



RICHARD TELTHORST  
President

April 14, 2005

The Honorable Dale Hardy Roberts  
Secretary, Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

**FILED<sup>2</sup>**

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**RE: Case No. TX-2005-0258  
4CSR 240-33.045**

Dear Judge Roberts:

**Missouri Public  
Service Commission**

Thank you for the opportunity to provide comments regarding the above-captioned proposed rule. As you know, the Missouri Telecommunications Industry Association (MTIA) participated in a number of industry-staff meetings to review and discuss various provisions of this proposed rule during its development. Our comments here focus on two provisions that, if left unchanged, would set a questionable legal precedent in future Commission proceedings.

The association objects to proposed rule **4 CSR 240-33.045(4)**, which states that the presence of a charge in a currently effective tariff is not evidence that the charge is authorized or mandated by the Commission. By definition, any currently effective tariff indicates that the charge is authorized or mandated by the Commission; the Commission either approved the charge or allowed it to go into effect by operation of law. Thus, this sentence is legally incorrect and should be deleted in its entirety.

The association objects to proposed rule **4 CSR 240-33.045(5)**. The Commission has no authority to order removal or modification of any charge that it finds does not comport with this rule. Instead, the Commission must consider, after a hearing, whether an existing tariff is unlawful. Further, the Commission may review any newly proposed tariff and its decision to approve or reject the tariff is subject to review on the basis of whether it is lawful and reasonable.

We would propose deleting 4 CSR 240-33.045(5) in its entirety and incorporating this provision in the rule: **Nothing in this rule is intended to preclude the Commission's authority to review tariffs for lawfulness.**

Sincerely,

Richard Telthorst, CAE  
President