

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Request)	
of CenturyTel of Missouri, LLC,)	
and Embarras Missouri, Inc.)	Case No. TO-2010-0042
for Relief from Submission)	
of Surveillance Data Reports.)	

SUGGESTIONS OF THE OFFICE OF THE PUBLIC COUNSEL

The Office of the Public Counsel respectfully suggests to the Missouri Public Service Commission that if the requested relief is granted that the Commission still exercise its residual powers and duties regarding telecommunications and public utilities by providing for the retention and authorized access to company records that can assist the Commission determine the status of telecommunications in Missouri. Embarras Missouri, Inc. and CenturyTel of Missouri, LLC (and the successor teleco CenturyLink) appear to have the statutory grounds for relief under HB 1779 from the submission of surveillance data reports because of their competitive status. However, the PSC has a responsibility to safeguard the integrity of the telecommunications and communications infrastructure and the availability of telecommunications and related communications service to preserve, protect, and advance the public interest.

Section 386.250. The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(2) To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state, except that nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission, except for exchange access service;

(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

The General Assembly has declared the intent and purpose of chapter 392, RSMO as follows: Sec. 392.185. The provisions of this chapter shall be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;

- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

To that end, Public Counsel asks the Commission to provide for adequate records retention and access for use as a source for the Commission to investigate, evaluate, and report on the Missouri's communications and telecommunications status.

Regulation acts as a substitute for competition to protect consumer. *May Dep't Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 48 (1937). The purpose of Missouri's telecommunications law in Chapter 392, RSMo, includes the intent that full and fair competition is allowed to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest. (Section 392.185 (6), RSMo.) The commission must have ready

access to Missouri specific data to determine if and to what degree competition is protecting consumers and fulfilling the other principles set out in Section 386.185, RSMo.

Public Counsel's proposal is not inconsistent or contrary to HB 1779. Public Counsel's suggestion does not call for continuation of the surveillance filing or even the preparation of the present reports without a filing requirement. Public Counsel is not proposing that the companies use any particular form or format, create any specific document or record or require enumerated data now provided under the present surveillance reports.

Public Counsel presumes that these companies employ some form of "best practices" management and maintain some type of quality control records, asset reports and evaluations, project and network status reports or other management tools that identify and analyze operations and infrastructure, both successes and problem areas. Public Counsel's request is that the Commission directs the companies to preserve these records and provide access to these records and any other similar management tools to the Commission Staff and the Office of the Public Counsel. Public Counsel suggests this as a practical means to carry out HB 1779 and its low level of oversight, yet not abandon the basic responsibility and need to protect and advance the public interest.

Public Counsel is not singling out these companies for disparate treatment, but hopes that the Commission will adopt this type of minimal record retention and access for similarly situated telecommunications companies. (*In the Matter of the Application of Yourtel America, Inc. for Waiver of Commission Rules and Statute, TE-2010-0050; In the Matter of the Petition for Waivers of Certain Rules and Statutes on behalf of*

Windstream1 Communication, Inc, XO-2010-0040) Public Counsel makes this suggestion now, not to restrict these two companies or to interfere with the acquisition, but rather because the timing of the companies' relief request offers an opportunity for the Commission to consider and take action now to memorialize its public policy to preserve company records so that it may have the ability to make a factual investigation and report on the status of telecommunications.

The PSC has its Staff monitoring and tracking telecommunication rate tariffs for a data base for rate actions; Public Counsel's suggestion compliments this by preserving information related to infrastructure and service without burdening the companies to create special records or methods to identify service and infrastructure success and problems. Public Counsel asks the Commission to issue an order to avoid any misunderstanding about the need to have data to periodically review and to ensure the companies are aware of the PSC's policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was emailed, mailed or hand delivered this 10th day of August 2009 to the following attorneys of record:

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