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**Missouri Public Service Commission**

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February 24, 2000

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Vice Chair

**FILED<sup>3</sup>**

FEB 24 2000

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**RE: Case No. TC-2000-176**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

*Julie A. Kardis*

Julie A. Kardis  
Assistant General Counsel  
(573) 751-8706  
(573) 751-9285 (Fax)

JAK:sw  
Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

FEB 24 2000

Missouri Public  
Service Commission

Nixa Area E-911 Board, )  
 )  
Complainant, )  
 )  
v. )  
 )  
Missouri Comm South, Inc., )  
 )  
Respondent. )

Case No. TC-2000-176

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation states:

1. In the attached Memorandum, which is labeled Appendix A, Staff recommends that the Commission deem Nixa Area E-911 Board's (Complainant) allegations admitted pursuant to 4 CSR 240-2.070(9) and Missouri Comm South, Inc. (Respondent) to be in default. Pursuant to 4 CSR 240-2.070(9), the Commission may deem the complainant's averments admitted if the respondent in a complaint case fails to file a timely answer absent a finding of good cause by the Commission.

2. Staff further recommends that the Commission find Respondent in violation of §190.310, RSMo 1994, 4 CSR 240-34.010(1)(A), and its own tariff and order its General Counsel to pursue the maximum penalties under §§386.570 and 392.360, RSMo 1994.

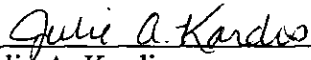
3. Finally, Staff recommends that the Commission order Respondent to immediately begin making payments to Complainant and to provide to the Commission a list of all areas in which it is providing service, the 911 service authority in each of those areas, the number of lines

upon which the applicable 911 surcharge should be collected, the amount of 911 surcharges it has collected in each of those areas, and the amount of 911 surcharges it has remitted to the appropriate 911 service authority in each of those areas, as well as copies of the quarterly returns filed and lists of individuals refusing to pay surcharges in each of those areas.

WHEREFORE, Staff recommends that the Commission deem Complainant's averments admitted, find Respondent in violation of the statutes, rules, and its own tariff as stated above, order its General Counsel to pursue maximum penalties in circuit court, and order Respondent to provide to the Commission the aforementioned information.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

  
\_\_\_\_\_  
Julie A. Kardis  
Assistant General Counsel  
Missouri Bar No. 44450

Attorney for the Staff of the  
Missouri Public Service Commission  
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## Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 24<sup>th</sup> day of February 2000.

Quin A. Kardus

# MEMORANDUM

RECEIVED

FEB 18 2000

JLR 9:53

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION

To: Missouri Public Service Commission Official Case File  
Case No. TC-2000-176, Nixa Area E-911 Board vs. Missouri Comm South, Inc.

From: <sup>TWS</sup> Tom Solt  
Telecommunications Department

Wes Headlee 2-16-00  
Utility Operations Division/Date

Manly 2-24-00 AK 2-24-00  
General Counsel's Office/Date

Subject: Report on Nixa Area E-911 Board vs. Missouri Comm South, Inc.

Date: February 16, 2000

On August 20, 1999, the Nixa Area E-911 Board (Nixa), filed a complaint against Missouri Comm South, Inc. (MCS), alleging the following:

- MCS was collecting Nixa's 15% 911 surcharge
- MCS had not submitted a list of any amounts uncollected as provided for in Section 190.305 RSMo
- MCS had remitted no collected tax amounts as required by Section 190.310 RSMo
- MCS had filed no quarterly returns as required by Section 190.310 RSMo

Nixa's complaint requests the Commission to order MCS to provide an accounting of all amounts collected on behalf of Nixa, to provide an accounting of all MCS Nixa customers, to remit all taxes collected on behalf of Nixa, to comply with all statutory requirements and procedures governing MCS' collection of taxes on behalf of Nixa, and for any other relief deemed just and equitable by the Commission.

On August 24, 1999, the Commission issued a Notice of Complaint, which directed MCS to file an answer or a notice that the complaint had been satisfied, by September 23, 1999. On September 16, 1999, MCS filed a letter which states MCS has taken steps to gather the necessary information to resolve the issue, and that by the end of September 1999, MCS would provide Nixa with the information requested in the complaint concerning the amounts collected and users serviced, and would remit the appropriate tax amounts collected, in compliance with statutory requirements.

On October 26, 1999, the Commission issued an Order Directing Filing, which stated that MCS' September 16 letter was not in compliance with the Commission's August 24<sup>th</sup> Notice, and directed MCS to file an answer or notice that the complaint had been resolved, by November 5, 1999.

On December 2, 1999, the Commission issued a Second Order Directing Filing, directing MCS to file either an answer or notice that the complaint had been satisfied, not later than December 13, 1999. On December 13, 1999, MCS, through its local counsel, filed its Answer to Complaint, in which MCS denied all charges alleged in the complaint. MCS also filed a Motion to Strike, asking that the portions of Nixa's complaint requesting an accounting of surcharge amounts collected be stricken, stating that the Commission cannot order any accounting or award of money.

Appendix A

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MCS' failure to comply with the Commission's orders, and for the violations of state statute, regulations, and its own tariff. Staff also recommends the Commission find that MCS should have been paying the Nixa Area E-911 surcharge in accordance with the applicable section of the RSMo, and that the Commission order MCS to immediately begin making payments to the Nixa Area E-911 Board, and any other applicable 911 authority in whose area it operates, in accordance with statute, its tariff, and 4 CSR 240-34.010(1)(A). Staff further recommends that MCS be required to provide to the Commission a list of all areas in which it is providing service, the 911 service authority (county, city, or other), in each of those areas, the number of lines upon which the applicable 911 surcharge should be collected, the amount of 911 surcharges it has collected in each of those areas, and the amount of 911 surcharges it has remitted to the appropriate 911 service authority in each of those areas, as well as copies of the quarterly returns filed and lists of individuals refusing to pay 911 surcharges in each of those areas.

At the Staff-sponsored 911 forum, held November 16, 1999, which was attended by 911 personnel as well as telephone company representatives, many of the 911 administrators present expressed concern that the non-payment of surcharges by CLECs operating within their services areas was a problem. Although CLEC tariffs state the exchanges in which they are authorized to provide service, Staff has no way of knowing in which areas CLECs are actually doing business, which makes it impossible to know if the CLECs operating in the state are paying their applicable 911 surcharges.

If, in the instant case, the Commission were to ask its general counsel to pursue the maximum penalties available under the law, it may serve as notice to all CLECs operating in Missouri that the subject of the payment of 911 surcharges is one that the Commission believes is a serious one, worthy of its attention, and, in the case of non-payment, of its serious consequences.

**Service List for  
Case No. TC-2000-176  
February 24, 2000**

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