

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet

In the Matter of Sage Telecom, Inc. Filing)
Tariff Revisions Adding a Public Switched)
Network Recovery Charge, Adding More) Docket No. 06-SAGT-1031-TAR
Plan Minutes to Specified Plans, and)
Making Rate Changes.)

ORDER DENYING PETITION FOR RECONSIDERATION

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for a decision. Being duly advised in the premises and familiar with its files and records, the Commission finds and concludes as follows:

1. On March 23, 2006, Sage Telecom Inc. (Sage) filed revised tariff pages adding a public switched network recovery charge in the amount of \$1.33, adding more minutes to certain calling plans and changing some rates. Sage requested an effective date of April 1, 2006. Because Sage is a price deregulated company, the tariff price changes were accepted as filed with an effective date of April 1, 2006, as requested.

2. On March 28, 2006, Citizens' Utility Ratepayer Board (CURB) filed a Complaint, Petition to Intervene, and Motion to Defer the Effective Date of Proposed Public Switched Network Recovery Charge and Suspend Proceeding (Complaint). CURB requested permission to intervene with respect to Sage's proposed public switched network recovery charge on behalf of residential and small commercial ratepayers. CURB argued the interests of residential and small commercial ratepayers may be adversely affected by a Commission order in this docket.

3. The Commission issued an order on May 1, 2006, denying CURB's Petition to intervene and its motion to defer the effective date of the switched access recovery charge. The Commission stated it was aware that other competitive local exchange companies had filed similar charges and that it would address this type of charge generically in Docket No. 06-GIMT-187-GIT, the Billing Practice Standards docket (187 docket).

4. On May 16, 2006, CURB filed a Petition for reconsideration (Petition) of the Commission's Order. CURB argued the Commission should reconsider its May 1, 2006 Order because the Commission has the authority to investigate whether the tariff is just and reasonable, fraudulent, or inconsistent with the public interest. CURB states its filing was timely and should have operated to alter the approval process generally applicable to price deregulated company tariff filings. Petition, ¶¶ 8-14.

5. The Commission has jurisdiction to address the issues raised in this docket pursuant to K.S.A. 66-1,188, K.S.A. 66-1,189, K.S.A. 66-1,192 and K.S.A. 2005 Supp. 77-529(b).

6. CURB asserts the Commission's assumption that its concerns in this case are the same as in Docket No. 06-CCIC-016-TAR (016 docket) is incorrect. CURB states in that case, it was clear the company sought to recover for an increase in cost resulting from the Triennial Review Remand Order (TRRO), and although CURB opposed this surcharge it does not represent the duplicative charge imposed by Sage in this case. CURB states Sage already imposed a Subscriber Line Charge (SLC) to recover costs resulting from the TRRO and it appears the \$1.33 surcharge at issue in this docket is merely recovering costs that are already being recovered. CURB alleges deferral of

this issue to the 187 docket fails to address the “misleading, deceptive, and duplicative nature of Sage’s surcharge.” Petition, ¶¶ 15-19.

7. CURB also attacks the Commission’s order on procedural grounds, arguing the Commission failed to consider CURB’s filing before summarily approving Sage’s tariff. CURB further argues Kansas ratepayers will suffer irreparable harm by allowing Sage to charge this surcharge until an order is entered in the 187 docket. Finally, CURB asserts Sage withdrew this surcharge in Missouri after the Commission set the matter for hearing. Petition, ¶¶ 20-26.

8. On May 25, 2006, Sage filed its response to CURB’s Petition, observing that CURB raised no objection to several other tariff changes, such as increased long distance minutes and changed rates for several plans, but only to the access recovery charge. Sage agrees with the Commission’s decision to address this issue for all companies in the 187 docket. Sage notes CURB has raised its concerns about access recovery charges in that docket. Sage asserts its access recovery charge is not deceptive because it is clearly identified and defined in the tariff sheets.

9. Staff filed a response to CURB’s Petition on June 2, 2006, after receiving an extension of time to respond. Staff agreed with the Commission that this issue is appropriately addressed in the 187 docket where all parties with an interest in the issue have an opportunity to provide input. However, Staff also indicated it was not opposed to a further investigation into the propriety of Sage’s access recovery charge in this docket. Staff Response, ¶¶ 9-10. Staff stated it shared some of CURB’s concerns regarding the propriety of imposing discrete charges instead of raising service rates and suggested more information about Sage’s Missouri filing might be useful. Staff Response, ¶ 11.

