

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Windstream Missouri, Inc.'s Tariffs)	
Filed to Adjust Rates and Rebalance Local Basic Rates)	<u>Case No. TT-2009-0134</u>
and Switched Access Rates Under Section 392.245,)	Tariff No. JI-2009-0198
RSMo, as amended by H.B. 1779.)	Tariff No. JI-2009-0199

STAFF'S RESPONSE TO OFFICE OF THE PUBLIC COUNSEL'S OBJECTION TO
LOCAL BASIC RATE INCREASE UNDER REBALANCING STATUTE

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its response to Office of the Public Counsel's Objection to Local Basic Rate Increase under Rebalancing Statute in Case No. TT-2009-0134 states as follows:

1. On September 15, 2008, Windstream Missouri, Inc. (Windstream) submitted tariff sheets with the Missouri Public Service Commission (the Commission). Those tariff sheets were assigned Tariff Nos. JI-2009-0198 and JI-2009-0199 and bear an effective date of November 1, 2008.

2. In that tariff filing Windstream made numerous alterations to its existing tariff, including:

1. The adjustment of the maximum allowable prices and current rates for basic local telecommunications service and the service charges by the change in the Consumer Price Index (CPI), in accordance with RSMo Section 392.245.4(1)(a), as amended by the passage of H.B. 1779¹.
2. An increase in Windstream's access line rates by \$1.50 and an offset of that revenue increase by a decrease in Windstream's Terminating Interstate IntraLATA

¹ Unless otherwise noted, all references to RSMo refer to the Missouri Revised Statutes (2000) as amended by the passage of House Bill 1779, which became effective August 28, 2008.

CCL access rates by \$.0137 per minute under a rate rebalancing scheme provided for in RSMo 392.245.8 and 392.245.9.

3. A rate increase for certain non-basic services under RSMo 392.245.11.

3. On October 15, 2008, the Office of the Public Counsel (OPC) filed a pleading objecting to the rate rebalancing proposed by Windstream in Tariff No. JI-2009-0198.

4. In its Order Directing Filing, issued October 17, 2008, the Commission directed both Staff and Windstream to file responses to OPC's objection no later than October 23, 2008.

5. In reference to the rate rebalancing proposed under RSMo Sections 392.245.8 and 392.245.9, those sections, as amended by H.B. 1779, read in pertinent part as follows:

.8 An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company [is] first [subject to regulation under this section] **exercises its option to rebalance rates under this subsection** . . . Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company [is] first [subject to regulation under this section] **exercises its option to rebalance rates under this subsection**.

.9 Other provisions of this section to the contrary notwithstanding [and no earlier than January 1, 1997], the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the **annual** revenue loss resulting from [the first year's] **its** access service rate reduction by increasing **each year** its monthly maximum allowable prices applicable to basic local exchange telecommunications services by an amount not to exceed one dollar fifty cents. . .

6. In the attached memorandum, labeled Appendix A, Staff agrees with OPC that after the passage of H.B. 1779 that Commission approval is not required for the rebalancing of

rates under Section 392.245. Staff disagrees with OPC that the Commission retains its traditional consumer protection authority, as least to the extent argued by OPC in this case.

7. Although the opening provision of Section 392.245.1 states that “[t]he commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation,” that Section goes on to provide that “[a]ny rate, charge, toll, or rental that does not exceed the maximum allowable price under this section shall be deemed to be just, reasonable, and lawful.” Section 392.245.1, RSMo (2000).

8. In the attached Appendix A, Staff states that the rates included in the instant tariff filing comply with the technical requirements of Section 392.245 and do not exceed the maximum allowable prices under that section.

9. OPC’s argument parallels that raised by SBC in a Chapter 392 challenge brought by SBC under Section 392.245.11. In that case the Missouri Court of Appeals for the Western District agreed with SBC’s argument that “the maximum allowable price set forth in section 392.245.11 constitutes a legislative determination of what constitutes a just and reasonable rate increase for non-basic telecommunications services, without any interference from the Commission in determining whether they are just and reasonable.” State ex rel. Southwestern Bell Telephone, L.P., d/b/a SBC Missouri v. Missouri Public Service Commission, 173 S.W.3d 327, 331 (Mo. App. W.D. 2005). In other words, the Court found that it was the duty of the Commission to ensure that “the rates, charges, tolls and rentals charged by telecommunications companies are just, reasonable and lawful, by ensuring that the rates, charges, tolls and rentals charged by telecommunications companies do not exceed the statutory maximum allowable price,” but not to conduct “an independent just and reasonable analysis separate from its analysis

concerning whether the proposed rate increases were keeping with the statutory maximum allowable price.” Id. at 331.

