling plans, and therefore are not discriminatory.

12. In the attached Memorandum, the Staff states that First Communications proposed increase in rates complies with applicable statutes and rules.

13. As Public Counsel's motion notes, the customer notice states that the monthly recurring charges will go into effect on August 1. The Staff will investigate whether First Communications began assessing the monthly recurring charges before the tariff sheets' proposed effective date of November 7. As Public Counsel's motion also notes, the customer notice states that First Communications will begin assessing, effective August 1, a monthly billing fee of 99 cents on any account whose invoice is less than \$10. This billing fee is not in First Communications' tariff. The Staff will investigate whether First Communications is charging this billing fee. The Staff will report back to the Commission if its investigation reveals that First Communications has been assessing a non-tariffed monthly recurring charge or billing fee.

WHEREFORE, the Staff recommends that the Commission allow the rate increases to take effect by operation of law.

Respectfully submitted,

/s/ William K. Haas _____

William K. Haas

Deputy General Counsel

Missouri Bar No. 28701

Attorney for the Staff of the

Missouri Public Service Commission

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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 the following this 2nd day of November 2007.

/s/ William K. Haas _____

Lewis Mills
Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102

Legal Department
First Communications, LLC
15166 Neo Parkway
Garfield Heights OH 44128

Patrick Crocker
Attorney for First Communications
900 Comerica Building
Kalamazoo, MI 49007

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Company Name: First Communications, LLC
Tariff File No. JX-2008-0217 Case No. TT-2008-0132

From: Lisa Mahaney
Telecommunications Department

William Voight 11/2/07
Utility Operations Division/Date

William K. Haas 11/2/07
General Counsel's Office/Date

Subject: Staff's Recommendation to Allow Tariff to Become Effective by Operation of Law

Date: 11/2/07

On October 29, 2007, the Office of the Public Counsel filed objections to the tariff and the corresponding customer notice filed by First Communications, LLC, adding monthly recurring charges to several of its calling plans. An Order Setting Time For Responses set the date for responses as no later than November 2, 2007.

Staff believes that First Communications' tariff meets the requirements of all applicable statutes, specifically, one or more of the following: Sections 392.200(8), (12); 392.245; 392.455(3), (4); 392.515(1) and 392.500(2) RSMo. In addition, the tariff filing does not conflict with the following Commission rules: 4 CSR 240-3.545 (4), (6), (7), (8 C,G,H), (9), (15), (16), (19); 4 CSR 240-31.065(1), (2), (3); 4 CSR 240-32.150(5), 32.160(1), (2), 32.190; 4 CSR 240-33.040(4), 33.045(2), 33.050(4) and 33.070(2).

Staff recommends that the following tariff pages become effective by operation of law on November 7, 2007:

Missouri PSC Tariff No. 1, 1st Revised Page No. 25
Missouri PSC Tariff No. 1, 1st Revised Page No. 25.3
Missouri PSC Tariff No. 1, 1st Revised Page No. 26
Missouri PSC Tariff No. 1, 1st Revised Page No. 26.3
Missouri PSC Tariff No. 1, 1st Revised Page No. 27
Missouri PSC Tariff No. 1, 1st Revised Page No. 27.3
Missouri PSC Tariff No. 1, 1st Revised Page No. 28
Missouri PSC Tariff No. 1, 1st Revised Page No. 28.3

Staff will investigate whether First Communications, LLC, assessed nontariffed billing charges or nontariffed monthly recurring charges.

☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.
☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.
(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)

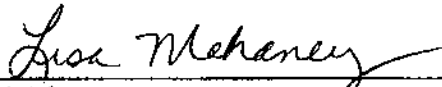
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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Communications, LLC, concerning)	Case No. TT-2008-0132
monthly recurring charges and new billing)	Tariff Filing No. JX-2008-0217
fee.)	

AFFIDAVIT OF LISA MAHANEY

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Lisa Mahaney, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying memorandum, and that the facts therein are true and correct to the best of her knowledge and belief.



Lisa Mahaney

Subscribed and affirmed before me this 2nd day of November 2007
I am commissioned as a notary public within the County of Callaway,
State of Missouri and my commission expires on 9-21-10



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



NOTARY PUBLIC