

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

The Staff of the Missouri Public Service)
Commission,)

Complainant,)

v.)

Winstar Communications, L.L.C.,)

Respondent.)

Case No. TC-2007-0494

MOTION FOR CLARIFICATION AND MODIFICATION

COMES NOW the Staff of the Missouri Public Service Commission and submits this Motion for Clarification of the Commission's Order Granting Default issued September 6, 2007.

In support of its request, Staff states:

1. On September 6, 2007, the Commission issued an Order Granting Default wherein the Commission stated, "The General Counsel of the Commission is authorized, pursuant to Section 386.360, RSMo, to file a petition in Circuit Court to seek such judgments as necessary, including a writ of mandamus or injunction against Winstar Communications, Inc. [sic], to recover surcharges and compel compliance with the relevant statutes and regulations."

2. As Winstar owes money to the Missouri Universal Fund and the Deaf Relay Service and Equipment Distribution Fund, Staff Counsel would prefer to Petition the Circuit Court for judgment on the statutory amounts owed, as well as seeking injunctive relief under Section 386.360. In the Commission's grant of authority to the General Counsel recited above, the Commission grants authority under Section 386.360 RSMo. But section 386.360 only authorizes the use of injunctive relief. Injunctive relief is an equitable remedy, and is not the

proper mechanism to seek a money judgment for remittance of past-due, statutorily amounts owed.

3. As the Order Granting Default stands, Staff Counsel believes that it has not been given authority to seek a money judgment against Winstar in addition to injunctive relief.

4. Staff Counsel plans to seek injunctive relief against Winstar pursuant to Section 386.360 RSMo., as well as penalties under Section 386.600.

5. Commission regulation 4 CSR 240-2.160(4) permits the Commission to correct its orders *nunc pro tunc*.

6. Likewise, Section 386.490.3 provides that every order or decision of the Commission is in force “until changed or abrogated by the commission. . .”

7. Counsel suggests the following language for paragraph four in the ordered paragraphs: The General Counsel of the Commission is authorized to recover past-due surcharges in the Circuit Court, and pursuant to Section 386.360, RSMo 2000, to file a petition in Circuit Court to seek such judgments as necessary, including a writ of mandamus or injunction against Winstar Communications, Inc., to recover surcharges and compel compliance with the relevant statutes and regulations.

WHEREFORE, Staff requests that the Commission clarify and modify its Order Granting Default issued September 6, 2007, and authorize the General Counsel the seek not only penalties under the penalty statutes and injunctive relief under 386.360 RSMo., but also judgment for the statutorily owed amounts to the Missouri Universal Service Fund and the Deaf Relay Service and Equipment Distribution Fund.

Respectfully submitted,

/s/ **Blane Baker**

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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 2nd day of October 2007.

/s/ **Blane Baker**