

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

In the Matter of the Waiver of                    )  
Certain Rules and Statutes to                    )     **File No. TE-2012-0073**  
Telecommunications Companies                    )

**STAFF RESPONSE**

COMES NOW the Staff of the Missouri Public Service Commission and for its Response states:

1. On September 8, 2011, the Commission's Staff filed a motion asking the Commission to adopt a list of standard waivers, grant those standard waivers to all telecommunications companies except those that request that those waivers not be granted, and waive the Commission regulations that require that these waivers be listed in future applications and tariffs.

2. On September 12, 2011, the Commission directed the Staff to file a pleading explaining whether the relief Staff seeks would constitute a "rule" within the meaning of Section 536.010(6), RSMo (Supp. 2010).

3. Section 536.010(6) provides as follows:

(6) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but does not include:

\* \* \*

(j) A decision by an agency not to exercise a discretionary power;

4. The proposal contained with the Staff's Motion is not a rule. First, in the broadest sense, it is not a statement of general applicability. Not all regulated telecommunications carriers

(“companies”) want the proposed “standard waivers” to apply to them. Some companies proudly adhere to the standards set out in the Commission’s rules, believing that they set the standard for safe and adequate service, as well as proper customer service. The Staff proposal, made after discussion with interested company representatives, was to establish an opt-out procedure whereby such companies could have the waivers not apply to them. The single pleading (the Staff’s Motion) was arrived at simply as a measure for reducing the administrative burden to both the companies and the Commission, rather than the hundreds of waiver requests and tariff filings that would be processed without the proposed method. The simple consolidation of cases does not transform the waivers granted in a case-by-case basis into a statement of general applicability.

5. The proposal asks the Commission to refrain from exercising a discretionary power, and would not constitute a rule even if it did apply to all companies. The Commission has the authority to grant certain waivers, although the statute provides that the Commission “shall” waive certain statutes and rules in certain circumstances. As to the mandatory waivers, the statute is sufficiently unambiguous as to give all who need it notice that certain statutory or rule provisions are waived, without the need of a rule to elucidate it. To the extent that the Commission is acting within its discretion, no formal rule need be adopted.

6. As to the inclusion of the “standard” waived rules in the tariff, administrative efficiency is again the goal. As noted above, the statute gives sufficient notice that certain statutory and rule provisions do not apply in certain circumstances. If a company were to be granted an exemption based on unique facts and circumstances, the Staff would expect the company to list that waiver in its tariff. However, if the “standard” list changes, then it should apply to all those companies who want the “standard” waivers without every company having to change its tariff. In addition, applications for certification often include an incorrect list, which necessitates significant Staff involvement and delays the certification. While that delay does not rise to the level of a barrier to entry, it does introduce complications that serve little or no purpose, since consumers and the Staff do not rely on the tariffs as notice of the standard waivers, but look instead to the statute.

WHEREFORE, the Staff again moves that the Commission adopt the “standard” list of waivers listed in its Motion, grant them to all telecommunications companies, except those that

file a request in this matter that they not apply, and waive the requirements that these waivers be listed in the application and tariff.

Respectfully submitted,



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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 19<sup>th</sup> day of September, 2011.

