

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

In the Matter of the Petition for Waiver of     )  
Commission Rules and Statutes on behalf     )     Case No. XE-2009-0425  
of Holway Long Distance Company             )

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff),  
through the undersigned counsel, and submits this *Staff Recommendation* to the Missouri  
Public Service Commission (Commission), respectfully stating the following:

Procedural History

1. On May 27, 2009, Holway Long Distance Company (Holway or Company) filed  
*a Petition For Waiver Of Commission Rules And Statutes And Motion For  
Expedited Treatment (Petition for Waiver).*
2. On June 1, 2009, the Commission issued its *Order Granting Expedited Treatment  
And Directing Staff To File Recommendations.* The Commission granted  
Holway's request for expedited treatment and ordered Staff to file its  
recommendation no later than June 10, 2009.
3. On July 6, 2000, the Commission in Case No. TA-2000-786, granted Holway a  
certificate of service authority to provide local exchange telecommunications  
services limited to providing dedicated, non-switched local exchange private line  
services, and interexchange telecommunications services in the state of Missouri.  
The Commission classified the Company and its services as competitive.
4. Additionally, the Commission's July 6<sup>th</sup> Order waived Holway's application of  
the following RSMo statutes and Commission rules: 392.210.2 uniform system  
of accounts; 392.240.1 rates, rentals, service & physical connections; 392.270

valuation of property (ratemaking); 392.280 depreciation accounts; 392.290 issuance of securities; 392.300.2 acquisition of stock; 392.310 stock and debt issuance; 392.320 stock dividend payment; 392.340 reorganization(s); 392.330 RSMo (Supp. 1999) issuance of securities, debts and notes; 4 CSR 240-10.020 depreciation fund income; 4 CSR 240-30.010(2)(C) posting of tariffs; 4 CSR 240-30.040 uniform system of accounts; 4 CSR 240-33.030 minimum charges; and 4 CSR 240-35 reporting of bypass and customer-specific arrangements.

5. Holway's *Petition For Waiver* requests the statutes cited in paragraph four (4) above, and Section 392.300 RSMo be waived. In addition to 4 CSR 240-10.020 and 30.040 cited in paragraph four (4) above, Holway requests the Commission also waive 4 CSR 240-3.550 (4) and (5)(A), 32.060, 32.070, 32.080, 33.040 (1) through (3) and (5) through (10), 33.045, 33.080 (1), 33.130 (1), (4) and (5), to the extent they apply to interexchange carriers.

#### Statutory Authority

6. Pursuant to Section 392.182 RSMo (2000), the Commission is to permit flexible regulation of telecommunication companies and services classified as competitive, and to allow market competition to function for regulation.
7. Section 392.361.5 RSMo permitted the Commission to issue an order classifying the Company and its services as competitive, and suspend or modify the application of its rules or the application of any statutory provision contained in Sections 392.200 to 392.340 RSMo, except as provided in 392.390 RSMo.
8. Pursuant to 392.420 RSMo (Supp. 2008), HB 1779, the Commission is authorized to modify the application of its rules or the application of any statutory provision

contained in Sections 392.200 to 392.340 RSMo, if such waiver or modification is otherwise consistent with the other provisions of Sections 392.361 to 392.520, and the purposes of Chapter 392.

Staff Recommendation

9. Staff recommends the Commission approve the *Petition For Waiver* at its earliest convenience, as the request is consistent with Sections 392.361 to 392.520, and the purposes of Chapter 392. Staff's *Memorandum* in attached hereto as Appendix A.
10. The Staff has reviewed the revised tariff sheet filed with the *Petition For Waiver*, and recommends the Commission approve it.
11. Holway is not delinquent in any payment of its assessment, Missouri Universal Service Fund and Relay Missouri remittances, or its annual report obligations.
12. Approval of the Company's *Petition For Waiver* will not affect any case currently before the Commission.

**WHEREFORE**, Staff recommends the Missouri Public Service Commission issue an order that 1) grants the waivers requested by Holway, as listed in the Petition and paragraph five (5) above; and 2) approves the Company's revised tariff.

