

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**
At a session of the Public Service
Commission held at its office in
Jefferson City on the 26th day of
August, 2009.

In the Matter of the Petition for Waivers of)
Certain Rules and Statutes on behalf) **File No. XO-2010-0040**
of Windstream Communications, Inc.) **Tracking No. YX-2010-0057**

ORDER GRANTING WAIVER OF STATUTES AND REGULATIONS

Issue Date: August 26, 2009

Effective Date: August 27, 2009

The Missouri Public Service Commission is granting the petition for waiver of statutes and regulations of Windstream Communications, Inc., ("Windstream").

Windstream filed its petition on July 29, 2009, with an affidavit and revised tariff sheets effective on August 27, 2009. On August 11, 2009, Office of Public Counsel ("OPC") filed suggestions ("suggestions") regarding the petition.¹ On August 18, 2009, the Commission's staff ("Staff") filed its response to OPC's suggestions and verified recommendation in favor of the petition. On August 24, 2009, Windstream filed its response to OPC's suggestions. Because no party disputes the petition, no law requires a hearing before granting the petition, so the Commission convened no hearing, and bases its findings on the verified filings.²

The company holds certificates of service authority ("certificates") to provide non-switched local exchange services, and interexchange telecommunications services in

¹ OPC neither seeks denial of the petition nor specifies any conditions for granting it. OPC asks for a declaration that the Commission will continue to enforce provisions of law not waived. OPC also asks the Commission to order that Windstream shall preserve and allow access to unidentified documents. Neither relief has any relevance under the laws related to the petition.

² ***State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n***, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

Missouri under competitive classification. The company's certificates already include waivers of certain provisions of law, and the petition seeks further waivers as follows:

<i>Statutes (sections in the 2000 Revised Statutes of Missouri)</i>	<i>Topic</i>	<i>Current</i>	<i>Sought</i>
392.210.2	Uniform system of accounts	x	
392.240.1	Rates, rentals, service, connections	x	
392.270	Valuation of property (ratemaking)	x	
392.280	Depreciation accounts	x	
392.290	Issuance of securities	x	
392.300	Acquisition of stock		x
392.310	Stock and debt issuance	x	
392.320	Stock dividend payment	x	
392.330	Securities, debts and notes	x	
392.340	Reorganization(s)	x	
<i>Regulations (4 CSR 240)</i>	<i>Topic</i>	<i>Current</i>	<i>Sought</i>
3.550(4) and (5)(A)	Records and Reports		x
10.020, RSMo	Depreciation Fund Income	x	
30.040, RSMo	Uniform System of Accounts	x	
32.060	Engineering, Maintenance		x
32.070	Quality of Service		x
32.080	Service Levels		x
33.040(1)-(3) and (5)-(10)	Billing and Payment		x
33.045	Charge on Bills		x
33.080(1)	Billing		x
33.130(1), (4) and (5)	Operator Service		x

Such a petition is within the Commission's jurisdiction, and subject to a standard, as follows:

The commission is authorized, in connection with the . . . modification of a certificate of interexchange or local exchange service authority . . . 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.^[3]

³ Section 392.420, RSMo Supp. 2008.

To show that the requested waivers meet that standard, Windstream cites several authorities.

Windstream cites Commission orders granting waivers to applicants holding the same certificates as Windstream.⁴ Windstream also cites the statutory entitlements to waivers for certain other entities. Such entities include an incumbent local exchange telecommunications company:

Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected[;⁵]

and:

In addition, where an interconnected voice over Internet protocol service provider is registered to provide service in an incumbent local exchange telecommunications company's authorized service area under section 392.550, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected[;⁶]

and an alternative local exchange telecommunications company:

. . . 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

⁴ File Nos. TE-2009-0169 and XE-2009-0308.

⁵ Section 392.420.

⁶ *Id.*

392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340[;^{7]}

and either an incumbent or alternative local exchange telecommunications company:

An incumbent local exchange telecommunications company deemed competitive under this section and all alternative local exchange telecommunications companies shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the commission[.^{8]}

Staff cites those same statutes in support of its recommendation favoring the requested waivers.

Further, Windstream is not delinquent in filing an annual report, remitting its annual assessment to the Commission, and payments to the Universal Service Fund and Relay Missouri. OPC agrees that Windstream “appears to have statutory grounds for” the requested waivers. Therefore, the Commission concludes that the waivers sought are consistent with the provisions of sections 392.361 to 392.520 and the purposes of chapter 392, RSMo.

The Commission will grant the waivers and approve the tariff.

THE COMMISSION ORDERS THAT:

1. The petition for waiver of statutes and regulations filed by Windstream Communications, Inc., is granted.
2. Application of the following statutes and regulations shall be waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)

⁷ *Id.*

⁸ Section 392.245.5(8), RSMo Supp. 2008.

- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Regulations

- | | | |
|--------------------------------------|---|-----------------------------|
| 4 CSR 240-3.550(4) and (5)(A) | - | Records and Reports |
| 4 CSR 240-10.020 | - | Depreciation Fund Income |
| 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 Levels |
| 4 CSR 240-33.040(1)-(3) and (5)-(10) | - | Billing and Payment |
| 4 CSR 240-33.045 | - | Charge on Bills |
| 4 CSR 240-33.080(1) | - | Billing |
| 4 CSR 240-33.130(1), (4) and (5) | - | Operator Service |

3. The tariff issued by Windstream Communications, Inc., July 28, 2009, and assigned tariff tracking no. number YX-2010-0057 is approved to become effective on August 27, 2009. The tariff approved is:

Tariff Mo. PSC No. 1

**Second Revised Page 6 Replacing First Revised Page 6
First Revised Page 7 Replacing Original Page 7**

- 4. This order shall become effective on August 27, 2009.
- 5. This file may close on August 28, 2009.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Jordan, Regulatory Law Judge