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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Annual Report of
TCG St. Louis, Inc.

)
) Case No. TO-99-481

ORDER GRANTING CONFIDENTIAL TREATMENT AND LATE FILING

On April 22, 1999, TCG St. Louis, Inc. (TCG) filed a document entitled Motion to Accept Proprietary Annual Report. The document requested that the Commission accept TCG's alternative basic local exchange carrier annual report for 1998 as a proprietary document. TCG stated that the annual report contains sensitive information that TCG considers confidential. TCG also stated that it has taken all appropriate precautions to protect against the disclosure and that its ability to effectively compete in the Missouri market may be compromised if the annual report is publicly available.

The document cited no statutory provision or other authority which would allow the Commission to grant confidential treatment to such reports. 4 CSR 240-2.060(1)(D) states: "All applications . . . shall include . . . [r]eference to the statutory provision or other authority under which relief is requested." The Commission consequently issued its Order Requiring Correction on May 4, 1999, requiring that TCG state under which statute, rule or other authority it was filing.

The Commission also required TCG to set forth a factual basis, and not just a conclusory recitation, explaining why the release of nonpublic information would be harmful to it. 4 CSR 240-10.080(7) Annual Report Filing Requirements states:

Where a utility subject to this rule considers the information requested on the annual report form to be confidential, it must make a written request to the executive secretary to file that information under seal and state good cause for maintaining the information under seal. . . .

Finally, the Commission also required that TCG state whether the information it seeks to make confidential is available in any other form in any other public place (e.g., the Internet, public libraries, reports previously published, filings with other regulatory agencies, etc.). TCG was given until May 14, 1999, to file a corrected application or be subject to denial of the relief it requests. TCG failed to obey the Commission's order in that it did not file a corrected application.

On May 25, 1999, the Commission entered its Order Denying Relief. The Commission's order stated, *inter alia*, that TCG's request that its alternative basic local exchange carrier annual report for 1998 should be treated as a proprietary document is denied and the report shall be considered for all purposes a public document.

On June 3, 1999, TCG filed both its Request to the Executive Secretary to File Annual Report Under Seal, which corrected its original application, and its Application for Rehearing and Motion for

Reconsideration and Suggestions in Support Thereof¹ (reconsideration motion). 4 CSR 240-2.160(3) states in part: "The commission shall . . . reconsider the order if in its judgment there is sufficient reason to do so." In its reconsideration motion, TCG stated that simultaneous to this case, it had an almost identical proceeding in Case No. TO-99-482, in which TCG requested that its interexchange telecommunications company annual report be kept confidential. TCG timely responded to the Commission's Order Requiring Correction in that case. However, TCG stated, due to the similarities of that case and this case, TCG inadvertently did not respond in this case. On June 16, 1999, the Commission found that there was sufficient reason to favorably reconsider its Order Denying Relief issued on May 25, 1999, and reversed that order.

On July 16, 1999, the Staff of the Commission filed a recommendation, which was slightly different than the one filed in TO-99-482, which concerned TCG's IXC annual statement. The Commission will follow in this case what it ordered in TO-99-482, namely: that TCG's request be granted insofar as statement of cash flows, balance sheet, and income statement are concerned; that the Commission grant TCG's request for confidential treatment of the financial statements contained in its 1998 annual report; and that TCG be required to file,

1 While admittedly not totally clear, Commission Rule 4 CSR 240-2.160 has been interpreted by Commission practice: the term "motion for rehearing" means a motion made after a final contested order where a hearing which disposes of all contested issues has been held, and "motion for reconsideration" means a motion to again deliberate an order issued other than a final contested order. Since there was no hearing in this case, TCG's filing was considered a motion for reconsideration.

within ten (10) days of the effective date of this order, a public version of its annual report: (a) that blacks out or otherwise obscures the confidential information on its financial statements; (b) that identifies each affected page with the words, "Confidential Information Omitted"; and (c) to which has been attached a copy of said order approving confidential treatment.

Upon review of TCG's motion, the Commission finds that there is good cause shown for the request to protect confidential information, that is, TCG's statement of cash flows, balance sheet, income statement, and financial statements; and that the request substantially complies with the above-cited rule. Therefore, confidential treatment for those portions identified as confidential of the annual report filed by TCG for 1998 should be granted. The Commission also finds that there is good cause to extend the filing date of the annual report for TCG since it made a good-faith attempt to file on time. Therefore, an order allowing TCG to file out of time should also be granted.

IT IS THEREFORE ORDERED:

1. That the request for confidential treatment of TCG St. Louis, Inc.'s statement of cash flows, balance sheet, income statement, and financial statements, filed in its annual report is granted, that such information shall be filed under seal, and that such information shall be maintained under seal.

2. That TCG St. Louis, Inc., be required to file, within ten (10) days of the effective date of this order, a public version of its annual report: (a) that blacks out or otherwise obscures the confidential

information on its financial statements; (b) that identifies each affected page with the words, "Confidential Information Omitted"; and (c) to which has been attached a copy of this order.

3. That TCG St. Louis, Inc. shall be allowed to file its annual report out of time.

4. That this order shall become effective on September 17, 1999.

5. That this case shall remain open until TCG St. Louis, Inc. has complied with this order.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant to
4 CSR 240-2.120(1), (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 7th day of September, 1999.

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION