

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

In the Matter of Proposed Emergency)
Rule for 211 Service.)

Case No. TX-2004-

MOTION FOR FINDING OF NECESSITY FOR EMERGENCY RULEMAKING

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through its Office of General Counsel, pursuant to section 536.016 and 536.025 RSMo 2000, and for its Motion for Finding of Necessity for Emergency Rulemaking states as follows:

1 In this filing Staff is requesting a motion for necessity for emergency rulemaking for 211 service for the reasons contained in this pleading and in the attached affidavit of Natelle Dietrich, Staff Regulatory Economist III for the Staff of the Missouri Public Service Commission.

2. Section 536.016 RSMo 2000 provides that a state agency shall propose rules based upon “a finding by the agency that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority. Section 536.025 RSMo 2000 provides the powers and procedure for emergency rulemaking. The Commission’s authority to promulgate an emergency rule is pursuant to section 536.025 RSMo 2000. A state agency may make a rule without following the normal provisions for rulemaking as found in Section 536.021 if the state agency:

- (1) Finds that an immediate danger to the public health, safety or welfare requires emergency action or the rule is necessary to preserve a compelling governmental interest that requires an early effective date as permitted pursuant to this section;
- (2) Follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances;

(3) Follows procedures which comply with the protections extended by the Missouri and United States Constitutions; and

(4) Limits the scope of such rule to the circumstances creating an emergency and requiring emergency action.

3. On June 20, 2003, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (SBC Missouri) filed amended tariff sheets to provide 211 service. On July 13, 2003, Heart of America United Way (HAUW) filed an application to be the sole 211 service provider in several Missouri counties.¹ HAUW concurrently filed a motion to suspend SBC Missouri's tariff filing to dispute the price of the service.² While the Commission was considering the motion to suspend, SBC withdrew its tariff on July 17, 2003.

4. The Commission's state authority to promulgate rules for 211 service is pursuant to sections 386.250, 392.200 and 392.245 RSMo 2000. In particular section 386.250(6) authorizes the Commission to adopt rules that prescribe the conditions of rendering public utility service, disconnecting or refusing to reconnect public utility service and billing for public utility service.

5. The state commission's federal authority comes from 47 U.S.C. 251(e)(1), which authorizes the FCC to delegate all or part of its numbering administration authority to the states. The FCC in its Third Report and Order and Order on Reconsideration assigned 211 as a national abbreviated dialing code to be used for access to community information and referral services.³ In its order the FCC discussed the need for a 211 service as represented by the types of calls received by the United Way 211 based in Atlanta as calls involving needs vital to the welfare of

¹ The counties requested were: Andrew, Buchanan, Dekalb, Clinton, Caldwell, Platte, Clay, Ray, Jackson, Lafayette, Cass, Johnson, Saline, Pettis, Bates and Henry.

² Case No. AO-2004-0036 and AO-2004-0038.

³ CC Docket No. 92-105, *Third Report and Order and Order on Reconsideration*, paragraph 52.

individuals, families, and communities, such as shelter needs, utilities issues critical in inclement weather, medical aid, child and spousal abuse counseling, etc.⁴

6. The FCC in assigning 211 made two requirements of the telecommunications carrier that receives a request from an entity (e.g., the United Way) to use 211 for access to community information and referral services, “the telecommunications provider must: (1) ensure that any entities that were using 211 at the local level prior to the effective date of this Order relinquish use of the code for non-compliant services, and (2) take any steps necessary (such as reprogramming switch software) to complete 211 calls from its subscribers to the requesting entity in its service area.”⁵

7. Currently, Missouri does not have 211 service anywhere in the state and no Commission rules exist for offering 211 service. SBC Missouri has received an application to use 211 for access to community information and referral services and must now comply with the above FCC order. There are many unanswered questions presented by such a request that have not yet been addressed by the Missouri Public Service Commission, for example: (1) Who will pay for the 211 service? (2) Will there be competing bids for the service? (3) What standards should a potential provider meet?

8. There is a compelling government interest in protecting the public by ensuring that the purposes of the telecommunications Chapter 392 are upheld in: promoting the availability of 211 service, ensuring that the business customer pays a reasonable charge for the service, promoting the health, safety and welfare of the state in allowing the ease and access of a 211 service for those in need and providing for consumer privacy. Section 392.185 RSMo 2000. Providing an emergency rule, that is effective not less than ten days from its filing with the

⁴ *Id.* at paragraph 19.

