

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

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5 TRANSCRIPT OF PROCEEDINGS

6
7 Public Hearing

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10 May 26, 2004
11 Jefferson City, Missouri
12 Volume 1

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14 In the Matter of the Proposed)
15 Rule for 211 Service,) Case No. TX-2004-0154

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18 LEWIS MILLS, Presiding
19 DEPUTY CHIEF REGULATORY LAW JUDGE

20 JEFF DAVIS, Commissioner

21
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1 P R O C E E D I N G S

2 JUDGE MILLS: Let's go on the record.

3 We're on the record this morning for a comment
4 hearing in a rule making case, Case No.
5 TX-2004-0154. We'll take comments -- and I
6 went over this briefly when we were off the
7 record. We'll take comments generally in the
8 order of those most favorable to the rule,
9 those least favorable to the rule. In this
10 case, Staff having proposed the rule, I will
11 take as most favorable. The other interested
12 entities, at least as far as I can tell from
13 the written comments, don't seem to be opposed
14 to the rule. The comments are more in the
15 nature of clarification than outright
16 opposition. So I don't know that it makes a
17 whole lot of difference in what order we go
18 after we get through the Staff comments. I
19 think I will probably take Southwestern Bell
20 last so the other two interested entities can
21 go -- I'll just say, for ease, we'll go front
22 to back and we'll do Mr. Comley second. So
23 let's go ahead, and we'll start with Staff.

24 Mr. Haas, I assume that Ms. Dietrich is
25 here to make comments on behalf of the staff?

1 MR. HAAS: Yes, your Honor.

2 JUDGE MILLS: Okay.

3 MR. HAAS: For the record, my name is
4 William Haas. I am the commissioned staff
5 attorney assigned to this rule-making. The
6 Staff has filed written comments in support of
7 this proposed rule-making. And as you have
8 noted, staff economist Natelle Dietrich is here
9 today to support the rule and to respond to
10 comments made by other entities. The staff
11 would call Natelle Dietrich.

12 JUDGE MILLS: Okay. Could you come
13 forward, please? Either -- we're not -- we're
14 not taking this down on the VTEL system, so
15 either the podium or the witness stand, they
16 both have live mics, whichever you're more
17 comfortable on.

18 NATELLE DIETRICH,
19 being first duly sworn to testify the truth, the whole
20 truth, and nothing but the truth, testified as follows:

21 JUDGE MILLS: Thank you. If you
22 could begin by stating your name, and then
23 proceed with your comments, please.

24 MS. DIETRICH: My name is Natelle,
25 N-a-t-e-l-l-e, Dietrich, D-i-e-t-r-i-c-h. I'm

1 an economist with the Telecommunications
2 Department of the Commission. The proposed
3 rule sets forth the terms and conditions for
4 the assignment and provision of 211 service in
5 Missouri and makes the emergency rule currently
6 in effect a permanent rule. The proposed rule
7 is intended to enhance the ability of the
8 public to access services that provide free
9 information or referral to community resources
10 in situations that are not life threatening but
11 still serious in nature.

12 Staff supports the proposed rule and has
13 reviewed the comments filed by the various --
14 various parties in the case and offers the
15 following responses: SBC generally objects to
16 Section 2 because of the use of the word "use."
17 For instance, the proposed rule states, When a
18 telecommunication company receives a request
19 from an entity to use 211 as the information
20 number referral provider. And then in another
21 section it talks about, The company will ensure
22 that any entities that were using 211 prior to
23 July 31st would relinquish that use. SBC
24 suggests a form of the word "assign" would be
25 more appropriate -- more appropriately describe

1 211 service. Although Staff does not object to
2 replacing use with assign, Staff would point
3 out that language in Sections 2A and 2B,
4 including the use of the word "use" is language
5 that's directly from the FCC's July 2000 order.
6 And that's where that language came from.

7 Section 2C requires the telecommunications
8 company receiving a request for 211 service to
9 submit a tariff to the Commission if no tariff
10 currently exists incorporating the rates, terms
11 and conditions for 211 service.

12 Heart of America United Way suggests a
13 time frame be added to this section such that a
14 company would submit a tariff within 30 days of
15 receiving a request for 211 service. Staff
16 does not object to a time frame being included
17 in the tariff, but would suggest that perhaps
18 30 days may not be enough time for a company to
19 determine the cost and develop a tariff for
20 that service. Staff would suggest 60 days is
21 more appropriate. Some companies are national
22 companies and would have to complete tariffs on
23 a national -- national basis using national
24 comparisons as as well as Missouri specific
25 cost information while other companies are

1 small and would have no experience in
2 developing 211 tariffs and would have to
3 basically start from scratch. So we thought
4 maybe 60 days would be more appropriate.