Respectfully submitted,

**/s/ Jennifer Hernandez**

Jennifer Hernandez

Legal Counsel

Missouri Bar No. 59814

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

(573) 751-8706 (Telephone)  
(573) 751-9285 (Fax)

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on W.R. England III and Brian T. McCartney of Brydon, Swearngen & England PC, 312 East Capitol Avenue, P.O. Box 456, Jefferson City, MO 65102, [bmccartney@brydonlaw.com](mailto:bmccartney@brydonlaw.com); Shawn Hanson, President and General Manager, Holway Long Distance, [shanson@americanbb.com](mailto:shanson@americanbb.com); and The Office of Public Counsel, 200 Madison Street, P.O. Box 2230, Jefferson City, MO 65102, [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov) this 10<sup>th</sup> day of June, 2009, either by hand delivery, electronic mail or First Class United States Mail, postage prepaid.

**/s/ Jennifer Hernandez**

# M E M O R A N D U M

To: Missouri Public Service Commission Official Case File  
Case No. XE-2009-0425 File No. YX-2009-0836  
Company Name: Holway Long Distance Company

From: Sara Buyak  
Telecommunications Department

William Voight          6-4-09  
Utility Operations Division/Date

Subject: Staff Recommendation to Approve Holway Long Distance Company's  
Request for Waivers.

Date: June 4, 2009

On May 27, 2009, Holway Long Distance Company (Holway) filed a Petition For Waiver of Commission Rules and Statutes and Motion for Expedited Treatment and tariff sheet, PSC Mo. No. 1, 1<sup>st</sup> Revised Sheet 2, to exempt Holway from certain statutory requirements and Commission rules. The requested waivers and a brief description of each are as follows:

Commission Rules (4CSR 240 - )	Brief Description
3.550(4) and (5)(A)	Held order records, Quality of service reports.
10.020*	Income on Depreciation Fund Investments
30.040*	Uniform System of Accounts
32.060	Engineering and maintenance
32.070	Quality of Service
32.080	Service objectives and surveillance levels
33.040(1) through (3) and (5) through (10)	Billing and payment standards
33.045	Clear identification and placement of charges on bills
33.080(1)	Toll-free number for billing disputes
33.130, sections (1), (4) and (5)	Operator service billing requirements

Missouri Statutes	Brief description of Commission's authority
392.210.2*	Accounting (system of accounts)
392.240.1*	Rates
392.270*	Accounting (valuation)
392.280*	Accounting (depreciation/accounts)
392.290*	Issuance of stocks, bonds and other indebttness
392.300	Transfer of property and ownership of stock
392.310*	Approval of issuing stocks, bonds and other indebttness
392.320*	Certificate of Commission to be recorded stock dividends
392.330*	Account for disposition of proceeds of all sales of stocks, bonds, notes, and other indebttness
392.340*	Reorganization
* Rules and statutes were previously waived	

Holway requests the Commission grant the waivers pursuant to Sections 392.185, 392.361.5, and 392.420, RSMo. The Telecommunications Department Staff (Staff) wishes to note that the waivers are the same as those previously granted by the Commission to other carriers and most recently in Case No. XE-2009-0308.

Under section 392.420, the Commission may approve these waivers “if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter.”

The Staff recommends because the requested waivers of the above-listed statutory and Commission rule provisions are consistent with the other provisions of sections 392.361 to 392.520 and the purposes of Chapter 392, that the Commission approve the request at its earliest convenience, and permit the tariff sheet to go into effect by operation of law.

The Staff is unaware of any other matter that may affect the matters in this case.

☒ The Company is not delinquent in filing an annual report, USF, Relay, and paying the PSC assessment.

☐ The Company is delinquent: (☐ No annual report ☐ No USF ☐ No Relay

☐ Unpaid PSC assessment. Amount owed: )



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**AFFIDAVIT OF Sara Buyak**

STATE OF MISSOURI )  
 ) ss:  
COUNTY OF COLE )

Sara Buyak, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying staff recommendation, and that the facts therein are true and correct to the best of her knowledge and belief.

  
SARA BUYAK

Subscribed and affirmed before me this 10<sup>th</sup> day of June, 2009.



  
NOTARY PUBLIC

ROSEMARY R. ROBINSON  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Callaway County  
My Commission Expires: September 23, 2012  
Commission Number: 08499510