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June 11, 2002

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

Re: **Missouri State Discount Telephone,  
Case No. TT-2002-1097**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Response of the Office of the Public Counsel**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. F. Dandino".

Michael F. Dandino  
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

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

In the Matter of the Tariff Filing of )  
Missouri State Discount Telephone to Add )  
Exchanges for BPS Telephone Company, )  
Chariton Valley Telephone Corporation, )  
and Mid-Missouri Telephone Company to )  
Reflect Newly Authorized Exchanges as )  
per Recently Approved Interconnection )  
Agreements.

Case No. TT-2002-1097  
Tariff No. 200200981

**RESPONSE OF THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel and respectfully suggests to the Missouri Public Service Commission the following in response to the Staff Recommendation and the Company's suggestions in opposition to Public Counsel's Motion to Suspend the Tariff:

1. The overriding issue before the Commission here is not whether the form and content of the tariff is lawful and proper. The real issue in this case is broader than just Missouri State Discount Telephone Company's tariff. Because of circumstances and Section 392.245, RSMo, this tariff has become an important factor in a multifaceted problem. The tariff raises issues of not only how the PSC is going to address factual matters and legal issues that directly concern this tariff and this Company, but also the status of BPS Telephone Company as a price cap regulated small company, as well as the ability of the Commission to pursue a significant allegation of overearnings against BPS Telephone Company. This tariff filing gives the PSC another avenue to explore these issues. By suspending

the tariff, the Commission can freeze the status quo and allow it to address the issues. The PSC should give itself the full array of its options. The PSC should use the tools available within the sound exercise of its discretion to protect consumers and promote the public interest. These elements are present in the circumstances surrounding this tariff filing and its impact on BPS, its customers and this Commission.

2. The validity of BPS's prior election to be regulated as a price cap company under Section 392.245, RSMo has been questioned by the Staff in Case No. TC 2002-1076 on the grounds that a reseller cannot serve as competitor under Section 392.245, RSMo and that a prepaid service provider is not a competitor under the same statute. The failure of Missouri State Discount Telephone to have a valid tariff in place to authorize it to provide service also raises serious questions of the effectiveness of the BPS election, as discussed in Public Counsel's Motion to Suspend.
3. The PSC may foreclose its ability to investigate the alleged overearnings of BPS by allowing this tariff to become effective. Any flaw in the election by BPS of price cap status due to MDST's status can then be corrected by a new election after the effective date. After that, the issue may be limited to the question of whether a reseller or a prepaid provider can be the basis of the election.
4. Staff has noted that Missouri State Discount Telephone is not providing "lawful service" its recommendation:

"In Case No. TC-2002-1076, Staff filed a Motion for Commission Authority to File an Excessive Earnings Complaint against BPS Telephone Company (BPS). In Case No. TC-2002-1076, the Staff alleges that MSD is not providing lawful service in

BPS's service areas. If approved, the instant filing would appear to correct questions raised by the Staff regarding MSD's lawful operations in the BPS service areas." (Emphasis added).

IF MDST was not providing "lawful service" then it cannot serve as a basis for BPS's price cap election.

5. Public Counsel wants Missouri State Discount Telephone to comply with the law. Yet under the facts here, the approval of this tariff may very well defeat the public interest in seeing that (1) rate of return companies do not exceed the authorized level of earnings, (2) only competitors that are properly certified and tariffed to do business in exchanges can serve as a basis for price cap regulation election, and (3) the entire regulatory process functions with an eye toward the intent and purpose of the law and the best interests of the public.
6. The PSC should exercise its discretion to suspend this tariff so that it has an opportunity to make informed legal and factual decisions on the question of the alleged overearnings of BPS and the other related issues through a considered review and decision on affirmative action by the PSC rather than having matters possibly foreclosed by operation of law, inaction, or default.

For these reasons and the reasons set forth in the Motion to Suspend, Public Counsel asks the Commission to suspend the tariff and hold an evidentiary hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: 

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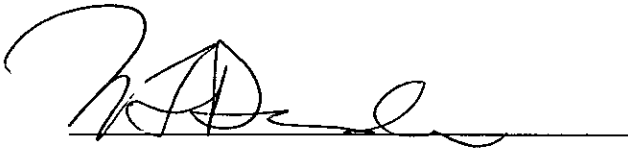
# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed or hand delivered this 11th day of June, 2002 to the following attorneys of record:

General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Craig S. Johnson  
Andereck, Evans, Milne, Peace & Johnson  
P. O. Box 1438  
Jefferson City, MO 65102-1438

Sondra Morgan/W.R. England  
Brydon, Swearngen & England  
P. O. Box 456  
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to read 'C. S. Johnson', is written over a horizontal line.