5 Section 2C also states that the rates
6 shall be established pursuant to section
7 392.220(3). That section -- that section -- or
8 that portion of the statute allows discounts to
9 charitable corporations. This reference was
10 originally included to address initial
11 suggestions by the Heart of Missouri United Way
12 -- or excuse me -- Heart of America United Way
13 that telecommunications companies should not be
14 allowed to profit from provisioning 211
15 service. Since the statute applies regardless
16 of whether it is referenced in the rule or not,
17 Staff suggests the statutory reference be
18 removed from the rule.

19 Section 2D requires the telecommunication
20 company receiving a request for 211 service to
21 determine that the entity is a Missouri I&R
22 provider or has submitted an application to
23 become a Missouri I&R provider. Some parties
24 suggest the burden should be on the entity
25 seeking to be the 211 provider or the

1 Commission and not on the telecommunications
2 company. Staff would be supportive of a change
3 to the language, and we suggest the following
4 language: The Missouri I&R provider shall
5 provide a copy of its application to become a
6 Missouri I&R provider or a copy of of the order
7 granting it authority as a Missouri I&R
8 provider to each telecommunications company
9 along with a request for 211 service by that
10 telecommunications company.

11 SBC also suggests additional changes to
12 Section 2 such that the telecommunications
13 company would not be required to take any of
14 the actions until the entity seeking authority
15 had actually received authority from the
16 Missouri Commission as a Missouri I&R provider.
17 Staff disagrees with SBC's suggested language
18 changes.

19 The language in Section 2 is largely based
20 on language from the FCC's July 2000 order, as
21 I previously mentioned. And although the order
22 did not outline specific procedures for states
23 to provide -- or to provide 211 service, but
24 sets forth general guidelines allowing a
25 telecommunications company to respond to

1 requests after such time as the Commission
2 grants the authority would provide unnecessary
3 delays in the provision of 211 service in
4 Staff's opinion.

5 It's Staff's understanding through initial
6 conversations with SBC that it could take
7 around six months from the time a request was
8 received until such time as switches were
9 modified or software was modified in order to
10 have 211 available in Missouri. And when you
11 add to that the time that it would take for the
12 Commission to review an application and grant
13 such authority, it would be a substantial delay
14 in time waiting until once the authority was
15 actually granted.

16 SBC suggests Section 4B be modified such
17 that the Commission would provide notice to all
18 ILECs in the exchanges to be served, all
19 facilities based CLECS, all human services
20 entities for the exchanges to be served in all
21 city governments and cities within the
22 requested exchanges that have a population of
23 5,000 or more persons. This is the same list
24 that receives notice of the application, and
25 Staff suggests that it is not only redundant

1 but costly to the Commission to also provide
2 notice once the authority has been granted to
3 these same entities saying that the authority
4 has been granted.

5 Again, going back to our suggestion that
6 the I&R provider would provide the necessary
7 entities or telecommunications companies with a
8 copy of its application and/or orders should
9 take care of that concern.

10 In Section 7, once again, SBC suggests be
11 the word "use" be changed to assign, and Staff
12 does not object to this change.

13 SBC seeks clarification of Section 13,
14 which currently states, Neither a telephone
15 company nor a Missouri I&R provider shall
16 charge end users for 211 service. SBC suggests
17 the language could be interpreted as to not
18 allow telecommunications companies to charge
19 end users at all, especially if those end users
20 are making calls from pay phones or through
21 local measured services where customers pay
22 based on the length of the local call.

23 While Staff agrees the language may lead
24 to confusion, Staff does not support SBC's
25 proposed language because it could be

1 interpreted that standard rates could be
2 applied to all 211 calls. Instead, Staff
3 suggests the following language: Neither a
4 telephone company nor a Missouri I&R provider
5 shall charge end users a separate charge
6 specifically for 211 service.

7 And that ends our formal comments. I'd be
8 happy to answer any questions.

9 JUDGE MILLS: Thank you. Questions
10 from the bench? Commissioner Davis?

11 COMMISSIONER DAVIS: Nothing.

12 JUDGE MILLS: Okay. I have no
13 questions. So you may step down, and we'll
14 move on to our next entity. Mr. Comley?

15 MR. COMLEY: May it please the
16 Commission? Thank you, Judge, Mills.

17 JUDGE MILLS: Mr. Comley, I'm going
18 to swear you in as a witness if you don't mind.

19 MR. COMLEY: Sure.

20 MARK COMLEY,
21 being first duly sworn to testify the truth, the whole
22 truth, and nothing but the truth, testified as follows:

23 JUDGE MILLS: Thank you. You may
24 proceed.

25 MR. COMLEY: I'm appearing here this

1 morning on behalf of the Heart of America
2 United Way, Inc. And the Commission will note
3 that it is presently an applicant for
4 information and referral authority and 211 --
5 use of 211 in Missouri. The only one so far.
6 The Commission records should indicate that
7 yesterday with the assistance of staff, Office
8 of Public Counsel and Intervenors in the
9 particular case in which the application is
10 pending, we filed a unanimous stipulation. And
11 we also moved to suspend the remaining portions
12 of the procedural schedule, by the way.

13 Anyway, this is a very important rule for
14 us. And we'll stand by the written comments.
15 I want to tell the Commission how much we are
16 grateful for Ms. Dietrich's intense review of
17 the rule and the way that she approached it and
18 developed it. And we're grateful. The -- the
19 idea about the time limit, she did visit about
20 the provisions of 200(2)(C). And that, in our
21 estimation, did not give a suitable time
22 reference for a telecommunications company to
23 respond to requests for a tariff. And although
24 60 days sounds good, I think we'll stand by the
25 30 days and -- and give the -- the telephone

1 company the opportunity to come to the
2 Commission and say, You know what, we need more
3 time. We think that 30 days should be long
4 enough. For companies that should see this on
5 the horizon and should know that it's coming
6 and they already have facilities in place, I'm
7 certain that this is going to be a thing that
8 they can do. So we would stand by our
9 comments. We understand that there are some
10 companies that may find it hard to comply with
11 30 days. If that's the case, then they can
12 come to the Commission and ask for additional
13 time. I think our language was within 30 days
14 they have to submit the tariff, unless the
15 Commission allows a different time. So we
16 would propose that. Thank you very much.

17 JUDGE MILLS: Thank you. I'm sorry.
18 I don't know who you are, but if you could step
19 forward and identify yourself, we'll be happy
20 to take your comments.

21 MS. PARKER: Your Honor, I'm Sara
22 Parker. I'm the state librarian from the
23 Secretary of State's office.

24 JUDGE MILLS: Okay. Great. I'll
25 swear you in, and we'll take your comments.

1 SARA PARKER,
2 being first duly sworn to testify the truth, the whole
3 truth, and nothing but the truth, testified as follows:

4 JUDGE MILLS: Thank you. Please go
5 ahead.

6 MS. PARKER: I want to commend the
7 Commission and Staff and parties who have
8 worked on these rules. I think 211 is a needed
9 service in Missouri. And I particularly would
10 praise the rigor with which standards
11 professional information and referral will
12 bring to the provision of such a service. I do
13 want to make a comment on (3)(A)(2) that limits
14 the ability to -- for providers to provide 211
15 service to be non-profit organizations.

16 I think in terms of the long-term good of
17 Missouri, you might want to consider other
18 entities besides non-profits. Libraries have a
19 long history of answering public inquiries.
20 They have a long history of maintaining
21 community information files. Units of local
22 government, and government generally, often has
23 funding mechanisms to give stability and
24 resources for continuity of programs that
25 sometimes might not happen with non-profit

1 organizations. I think we need both. I think
2 United Way will do an excellent job. But I
3 think in other parts of the state there may
4 indeed be other entities, including libraries
5 and governmental entities, that might well
6 benefit from being able to apply and then being
7 judged on their merit. Libraries in Missouri
8 are not non-profits. They are government and
9 separate political subdivisions. Thank you.

10 JUDGE MILLS: Thank you. Other
11 questions from the bench? I don't believe
12 there are. But if you could -- if you could
13 wait for just a few moments, we -- we may have
14 questions for you.

15 MS. PARKER: Sure.

16 JUDGE MILLS: Mr. Lane? You can go
17 ahead and sit down, and I may ask you to come
18 back --

19 MS. PARKER: Okay.

20 JUDGE MILLS: -- if there are
21 questions from the bench for you.

22 PAUL LANE,
23 being first duly sworn to testify the truth, the whole
24 truth, and nothing but the truth, testified as follows:

25 JUDGE MILLS: Thank you. Please go

1 ahead.

2 MR. LANE: Your Honor, my name is
3 Paul Lane. I represent Southwestern Bell
4 Telephone, LP doing business as SBC Missouri.
5 We filed comments in the case in this
6 rule-making, and I don't propose to go through
7 those. But I could answer any questions that
8 you have. I thought I'd limit myself to
9 commenting on Staff's proposals in response to
10 -- to our change and those of some of the
11 others.

12 First, I think Staff doesn't disagree that
13 the use of the word "assign" or some variant
14 thereof is preferable to the use of the word
15 "use." And I do agree that's how the FCC rule
16 or order was structured, and I think they were
17 simply in error when they did it and assignment
18 is more appropriate. We don't want to have a
19 situation where a -- the code can't be
20 reclaimed because it's been assigned to
21 someone, but that person or organization isn't
22 using the code. So I think assigned is
23 appropriate. Glad to see Staff doesn't object
24 to that.

