

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

In the matter of a Proposed Rulemaking to)
Establish 4 CSR 240-33.170, Relay)
Missouri Surcharge Billing and Collection) Case No. TX-2008-0392
Standards)

STAFF COMMENTS

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and files the attached Staff comments respecting the Missouri Public Service Commission's proposed rule 4 CSR 240-3.162, Relay Missouri Surcharge Billing and Collection Standards.

Respectfully submitted,

/s/ Jennifer Heintz

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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 or parties of record this 3rd day of December 2008.

/s/ Jennifer Heintz

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COMMENTS OF THE PUBLIC SERVICE COMMISSION STAFF

The Missouri Public Service Commission Staff supports the adoption of the proposed rules regarding the establishment of billing and collections standards for the Relay Missouri surcharge. Although the Relay Missouri program has been in place since 1991 no rules have ever been established for carriers in billing and collecting the Relay Missouri surcharge. The proposed standards will ensure companies appropriately bill, collect and remit Relay Missouri surcharge revenues in a timely manner. In addition the rule will provide the Commission with the tools to verify company compliance. These comments will separately discuss each subsection in the proposed 4 CSR 240-33.170. Staff supports the proposed rules for 4 CSR 240-33.170 with the exception of a slight proposed revision for 4 CSR 240-33.170(5).

4 CSR 240-33.170(1)

This proposed rule clarifies that any company providing basic local telecommunications service or an interconnected voice-over the Internet protocol service provider shall apply a monthly surcharge on customer bills entitled "Relay Missouri Surcharge". Sub-part A of the proposed rule clarifies the types of lines the surcharge should apply while sub-part B clarifies exceptions.

The rule is needed to ensure carriers understand their obligation to apply the surcharge and is based on Sections 209.255 and 392.550.3(5)(a) RSMo. Specifying how the charge should appear on customer bills is important because over the years Staff has observed companies apply different surcharge labels. For example, in response to a survey conducted by the Staff in the Fall of 2007, some companies label the surcharge as "Deaf Tax Surcharge", "Telecommunications Relay Surcharge", "State Deaf and Disabled Fund", "Dual Party Relay Service" and other names. In Staff's opinion, consumers will better understand their bills if all companies label the surcharge in the same manner. The proposed name of the surcharge as "Relay Missouri Surcharge" was originally approved by the Commission in an Order Approving Identification of Surcharge and Content of Billing Insert issued February 22, 1991 in Case No. TO-90-174. Such a decision was based on company concerns of inserting a longer surcharge name into consumer bills. In addition relay users have expressed a preference for the name "Relay Missouri Surcharge".

The type of lines the surcharge should be applicable to is contained in Sub-part A. The types of lines are based on the Commission's Order Adopting Recommendations issued February 19, 1991 in Case No. TO-90-174. The list of line types has been slightly revised to reflect issues that have surfaced over the years regarding the application of the surcharge to certain access lines. For example, employee concession, DS-1, and interconnected VoIP are lines that should be included in this list.

Sub-part B of the proposed rule identifies surcharge exemptions. For example the Relay Missouri surcharge should not apply to payphone lines as specified by Section 209.255.1 RSMo. This sub-part also clarifies term "location" as used in the Section

209.255 RSMo provision, "...Any surcharge established by such rate recovery mechanism shall not be imposed upon more than one hundred basic telephone access lines per subscriber per *location*..." (emphasis added) Staff has received questions from business consumers about this provision. The intent of providing a definition of the term "location" is intended to address such questions and ensure consistency among companies in applying this provision. Staff recommends the Commission approve the proposed rule as published in the Missouri Register.

4 CSR 240-33.170(2)

This proposed rule is intended to ensure the surcharge is exempt from taxes identified in Chapter 144 which generally refers to sales taxes. Such tax exemption is specified in Section 209.255.1 RSMo. Staff recommends the Commission approve the proposed rule as published in the Missouri Register.

4 CSR 240-33.170(3)

This proposed rule describes the ability of a company to recover costs associated with billing, collecting and remitting the Relay Missouri surcharge as specified by Section 209.257 RSMo. For a number of years the retention amount set by the Missouri Commission has been \$30 or 1% of the amount collected, whichever is greater. The proposed rule clarifies that if the monthly amount collected is less than the minimum flat dollar retention amount the company will not be reimbursed for the difference between the surcharge revenue collected and the minimum retention amount. Staff recommends the Commission approve the proposed rule as published in the Missouri Register.