10. The result of this decision is contrary to the argument offered by OPC in this case. The Missouri legislature has comprised a comprehensive scheme of price-cap regulation for telecommunications companies, and as noted in the SBC case above, compliance with those regulations is conclusive evidence of just and reasonable conduct.

11. OPC further argues that the grant of regulatory and investigatory authority can be found in the intent embodied in RSMo Section 392.185 which states that “[t]he provisions of this chapter shall be construed to...ensure that customers pay only reasonable charges for telecommunications service...(and to) allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest...”. Section 392.185, RSMo (2000).

12. Staff is of the opinion that this provision of RSMo Section 392.185 by its own terms is meant merely as an aid in statutory construction, not as a grant of substantive jurisdiction or authority and that OPC’s reliance on that section as such is misplaced as evidence by the clear language of Section 392.245.

13. Furthermore, in an analogous case interpreting a provision of the Civil Code that provided that its interpretation “shall be construed to secure the just, speedy, and inexpensive determination of every action,” the St. Louis Court of Appeals held that such a provision “does not mean that courts are to adopt a construction of the Code clearly not warranted by the legislature.” Anthony v. Downs Amusement Co., 205 S.W.2d 925 (Mo. App. 1947).

WHEREFORE, Staff recommends the Commission adhere to the construction of the statute as provided by the Missouri legislature, overrule the objection to Windstream’s rate

rebalancing as raised by OPC, and approve the Windstream tariff filing in Tariff No. JI-2009-0198 and Tariff No. JI-2009-0199.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
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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 23rd day of October, 2008.

/s/ Eric Dearmont

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: TT-2009-0134
Tariff File Nos. JI-2009-0198 & JI-2009-0199
Windstream Missouri, Inc.

From: William Voight
Telecommunications Department

Subject: Staff Recommendation to Reject Public Counsel's Motion Calling for Suspension of Tariff Sheets; and for the Commission to Issue an Order Approving Tariff Sheets.

Date: October 23, 2008

Background:

On September 15, 2008, Windstream Missouri, Inc. (Windstream), an incumbent local exchange telecommunications carrier regulated pursuant to price cap regulation, submitted tariff filings designed to: (1) increase rates for basic telephone service, (2) increase rates for certain non-basic telephone services, and (3) reduce rates for switched exchange access service.

Windstream's tariff sheets bear an issue date of September 15th and are scheduled to go into effect by operation of law on November 1st. On October 15th, the Office of Public Counsel filed a Pleading in which it stated that it objects to Windstream's efforts to rebalance basic rates. Even though the Public Counsel recognizes that HB 1779 removed any cost/price justification for rate rebalancing, it nevertheless asks the Commission to suspend the filing for 30 days to conduct a "review" of consumer protection concerns. Public Counsel states that at a minimum, the record should include staff's recommendation and response to Public Counsel's objection. Lastly, should the Commission decide not to make an investigation, Public Counsel requested the Commission refrain from issuing an order approving tariff.

Rate Rebalancing of Basic Service:

Windstream proposes to increase the rates for basic service by \$1.50 per line for both business and residential customers. To offset the additional revenue represented by the \$1.50 per line increase, Windstream also proposes to decrease the intraLATA terminating carrier common line rate element from \$0.042668 to \$0.028698 (a 32% decrease) per minute. Such revenue-neutral "rate rebalancing" is permissible under Subsection 392.245.9 RSMo., as amended by H.B. 1779.

Consumer Price Index Rate Increase for Basic Service:

In addition to the \$1.50 per line base rate increase for residential and business service, Windstream also proposes to increase the same base rates an additional 3.7108 per cent, an amount Windstream calculates from a twelve-month moving average increase in the consumer price index. As in previous annual price cap filings, Windstream proposes to include basic service installation charges as part of the annual adjustment. Such annual price increases for basic service is permissible pursuant to Subsection 392.245.4(1)(a) RSMo., as amended by H.B. 1779.

