

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

In the Matter of the Notice of Election for)
Waiver of Commission Rules and Statutes) Case No. _____
Pursuant to Section 392.420, RSMo,)
as amended by HB 1779.)

**NOTICE OF ELECTION FOR WAIVER OF
COMMISSION RULES AND STATUTES**

COMES NOW BPS Telephone Company (“BPS” or Company), pursuant to Section 392.420, RSMo.¹ and hereby notifies the Missouri Public Service Commission (“Commission”) of its election for waiver of certain Commission rules and statutory provisions. In support of its Notice of Election, Company respectfully states as follows:

1. Company is a Missouri corporation duly authorized to conduct business in Missouri, with its principal office located at 120 Stewart Street, P.O. Box 550, Bernie, MO 63822-0550. Copies of Company’s Certificate of Good Standing from the Missouri Secretary of State were filed in Case No. TC-2002-1077, and are incorporated herein by reference pursuant to Commission Rule 4 CSR 240-2.060(1)(G). Company is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those terms is defined in Section 386.020, RSMo 2000.²

2. All correspondence, communications, and orders and decisions of the Commission issued in this matter should be sent to:

¹ All statutory references to Section 392.420, RSMo, refer to the revised statute pursuant to House Bill 1779 (“HB 1779”), effective August 28, 2008.

² Section 386.020, RSMo, as revised by House Bill 1779, effective August 28, 2008.

W.R. England III
Brian T. McCartney
Brydon, Swearingen & England PC
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102
Telephone: 573/635-7166
Facsimile: 573/634-7431
bmccartney@brydonlaw.com

3. Company has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the Application. No Missouri annual reports or assessment fees are overdue.

4. Section 392.420, RSMo as revised by HB 1779 and effective on August 28, 2008, states in relevant part:

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. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, **where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected. In addition, where an interconnected voice over Internet protocol service provider is registered to provide service in an incumbent local exchange telecommunications company's authorized service area under section 392.550, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected.**

(emphasis added).

5. Under Section 392.420, RSMo, where there is an alternative local exchange telecommunications company authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into the statutory and commission rule waivers. Company respectively submits that at least two alternative local exchange telecommunications companies are authorized to provide local exchange telecommunications services in its authorized service area. Specifically, two alternative local exchange telecommunications companies were recently authorized by the Commission to provide services in Company's authorized service area:

- a. MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services obtained an expanded certificate of service authority to provide basic local telecommunications services in all Missouri exchanges on September 25, 2008, in Case No. TA-2009-0083.
- b. XO Communications Services, Inc. obtained an expanded certificate of service authority to provide basic local telecommunications services in all Missouri exchanges on October 9, 2008 in Case No. TA-2009-0108.

6. Under Section 392.420, RSMo, where there is an interconnected internet protocol (VOIP) provider registered to provide service in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into the statutory and commission rule waivers. Company respectively submits that at least three interconnected VoIP providers are registered to provide services in its authorized service area. Specifically, three interconnected VoIP providers

recently filed notices of registration with the Commission to provide services in Company's authorized service area:

a. MCI Communications Services Inc. d/b/a Verizon Business Services filed its registration as a provider of interconnected VoIP services with the Commission on September 10, 2008 and was issued a voice over internet protocol registration on September 30, 2008, in Case No. DA-2009-0096.

b. XO Communications Services, Inc. filed its registration as a provider of interconnected VoIP services with the Commission on September 19, 2008 and was issued a voice over internet protocol registration on October 8, 2008 in Case No. DA-2009-0107.

c. Netelligent Corporation filed its registration as a provider of interconnected VoIP services with the Commission on October 2, 2008 and was issued a voice over internet protocol registration on November 2, 2008, in Case No. DA-2009-0122.

7. Company hereby exercises its statutory right to elect to opt into the waiver of the application and enforcement of some, but not all, of the quality of service and billing standards rules and the statutory sections listed in §392.420, RSMo. and waived in Cases No. TA-2009-0083 and TA-2009-0108. By opting into the waivers contained in this Notice of Election, Company does not waive any right or opportunity to seek additional waivers in the future. The specific rules and state statutes to be waived are listed below.

Commission Rules (4 CSR 240-)	Brief Description
3.550(4) and (5)(A)	Held order records, Quality of service reports.
32.060	Engineering and maintenance
32.070	Quality of Service
32.080	Service objectives and surveillance levels
33.040(1) through (3) and (5) through (10)	Billing and payment standards
33.045	Identification and placement of charges on bills

Missouri Statutes	Brief description of Commission's authority
392.280	Establish depreciation accounts and rates
392.290	Establish regulations regarding issuance of stocks, bonds and other indebtedness
392.300	Transfer of property and ownership of stock
392.310	Approval of issuing stocks, bonds and other indebtedness
392.320	Certificate of Commission to be recorded – stock dividends
392.330	Account for disposition of proceeds of all sales of stocks, bonds, notes and other indebtedness
392.340	Reorganization

8. **Tariff Filing.** Upon acknowledgement of this filing by the Commission, the Company will file revised tariff sheets to reflect the waived statutes and rules.

WHEREFORE, Company hereby provides the Commission with written notice of its election to opt into waivers of certain rules and statutes pursuant to Section 392.420, RSMo, commencing on the date of this filing.

Respectfully submitted,

/s/ Brian T. McCartney

W.R. England III MBN 23975

Brian T. McCartney MBN 47788

Brydon, Swearngen & England PC

312 East Capitol Avenue, P.O. Box 456

Jefferson City, MO 65102

Telephone: (573) 635-7166

Facsimile: (573) 634-7431

Email: bmccartney@brydonlaw.com

Attorneys for Company

CERTIFICATE OF SERVICE

A copy of this document was served on the following parties by e-mail on this 18th day of November, 2008.

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov

Mike Dandino
Office of Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

/s/ Brian T. McCartney