

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of)	
MCC Telephony of Missouri, Inc.)	Case No. TE-2006-0415
For a Waiver of Compliance with)	
The Requirement of 4 CSR 240-240-32)	

Reply Brief of the MITG

The MITG Companies submit the following Reply Brief:

Supplemental Issue: Does MCC comply with 4 CSR 240-32.080(5)(A) if it makes all installations by the installation date MCC and the customer agree to?

4 CSR 240-32.080(5) (A) (1) (A) requires 90% of orders for basic local service to be installed “within 5 working days after the customer ordered service; or (B) On or by the date requested if it is at least five (5) working days after the date the customer ordered service”.

MCC argues that a date agreed to by MCC and the customer meets a “customer request” exception to this rule. The MITG disagrees that, under the Commission rules, a date *agreed to* is the same as a date *requested*. 4 CSR 240-32.070 (4) provides:

“Each customer requesting the installation or repair of basic local telecommunications service will be provided with a commitment as to the date service will be installed or repaired. The customer may request an appointment more specific in time than the one offered by the company. If requested by the customer, the company will indicate a morning or afternoon appointment, and will make reasonable efforts to accommodate the customer’s appointment requests.”

It is clear from this rule that a customer is entitled to request an installation date different from the one MCC offers. If such a request is made, pursuant to 4 CSR 240-32.080(5) (A) (1) (B) MCC must meet that date if it is at least five days from the date the customer requested service. This subsection is not accurately characterized as a customer request exception permitting MCC to install more than five days after service is ordered.

Although the MITG disagrees with MCC's interpretation that there is a "customer request" exception to the existing rule of the Commission, the MITG has no particular disagreement with the concept that mutually agreed dates be eliminated from calculating compliance with the requirement that 90% of orders be installed within 5 days. The MITG has no objection to MCC being provided with a variance from the rule permitting MCC to exclude mutually agreed dates from the 6 day installation obligation.

Issue: Should the Commission conduct a rulemaking to revise the Commission's quality of service rules?

The MITG agrees with both MCC and Staff that the Commission should conduct a rulemaking to consider revising quality of service standards to provide a level playing field for competitors of differing service technologies. A rulemaking is preferable to continuing to consider individual complaint or waiver cases.

The MITG believes that 2007 session legislative activity,¹ and litigation,² substantiates the notion that new telephony entrants believe the Commission's rules are unduly burdensome, and that competition should supplant regulation. The MITG believes these particular bills go too far in proposing the Commission be divested of jurisdiction over interconnection and intercompany compensation, proposals that are at

¹ HB 1033 and SB 552

² *Comcast IP Phone, LLC v MoPSC*, US Dist Ct, W.D. Mo, Central Division Case No 06-4233-CV-C NKL.

odds with 47 USC 251 and 252. The MITG also believes that any legislation or rulemaking exempting one type of competitor from regulation should not be effective unless and until other competitors receive commensurately relaxed or relieved regulation.

The Commission is the agency with the expertise, and in the best position, to forestall similarly ill-advised legislation or litigation by proactively revising its rules to eliminate or relax rules which otherwise would hinder competitively neutral competition, while at the same time preserving customer protections that competition will not adequately preserve.

The MITG respectfully suggests that a generic docket or rulemaking proceeding be conducted, and that all stakeholders be given an opportunity to participate. The Commission should ask the industry for comment as to which rules need to be reviewed, and receive comments prior to initiating any rulemaking. For each rule, the MITG suggests that the Commission should consider the following basic questions:

- A. Should the rule be discontinued as it is no longer necessary or desirable in view of local competition?
- B. If retained, should the rule be modified to assure its application does not disparately impact competitors utilizing different technologies or types of facilities to provision local service?

WHEREFORE, the MITG respectfully requests that MCC's request for variance be denied, or alternatively that a temporary variance be provided, and that the Commission institute a docket or rulemaking in which to consider the retention, discontinuation, or modification of its rules consistent with the public interest in compliance with regulations resulting in no adverse competitive inequalities between

competitors, together with such other and different relief as is consistent with the relief requested herein.

/s/ Craig S. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was electronically mailed to the following attorneys of record in this proceeding this 6rd day of April, 2007, to all counsel of record in this proceeding.

/s/ Craig S. Johnson
Craig S. Johnson