Effect of Rate Rebalancing and CPI increases:

The following chart summarizes the overall effect of the consumer price index increases and rate rebalancing on Windstream's rates for basic local telephone service.

	Current Rate	Rate Group 1 Proposed Rate	Dollar Increase	Percent Change
Residential	\$7.51	\$9.28	\$1.77	23%
Business Line	\$13.44	\$15.43	\$1.99	14%
Business Trunk	\$20.13	\$22.37	\$2.24	11%

	Current Rate	Rate Group 2 Proposed Rate	Dollar Increase	Percent Change
Residential	\$8.02	\$9.81	\$1.79	22%
Business Line	\$14.36	\$16.39	\$2.03	14%
Business Trunk	\$21.53	\$23.82	\$2.29	10%

Price Increases for Non-Basic Services:

Windstream also proposes to increase rates for approximately 50 residence and business services and packages of services deemed to be non-basic. Staff notes that in most cases these services and rates are no longer available to new customers or, are available only to existing customers at existing locations. For example, Caller I.D. rates for existing business customers will increase from \$8.34 to \$9.99 monthly (19%), and Call Waiting for existing residential customers will increase from \$2.10 to \$2.99 monthly (42%). Pursuant to Subsection 392.245.11, RSMo., as emended by H.B. 1779, rates for non-basic services of price cap carriers are exempt from maximum allowable prices. Staff further notes that rates for services and packages of services for new customers generally remain unchanged.

Implementation of Rates for Services That Are Currently Not Charged For.

Windstream also proposes to begin charging \$0.80 for each local directory assistance call. The current charge is \$0.00. Pursuant to Subsection 392.361.8 RSMo, as amended by H.B. 1779, directory services are deemed competitive on a statewide basis for all local exchange carriers. Windstream also proposes to implement a monthly charge of \$0.99 for billed number screening, a service which prevents third number and collect calls from being billed to a telephone line (Rates for billed number screening for private pay telephones are unaffected). Instituting rates for previously uncharged-for non-basic services is permissible pursuant to Subsection 392.245.11 RSMo., as amended by H.B. 1779.

Staff Response to Public Counsel's Motion:

On October 17th, the Commission ordered Staff and Windstream to file a response to Public Counsel's October 15th Motion. The Staff agrees with Public Counsel that HB 1779 gives authority for companies to rebalance rates without an independent analysis by the Commission. The Staff also agrees with Public Counsel's conclusions that the specific outcome of the rebalancing is undeniable: local rates will increase in order to replace lost revenue attributable to lower access rates, with little hope that reduced long distance rates will flow through to end users.

However, given the clear and seemingly unambiguous mandate of HB 1779, the Staff disagrees that a consumer protection investigation is appropriate or necessary at this time. Staff suggests that, pursuant to Subsection 392.245.5, a more appropriate approach would be for the Commission to conduct a periodic examination to determine if the conditions for competitive classification continue to exist (in fact, 4 such examinations were conducted in fiscal year ending June, 2008):

Staff Recommendation:

Staff has examined the data supplied by Windstream in support of its rate rebalancing proposal. The data include information on switched access usage, customer line counts, information from the U.S. Department of Commerce used to calculate a twelve month moving average for the consumer price index and, a copy of its customer notice of rate increase. In the Staff's opinion, Windstream performed the calculations correctly and its notice to customers is adequate. Staff recommends the Commission reject Public Counsel's Motion calling for suspension of the tariff sheets, and issue an Order approving the tariff sheets at the Commission's earliest convenience.

The Staff is unaware of any other matter that affects, or that would be affected by, this matter.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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Case No. TT-2009-0134

AFFIDAVIT OF William Voight

STATE OF MISSOURI)
) Ss:
COUNTY OF COLE)

William Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he/she has participated in preparing the accompanying Staff Recommendation, and that the facts therein are true and correct to the best of his/her knowledge and belief.

William Voight

WILLIAM VOIGHT

Subscribed and affirmed before me this 23rd day of October 2008.



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

Susan L. Sundermeyer

NOTARY PUBLIC



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