

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

In the Matter of the Tariffs to Reduce Access            )  
Rates of Local Telecommunications Companies        )        File No. TT-2012-0317  
Pursuant to Federal Communications Commission    )  
Report and Order FCC 11-161.                            )

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response states as follows:

1.       On March 23, 2012, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Open Case asking that the Missouri Public Service Commission (Commission) issue an Order (1) opening a case file, (2) ordering companies to provide the requested tariff revisions and documentation, (3) reminding companies to appropriately mark confidential information, (4) requiring the proposed tariff filings to be made at least 60 days prior to the effective date, and (5) which is issued on or before April 1, 2012. Staff states that its request is necessary to accomplish the review of tariff filings to alter the rates in compliance with the Federal Communications Commission (FCC) Report and Order and Further Notice of Proposed Rulemaking in several dockets, including CC Docket No. 01-92, In the Matter of Developing an Unified Inter-carrier Compensation Regime, denominated FCC 11-161 (the FCC Order).

2.       In its filing, Staff requests that Commission require any company offering switched access service through a tariff to submit a tariff filing to comply with the FCC's Order at least 60 days prior to the effective date of the proposed tariff revision. Additionally, Staff requests that the Commission require any company submitting such a tariff filing to simultaneously provide

supporting documentation demonstrating how the proposal complies with the FCC's Order. Staff suggests that the supporting documentation be the requested information contained in the Excel spreadsheet attached to Staff's Motion; however, Staff encourages the company to provide any additional information to further demonstrate and clarify the company's compliance with the FCC's Order.

3. While it is unclear, it seems that Staff is requesting companies provide merely a comparison of its current rates to those of its proposed rates showing a revenue neutral shift in rates. Staff's proposal requires no evidence that the charges reflected in the proposed revised tariffs are just and reasonable. Instead, it seems those companies who show a revenue neutral shift in rates will have their proposed tariffs automatically go into effect on the proposed tariff effective date.

4. Section 392.200.1 of the Missouri Revised Statutes (RSMo) Cum. Supp. 2010, requires that rates be just and reasonable, and not more than allowed by law or by order or decision of the Commission:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

5. There is no provision which allows companies to automatically waive the requirement for just and reasonable rates under Section 392.200.1. Section 392.420, RSMo Cum. Supp. 2010 states:

The commission is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange service authority or the modification of a certificate of public convenience and necessity for interexchange or local exchange telecommunications service, to entertain a petition to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter. In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. ...

The revised tariff filings suggested by Staff are not “in connection with the issuance or modification of a certificate,” therefore the Commission is not authorized to entertain a petition to suspend or modify the application of Section 392.200.1. Section 392.200.1 is not specifically named in the list of statutes the Commission must waive if requested to do so. Therefore, Section 392.200.1 and the requirement for just and reasonable rates remains firmly in effect.

6. The companies subject to Staff’s Motion are rate-of-return regulated telecommunications companies. As such, a review of the proposed tariff revisions must include an earnings review in order to determine if the proposed rates are just and reasonable per Section 392.200.1. It is Public Counsel’s position that a mere showing of a revenue neutral shift in rates is not an appropriate substitute for an earnings review in order to determine if rates are just and reasonable.

WHEREFORE, Public Counsel respectfully submits its Response.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 27<sup>th</sup> day of March 2012:

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