10. On June 9, 2006, Sage filed a Reply to Staff's Response. Sage explained it implemented the access recovery charge to recover increases in its underlying costs. Specifically, AT&T raised its wholesale rates for access lines by \$1.00 on January 1, 2006. Sage indicated it initially intended to absorb the increased cost, but discovered that the \$1.00 increase coupled with other increases, such as higher costs for employee benefits, required it to raise rates to customers. Sage stated it was aware some of its principal competitors in Kansas had filed tariffs incorporating discrete charges for similar cost increases rather than raising the price for their service plans. Sage mentions Xpedius. Sage created a similar tariff structure because it was of the opinion that this would be preferable from a competitive point of view. Sage adds that it filed similar tariffs in nearly all the twelve states in which it operates. It mentions Ohio as one exception, stating that because competitors had not filed discrete charges in Ohio, Sage could propose an increase in its local rate and still remain competitive in that state. Sage Reply, ¶¶ 1-2.

11. Missouri is the only other state in which Sage has not implemented the access recovery charge. Sage explained that the Missouri Commission suspended the filing at the request of the Missouri Office of Public Counsel. Sage and Missouri Staff worked out an explanation of the surcharge to place on the bill, but then the Missouri Commission set the case for hearing several months down the road. At that time, Sage withdrew its Missouri filing, explaining that it has far fewer customers in Missouri than in Kansas. Sage determined that the cost of a contested proceeding would exceed the amount of additional revenue it would generate and decided that withdrawing the filing was its best option. Sage Reply. ¶ 4.

12. Sage attached its customer “Welcome Package” to its Reply. Information therein informs customers that the access recovery charge “is not a tax or fee imposed by a governmental entity.” Thus, when customers select Sage as a carrier, they receive information about this surcharge. Sage Reply, ¶ 5.

13. The Commission first observes that competitive local exchange companies, like Sage, are not subject to price regulation. K.S.A. 66-2008(w). Thus, there is no question that Sage could raise its rate for local service by \$1.33 and the Commission would have no authority to consider Sage’s reasons for doing so or what effect, if any, such an increase in rates would have on Kansas ratepayers. It is not the amount of the increase but rather the way it is structured that is the issue.

14. CURB argues that Sage has merely established a separate charge and labeled it as an access recovery charge, and that it is duplicative, misleading and deceptive. CURB states it is a disguised rate increase and precludes a meaningful comparison with rates charged by competitors.

15. The Commission agrees that it might have been preferable for Sage to increase its local service rate by this amount instead of implementing a surcharge. However, to the customer, an increase is still an increase, no matter how it is labeled on the bill., and the Commission has no policy in place that precludes competitive local exchange carriers from recovering costs in this manner. As stated in the Commission’s May 1, 2006 Order, the issue of whether this pricing method is misleading will be addressed in the 187 docket based on input from all interested parties. CURB argues this charge is duplicative and that no one knows what costs it is intended to recover, but in its June 9, 2006 Reply, Sage explains that this new charge recovers an increase in the cost of

an access line in its agreement with AT&T and also costs for increased employee benefits. Thus, it appears that it does not duplicate recovery of costs and there is a basis for the charge. It appears it is not unlike the SLC charge in the 016 docket, which CURB disagreed with, but did not appeal. Further, price deregulated companies are not limited to charging a rate that only recovers their costs. The check on their pricing is that of the market. Sage has no captive customers and must price its services so as to keep those it has and to gain additional customers. If it fails to do so, it is not likely to be able to stay in business.

16. CURB argues the surcharge is a disguised rate increase, but Sage has demonstrated that new customers receive information of this charge through the “Welcome Package” sent to them, although the Commission notes that customers might be better served if the print informing customers of this charge were bigger. The Commission again notes that Sage has no captive customers. Customers will surely notice if their bills increase and can decide to explore other service options. With respect to the ability of customers to make meaningful comparisons between competitors, the Commission is aware that many price deregulated companies have filed tariffs with similar discrete charges, thus the comparison may be meaningful since many companies have a similar structure of charges. The fact that many companies rely on discrete charges, such as this one, to recover cost convinces the Commission that it is appropriate to address this issue in the generic docket, so that any decision on the issue will apply to all companies. The Commission finds it is not appropriate to single Sage out for separate treatment in this docket.

17. This tariff filing was “accepted” in accordance with Commission standards for price changes filed by price deregulated companies. Contrary to CURB’s allegations, the Commission did not ignore CURB’s filing by denying CURB’s Complaint and its petition to intervene in the May 1, 2006 Order. The Commission carefully considered CURB’s Complaint, but determined that the issue has implications for all companies and that it should be considered in the 187 docket, decisions in which will apply to all companies and not just to Sage. Although the Commission agrees that it has authority to investigate aspects of this filing, it is not required to do so, particularly when there is an ongoing generic investigation that considers this issue and in which any decision will be applicable to all companies. CURB’s Petition for reconsideration is denied.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. CURB’s Petition for Reconsideration is denied for the reasons set out above.

B. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was mailed in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2005 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Comm.; Moffet, Comm.

Dated: JUN 15 2006

ORDER MAILED

JUN 15 2006

 Executive
Director

Susan K. Duffy
Executive Director

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