

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12<sup>th</sup> day of October, 2011.

# In the Matter of the Waiver of Certain Rules and Statutes to Telecommunications Companies

**File No. TE-2012-0073**

## ORDER DENYING STAFF'S MOTION TO ADOPT A LIST OF STANDARD WAIVERS

Issue Date: October 12, 2011

Effective Date: October 22, 2011

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 to 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.<sup>1</sup> Subsequently, on September 29, Staff modified its motion after further discussion with rural telecommunications carriers. Staff now requests that the Commission grant the standard waivers only to those companies that file a notice in this case requesting the grant of such waivers; in effect changing the proceeding from an opt-out to an opt-in process.

After considering Staff's motion, the Commission is concerned that if it were to grant Staff's motion it would be creating a rule as defined in Section 536.010(6), RSMo (Supp. 2010) without going through the rulemaking procedures mandated by Section

<sup>1</sup> The regulations Staff asks the Commission to waive are 4 CSR 3.510(1)(C) and 4 CSR 240-3.545(8)(C).

536.021, RSMo (Supp. 2010). At the Commission's direction, Staff addressed that concern in a pleading filed September 19.

In that pleading Staff explained its belief that it was not asking the Commission to create an unpublished rule. Staff contends the establishment of a list of standard waivers would not constitute a statement of general applicability because not all regulated telecommunications carriers want or will request those waivers. Staff claims that it is simply asking the Commission to reduce the administrative burden that would result if hundreds of waiver requests and tariff filings were made by individual telephone companies to request such waivers in separate cases.

Section 536.010(6), RSMo (Supp. 2010) defines "Rule" as "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." Missouri's courts have further indicated, "[a]n agency standard is a 'rule' if it announces a statement of policy or interpretation of law of future effect which acts on unnamed and unspecified facts. ..."<sup>2</sup>

Staff asks the Commission to issue a general order that would apply to any and all telecommunications companies that may in the future ask the Commission for its "standard" waivers. Even though not all telecommunications companies may ask for those waivers, the list of standard waivers proposed by Staff is still a statement of general applicability in that it is not related only to a specific set of facts relating to a

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<sup>2</sup> *NME Hospitals, Inc. v. Dept. of Soc. Serv., Div. of Med. Serv.*, 850 S.W.2d 71, 74 (Mo banc 1993), quoting *Missourians for Separation of Church and State v. Robertson*, 592 S.W.2d 825, 841 (Mo. App. 1979).

specific telecommunications company.<sup>3</sup> In short, it is a rule within the statutory definition.

Staff proposes that the Commission issue its general order in the interest of administrative efficiency to avoid the burden to both the Commission and to the regulated telecommunications companies that would result from the hundreds of waiver requests and tariff filings necessary to grant the “standard waivers” to all the telecommunications companies that may request such waivers. The Commission is sympathetic to those concerns, but administrative efficiency does not trump the clear language of the statute.

The Commission is unable to grant the relief Staff requests in its September 8, 2001 Motion. Therefore, the Commission will deny that motion and invite Staff to submit an appropriate rulemaking for the Commission’s consideration.

**THE COMMISSION ORDERS THAT:**

1. Staff’s Motion is denied.
2. This order shall become effective on October 22, 2011.

( S E A L )

**BY THE COMMISSION**



Steven C. Reed  
Secretary

Gunn, Chm., Davis, Jarrett,  
and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge

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<sup>3</sup> See. *Dept. of Soc. Serv., Div. of Med. Serv. v Little Hills Healthcare, Inc.*, 236 S.W.3d 637, 642 (Mo banc 2007).