

**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
October, 2010.

In the Matter of the Application of Inmate Calling Solutions, LLC d/b/a ICSolutions for Waiver of Commission Rules and Statutes.)))	<u>File No. XE-2011-0065</u>
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ORDER GRANTING WAIVERS AND DENYING REQUEST FOR HEARING

Issue Date: October 6, 2010

Effective Date: October 16, 2010

On September 3, 2010, Inmate Calling Solutions, LLC, d/b/a ICSolutions, filed a request with the Missouri Public Service Commission that the Commission waive certain rules and statutory provisions pursuant to Section 392.420, RSMo Cum. Supp 2009.¹ On September 17, 2010, the Office of the Public Counsel filed an objection to the waiver and requested a hearing on the matter.

Public Counsel did not object to all the waivers requested, but specifically objected to the waiver of the following rules:

- 4 CSR 240-33.040(1-3) and (5-10) Billing and payment standards
- 4 CSR 240-33.045 Clear identification and placement of charges on bills
- 4 CSR 240-33.080(1) Identify company name and toll-free number on bills
- 4 CSR 240-33.130(1), (4) and (5) Operator service requirements

Public Counsel objected to these waivers because they may be “detrimental to consumers and contrary to the public interest.” Public Counsel bases this claim on its assertion that “[c]alls initiated in correctional institutions are not subject to the same

¹ All statutory citations are to the Revised Statutes of Missouri, Cumulative Supplement 2009, unless otherwise cited.

competitive forces that have become common in the long distance and operator service markets.” Public Counsel further asserts that the persons receiving the calls may not be as familiar with this company or understand its billing practices as well as their local service provider.

Public Counsel did not cite any specific authority under which the Commission may deny these waivers, but suggested in its arguments that Section 392.420, RSMo Cum. Supp. 2009, does not apply because ICSolutions is not concurrently seeking the “issuance or modification of a certificate.”

The Staff of the Commission filed a recommendation on September 21, 2010, in which it recommended that the waivers be granted. Staff indicates that the Commission has granted similar waivers to similarly situated companies and suggests that the Commission remain consistent with its decisions in those prior cases.

ICSolutions filed a response to the Public Counsel on September 21, 2010. In its response, ICSolutions argues that “[i]t would be fundamentally unfair, prejudicial and discriminatory for ICSolutions to be denied the same waivers as were just granted to a major competitor (Global Tel*Link), or to . . . [have to defend] a contested case proceeding” to be granted those same waivers.² ICSolutions asserts that this type of waiver case is a “routine” matter that should be handled expeditiously by the Commission.

The relevant portions³ of Section 392.420 state:

The commission is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange

² The Global Tel*Link file referred to is XE-2010-0247.

³ The remaining five sentences of Section 392.240 deal with waivers for incumbent local exchange companies.

service authority or the modification of a certificate of public convenience and necessity for interexchange or local exchange telecommunications service, to entertain a petition to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter. In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, *and for all existing alternative local exchange telecommunications companies*, the commission *shall waive*, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330 and 392.340. (Emphasis added.)

Public Counsel argues that the waivers can only be granted in conjunction with the issuance or modification of ICSolutions' certificate as stated in the first sentence of Section 392.240. The Commission granted ICSolutions authority to provide local exchange telecommunications services in File No. XA-2004-0478.⁴ That order granted certain waivers but specifically set out that ICSolutions was "subject to all applicable statutes and Commission rules except as specified in this order." Thus, in essence, the request for waivers is a request to modify the certificate as granted.

Further, ICSolutions is an "alternative local exchange telecommunications company" as that term is defined in Section 386.020. Thus, under the second sentence of Section 392.420, ICSolutions is an existing alternative local exchange provider and the Commission has no discretion to deny the waivers requested. Therefore, the Commission shall grant the requested waivers and direct the company to file tariffs in

⁴ Order Approving Interexchange and Nonswitched Local Exchange Certificate of Service Authority and Order Approving Tariff, effective May 2, 2005.

compliance with this order. In addition, the Commission shall deny the request for hearing.

THE COMMISSION ORDERS THAT:

1. The Inmate Calling Solutions, LLC d/b/a ICSolutions' Application for Waiver of Commission Rules and Statutes is granted.

2. The Office of the Public counsel's request for a hearing is denied.

3. Inmate Calling Solutions, LLC d/b/a ICSolutions is granted the following waivers:

392.210.2 Accounting (system of accounts)

392.240.1 Rates

392.270 Accounting (valuation)

392.280 Accounting (depreciation/accounts)

392.290 Issuance of stocks, bonds and other indebtedness

392.300.1 Transfer of property and ownership of stock

392.310 Approval of issuing stocks, bonds and other indebtedness

392.320 Certificate of Commission to be recorded stock dividends

392.330 Disposition of proceeds of sales of stocks, bonds, notes, and other indebtedness

392.340 Reorganization

4 CSR 240-3.550(4) and (5)(A) Held order records, Quality of service reports.

4 CSR 240-10.020 Income on Depreciation Fund Investments

4 CSR 240-30.040 Uniform System of Accounts

4 CSR 240-32.060 Engineering and maintenance

4 CSR 240-32.070 Quality of Service

4 CSR 240-32.080 Service objectives and surveillance levels

4 CSR 240-33.040 (1) through (3) and (5) through (10) Billing and payment standards

4 CSR 240-33.045 Clear identification and placement of charges on bills

4 CSR 240-33.080 (1) Toll-free number for billing disputes

4 CSR 240-33.130 (1), (4), and (5) Operator service billing requirements

4. Inmate Calling Solutions, LLC d/b/a ICSolutions shall file tariff sheets in compliance with this order.

5. This order shall become effective on October 16, 2010.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name and title.

Steven C. Reed
Secretary

(S E A L)

Davis, Jarrett, Gunn,
and Kenney, CC., concur;
Clayton, Chm., dissents.

Dippell, Deputy Chief Regulatory Law Judge