

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 6th day of
November, 2007.

In the Matter of the Tariff Filing of First Communications,)	
LLC, Concerning Monthly Recurring Charges and New)	<u>Case No. TT-2008-0132</u>
Billing Fee.)	<u>Tariff No. JX-2008-0217</u>

**ORDER DENYING MOTION TO SUSPEND TARIFF AND DIRECTING
CORRECTED CUSTOMER NOTICE**

Issue Date: November 6, 2007

Effective Date: November 16, 2007

On October 4, 2007, First Communications, LLC, submitted tariff sheets proposing new calling plans and adding a monthly recurring charge to other calling plans for interexchange telecommunications services. The effective date of the tariff sheets is November 7, 2007.

On October 29, 2007, the Office of the Public Counsel filed a motion requesting that the tariff sheets be suspended for failing to comply with Commission rules. Public Counsel argues that the tariff is “vague and unreasonable and deceptive in that it fails to give the customer adequate notice of the purpose of the monthly recurring charge or any details about this monthly charge, the conditions that trigger the charge so the customer can, if desired, take the action necessary to avoid the charge.”¹

The Staff of the Missouri Public Service Commission filed a response on November 2, 2007. Staff’s recommendation included an analysis of the tariff provisions

¹ *Motion to Suspend*, p. 1 (filed October 29, 2007).

and concluded that the tariffs were in compliance with the applicable statutes and regulations. Staff recommends that the Commission deny the motion to suspend the tariffs.

Further, Staff states that in its opinion, the Commission may not conduct a “just and reasonable analysis” for competitive services under Section 392.500, RSMo Cum. Supp. 2006. Staff argues that “Senate Bill 237, enacted in 2005, amended the introductory clause of Section 392.500 RSMo Supp. 2006 to read, ‘Except as provided in subsections 2 to 5 of section 392.200 . . .’”² Subsection 1 of Section 392.200 is the portion of the statute relating to “just and reasonable” rates. Thus, Staff argues that the legislature has removed the requirement that these charges be just and reasonable.

Staff also stated that it will conduct a further investigation to ensure that customers were not billed for non-tariffed charges since the customer notice indicated the charges would go into effect on August 1 and that a billing charge that does not appear in First Communications’ tariff would also begin on August 1.

The tariff sheets at issue involve services and exchanges that have been designated as competitive.³ Section 392.500, RSMo, allows any such change to go into effect in ten days so long as customers receive appropriate notice. The Commission determines that the legislature removed the provision requiring the Commission to conduct a “just and reasonable” analysis. Therefore, Commission shall not suspend the tariffs based on that allegation.

Public Counsel’s other complaints about the tariff are that it is unclear and that it violates certain rules of the Commission. Public Counsel alleges that the tariff fails to

² *Staff Response in Opposition to Public Counsel’s Motion to Suspend*, para. 7, (filed November 2, 2007).

³ Case No. TA-2007-0067.

comply with 4 CSR 240-33.045, which requires that charges be clearly identified and set out separately on customer bills. The Commission finds that the charges are clearly set out in the tariff. Customers using specific services will incur a monthly charge of \$2.95. As to how that charge will appear on the bill, that has not yet occurred, thus, that objection is not yet ripe.

Public Counsel also argues that the tariff is not in compliance with 4 CSR 240-33.040 requiring ten-days written notice to the customers. Public Counsel believes the notice is inadequate because it contained an incorrect effective date of the charge. The customer notice provided indicates that the company intended this charge to become effective on August 1. In addition, the notice mentions a billing fee, not in the company's tariff, that is also to take effect on August 1.

While the notice does not have the correct effective date for the non-recurring charge, it is clear that certain services will receive a rate increase. This is a competitive company offering competitive services. Customers in Missouri have numerous choices for interexchange telecommunications services and can easily switch providers if unsatisfied with the rate increase. Indicating that the rate increase began three months earlier than it did may have caused some confusion, but most likely it only caused customers to switch carriers sooner rather than later.

The Commission also finds that First Communications has not been authorized to charge a \$.99 billing fee in Missouri even though it mentioned that fee in its notice. Furthermore, the Commission is not approving any such charge in this order. Therefore, any objections to that charge are also not ripe for action.

The Commission determines that even though the notice contained errors, it was adequate. The Commission finds, however, that the company should send an additional notice to its customers clarifying that the new monthly recurring charges were not authorized to begin until the effective date of the tariff and that no billing fee has been authorized.

The Commission shall direct its Staff to conduct its investigation into the possible charging of non-tariffed rates or fees and to bring any appropriate complaint to the Commission that the results from that investigation.

IT IS ORDERED THAT:

1. The Motion to Suspend Tariff File No. JX-2008-0217, filed on October 29, 2007, by the Office of the Public Counsel, is denied.
2. First Communication, LLC, shall send an additional notice to its customers as set out in the body of this order no later than its next regular billing cycle.
3. The Staff of the Missouri Public Service Commission shall investigate whether non-tariffed rates or fees were charged and shall bring any appropriate complaint to the Commission that results from that investigation. If no complaint is filed, then Staff shall file a report of its findings in this case file.

4. This order shall become effective on November 16, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., Concur.

Dippell, Deputy Chief Regulatory Law Judge