⁵ *Id.* at paragraph 21.

Secretary of State's Office, will allow telecommunications carriers firm ground on which to proceed in offering this needed service. It will also allow for protection of the community in providing basic requirements for telecommunications carriers and those entities wanting to supply 211 service.

9. Section 392.200.1 RSMo 2000 provides that 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." Additionally, "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."

10. Section 386.610 RSMo 2000 provides that the provisions of the Public Service Commission Law shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities. Section 392.185 RSMo 2000 provides:

The provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunications services; (2) Maintain and advance the efficiency and availability of telecommunications services; (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri; (4) Ensure that customers pay only reasonable charges for telecommunications service; (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services; (6) 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; (7) Promote parity of urban and rural telecommunications services; (8) Promote economic, educational, health care and cultural enhancements; and (9) Protect consumer privacy.


11. Concurrently with this motion, Staff is filing a Motion for Finding of Necessity for Rulemaking to provide a non-emergency rulemaking under Section 536.021. This is

necessary as an emergency rule is only to be in effect for one hundred eighty calendar days or thirty legislative days, whichever period is longer. Section 536.025.7 RSMo 2000. Where the emergency rule will allow expedient effectiveness of the rule, the normal rulemaking will allow the rule to continue in effect beyond the emergency period.

WHEREFORE, the Staff respectfully requests that the Commission find that the proposed emergency rulemaking is necessary to preserve the compelling governmental interest in protecting the public by providing standards and procedures for the provision of 211 for access to community information and referral services.

Respectfully submitted,

DANA K. JOYCE
General Counsel



William K. Haas
Deputy General Counsel
Missouri Bar No. 28701

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7510(Telephone)
(573) 751-9285 (Fax)
williamhaas@psc.state.mo.us

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mailed to all counsel of record this 23rd day of September 2003.



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AFFIDAVIT

Staff proposes to initiate an emergency rulemaking, 4 CSR 240-32.180 to provide initial Commission processes and procedures for the implementation and/or monitoring of 211 service as provided by local exchange carriers and/or community information and referral organizations.

The Federal Communications Commission (FCC), in its Third Report and Order and Order on Reconsideration, assigned 211 as a national abbreviated dialing code to be used for access to community information and referral services.¹ In its order, the FCC discussed the need for a 211 service to provide contact information for: (1) housing assistance, (2) maintaining utilities, (3) providing food, (4) finding counseling and offering hospice services, (5) substance abuse programs and (6) other programs to combat abuse.

The FCC, in assigning 211, required telecommunications carriers that receive a request from an information and referral entity to take any steps necessary (such as reprogramming switch software) to complete 211 calls from its subscribers to the requesting entity in its service area. Staff has had conversations with Southwestern Bell Telephone, L.P., d/b/a SBC Missouri and the Heart of Missouri United Way, both of which are preparing to make 211 information and referral service available in certain Missouri counties.


In light of the recent interest in providing 211 service to Missouri consumers, Staff proposes to initiate an emergency rulemaking, and then a subsequent permanent rulemaking

CC Docket No. 92-105, *Third Report and Order and Order on Reconsideration*, paragraph 52.

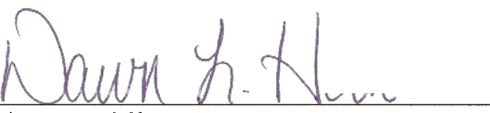
outlining processes and procedures for such things as establishing information and referral standards; determining technical and managerial ability to provide 211 services; determining availability of resources to provide 211 service 24 hours a day, seven days a week; initiating a process so consumers have equitable access to agencies providing assistance and outlining cost recovery guidelines.

An emergency rulemaking will bring the benefits of the abbreviated-dialing information and referral service to Missouri consumers in an expedited manner. The permanent rulemaking will establish procedures to establish a fair process for the on-going availability and expansion of 211 service to Missouri consumers.

I certify that I have read the foregoing statement and that the facts therein are complete, true and accurate to the best of my knowledge and belief.


Natelle Dietrich
Staff Regulatory Economist III

Subscribed and sworn to before me this day of September, 2003.


Notary Public
DAWN L. HAKE
Notary Public – State of Missouri
County of Cole
My commission expires
My commission expires Jan 9, 2005