4 CSR 240-33.170(4)

This proposed rule establishes a 30-day deadline for remitting surcharge revenue to the Commission. In Staff's opinion, establishing a deadline for remitting surcharge revenue is reasonable and will help address situations whereby a company fails to submit its Relay Missouri remittance in a timely manner. Past experience shows some companies have failed to submit such remittances in a timely manner as reflected in Case Nos. TO-2008-0124, TC-2008-0022 and TC-2007-0494. These complaint cases were initiated to address a company's failure to submit Relay Missouri revenues in a timely manner. Staff recommends the Commission approve 4 CSR 240-33.170(A) of the proposed rule as published in the Missouri Register.

In addition the proposed rule establishes a 1.5% late payment fee for delinquent amounts. Staff notes that there is some question whether the statutory language of Section 209.255.1 authorizes the collection of late fees. Staff also notes that there is no express prohibition on the collection of late fees in Section 209.255.1. It is uncertain how a court would rule on this issue. Staff also notes that in Chapter 536 rulemaking, there is no severability. If any provision of a rule is found to be invalid, the entire rule will be invalidated.

4 CSR 240-33.170(5)

This proposed rule requires a company to submit certain information when remitting surcharge revenues to the Commission. This information is referred to as the monthly Relay Missouri Statement and will help ensure a company is submitting the proper revenue to the Commission. Staff recommends the Relay Missouri Statement form be available in multiple locations within the Commission's web site. For example

the form should be available under the general heading "Forms" as well as within the Telecommunications portion of the Commission's web site under "Industry Information". Therefore Staff recommends the second sentence for subsection 5 simply read, "...The form for compiling the Relay Missouri Statement is electronically available on the commission's web site..." Staff recommends the Commission approve the proposed rule as published in the Missouri Register and subsequently revised by Staff in these comments.

4 CSR 240-33.170(6)

This proposed rule clarifies the previously discussed Relay Missouri Statement does not need to be submitted if the company does not remit any revenue to the Commission. In this respect a company with a minimal number of lines that generate \$30 or less in Relay Missouri revenue per month may simply retain such revenue. The company does not need to submit a monthly report to the Commission. This provision is intended to simplify reporting requirements for companies even though they are required to track and retain such information. Staff recommends the Commission approve the proposed rule as published in the Missouri Register.

4 CSR 240-33.170(7)

This proposed rule clarifies filing requirements associated with situations whereby a company desires to submit surcharge revenues on another company's behalf. In such situations, the proposed rule requires separate Relay Missouri Statement forms for each company. In this respect if the Commission receives one check that represents remittances of multiple companies the company is required to submit separate Relay

Missouri Statement forms for each company. In this respect the Commission should be able to easily distinguish the amounts remitted for each company. Such an expectation is dependent upon the Relay Missouri Surcharge form properly identifying the name of the company as authorized to provide basic local telecommunications service or interconnected Voice-over-Internet Protocol service, as required by the form. Staff recommends the Commission approve the proposed rule as published in the Missouri Register.

4 CSR 240-33.170(8)

This proposed rule requires all companies to submit certain Relay Missouri surcharge information in their annual report to the Commission. This information requires a company to identify the monthly totals of the surcharge revenue collected, retained and remitted. This information will ensure companies are properly billing collecting and remitting Relay Missouri surcharge revenue. Staff recommends the Commission approve the proposed rule as published in the Missouri Register.

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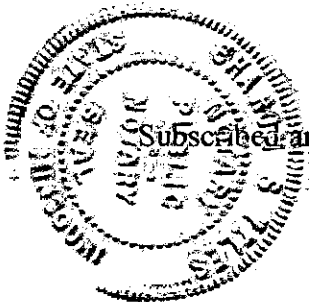
AFFIDAVIT OF John Van Eschen

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

John Van Eschen, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying document and that the facts therein are true and correct to the best of his knowledge and belief.



John Van Eschen



Subscribed and affirmed before me on this 3rd day of December, 2008.



Notary Public