25 In terms of the time for filing of tariff,

1 there have been a couple of different proposals
2 made. One is to have the tariff be filed after
3 the time that the Commission has issued an
4 order approving a 211 provider. Other
5 proposals say, Let's do it either within 30
6 days or as Staff said today within 60 days.
7 Probably -- I think from our perspective, it's
8 preferable to have it after the Commission has
9 reviewed and decided that a particular 211
10 provider should be approved. It's the time
11 that should start getting the -- the ability or
12 the requirement of the local company to file a
13 tariff. But if it's -- if it's 60 days, that's
14 something that I'm sure that we can probably
15 live with if we need to.

16 I think the Commission needs to recognize
17 that there's a difference between the filing of
18 the tariff and being able to offer the service.
19 And the tariff itself may contain some terms
20 that say, you know, how long after a request
21 will it take for the company to be in a
22 position where it's done the necessary program
23 to go -- to allow the service to be provided.
24 We certainly support 211 service and understand
25 it will be beneficial to the public. And I'm

1 sure we and other telephone companies will do
2 what we can to process those promptly. But I
3 think the Commission needs to recognize that it
4 may take some time to do that.

5 Third, we -- we agree with Staff that it's
6 appropriate to delete the reference to
7 392.220.3 -- or subdivision three. And all
8 those issues can be handled in the tariff case
9 to the extent there's a question about what
10 charges apply. And the rule does appropriately
11 provide that the 211 provider should incur the
12 cost of that, and we agree with that part of
13 the rule.

14 The next comment was in Section 4B in
15 terms of whether notice should be provided. We
16 think it probably makes sense to provide
17 notice. I think I would tie that issue to how
18 the Commission deals with the question of when
19 the tariff should be filed. Should it be
20 triggered off of approval from the Commission
21 or should it be triggered off of filing by a
22 party within X number of days after it? I will
23 let your treatment of this section follow what
24 you do with the other portion of the rule.

25 On subsection 7 of the rule, I think,

1 again, that's a use of the word "assign" rather
2 than "use" is appropriate there as I indicated
3 before.

4 The last area was in subsection 12 of the
5 rule, which -- I'm sorry, 13, which says that,
6 Neither a telephone company nor a Missouri I&R
7 provider shall charge end users for 211
8 service. Our comment, as Ms. Dietrich
9 appropriately noted, was directed primarily to
10 pay phones and local measured service users.
11 Those customers to make the local call would be
12 required in the case of pay phones to put in
13 the money. In the case of a local measured
14 service provider to call the 211 number, they
15 would be required to have that count as a call
16 that they made. It would be -- in some cases,
17 I'm not sure it would be technically feasible
18 but would be extraordinary difficult and time
19 consuming not to charge for those. Our
20 language, we think, solves that.

21 I tried to write down Staff's language as
22 Ms. Dietrich read it. It did not strike me as
23 objectionable. I think it's okay. But I think
24 it would be appropriate for the Commission when
25 they -- if they adopt Staff's proposed revised

1 language to make it clear that the intent of it
2 is for services like local measured service and
3 pay phones, that the normal charges in those
4 cases would apply. It just wouldn't be a
5 separate additional charge for 211 service.
6 And so if that's reflected in the Commission's
7 adoption of a rule, I think that would be fine.
8 We won't have a problem with it. That is all
9 the comments that I have unless there's any
10 questions.

11 JUDGE MILLS: I don't have any
12 questions. Does Staff have any additional
13 comments to make?

14 MS. DIETRICH: Sure.

15 JUDGE MILLS: Okay.

16 MS. DIETRICH: Just one additional
17 comment in response to the comment on Section 3
18 -- or excuse me, 2 -- I'm trying to find it
19 here. No. I was right. (3)(A)(2), a
20 statement that the applicant is a not for
21 profit organization as defined by Section
22 501-C3 of the federal tax code. The reason
23 that requirement was put in was because after
24 discussions with the Commission, there were
25 concerns that entities that may be questionable

1 would tie up the 211 number in a particular
2 area strictly to promote their point of view.
3 For instance, say, an abortion clinic would tie
4 it up to promote -- to promote their position
5 on abortion. And so that was the reason for
6 the reference to not for profit. Staff would be
7 amenable to expanding that to, Applicant is a
8 not for profit organization as defined by
9 Section 501-C3 of the federal tax code or a
10 governmental entity, which I think was how she
11 noted that libraries are included in the
12 general reference.

13 So that -- Staff would be amenable to that
14 change. Any questions?

15 JUDGE MILLS: No questions. Are
16 there any other further comments? Okay.
17 Hearing none, we're off the record.

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