

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

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

MAY 16 2006

 Docket  
Room

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

**PETITION FOR RECONSIDERATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), pursuant to K.S.A. 77-529(a), K.S.A. 66-118b, and K.A.R. 82-1-235, and respectfully petitions for reconsideration of the Commission's May 1, 2006, Order Addressing Citizens' Utility Ratepayer Board's Complaint, Petition to Intervene, and Motion to Defer the Effective Date of Proposed Public Switched Network Recovery Charge and Suspend Proceeding and Closing Docket (May 1<sup>st</sup> Order). In support of its Petition, CURB states and alleges as follows:

1. In the May 1<sup>st</sup> Order, the Commission:
  - denied CURB's petition to intervene on behalf of residential and small business ratepayers (May 1<sup>st</sup> Order, p. 3, ¶ A);
  - denied CURB's complaint without any consideration of the merits of the Complaint (May 1<sup>st</sup> Order, p. 3, ¶ A);
  - denied CURB's motion to defer the effective date of Sage's proposed public switched network recovery charge and suspend the tariff proceeding (May 1<sup>st</sup> Order, p. 3, ¶ A); and
  - made the following specific findings:

- “Because Sage is a price deregulated company, the tariff price changes were accepted as filed and effective April 1, 2006, as requested” (May 1<sup>st</sup> Order, ¶1); and
- “The Commission is aware that CURB has filed similar pleadings in previous tariff filing dockets of this nature. In those dockets the Commission has determined that CURB’s concerns regarding the switched access network recovery charge should be addressed on a generic basis in Docket No. 06-GIMT-187-GIT which addresses Billing Practice Standards. See f. ex. Docket No. 06-CCIC-016-TAR. As in that docket, the Commission denies CURB’s request for intervention and suspension. The issue will be addressed in Docket No. 06-GIMT-187-GIT.” (May 1<sup>st</sup> Order, ¶5).

2. CURB respectfully requests that the Commission reconsider the above referenced rulings.

### **I. TARIFF FILING**

3. On March 23, 2006, Sage filed revised tariff pages with the Commission, seeking to add a public switched network recovery charge, add more plan minutes to specified plans, and make rate changes. Sage requested the proposed public switched network recovery charge be effective April 1, 2006.

### **II. CURB’S COMPLAINT, PETITION, AND MOTION**

4. On March 28, 2006, CURB filed its Complaint, Petition to Intervene, and Motion to Defer the Effective Date of Proposed Public Switched Network Recovery Charge and Suspend Proceeding (CURB’S Complaint, Petition and Motion). Robert W. McCausland (Sage Vice President of Regulatory Affairs), Karl Andrew (Sage Telecom Regulatory Affairs), and Carey Roesel (Consultant for Sage Telecom) were all served copies of CURB’S Complaint, Petition and Motion.

5. In its Complaint, Petition and Motion, CURB sought permission to intervene in this docket with respect to Sage's proposed public switched network recovery charge. CURB alleged Sage's proposed public switched network recovery charge is unreasonable, unfair, unjust, unreasonably inefficient, unjustly discriminatory and/or unduly preferential, and that the Commission should undertake an investigation of the proposed public switched network recovery charge to determine whether an Order approving the proposed surcharge is appropriate and in the public interest.

6. Specifically, CURB alleged that Sage's proposed public switched network recovery charge is unreasonable, unfair, unjust, unreasonably inefficient, unjustly discriminatory and/or unduly preferential on the grounds the proposed charge:

- is not an appropriate surcharge;
- is misleading and deceptive;
- constitutes a disguised rate increase;
- duplicates an existing charge for the costs of accessing the local switched network;
- fails to disclose the true nature of the charges;
- misleads ratepayers as to the actual rate being charged by Sage; and
- prevents ratepayers from making accurate and meaningful comparisons of Sage's rates to rates charged by Sage's competitors.

### **III. SAGE TELECOM'S FAILURE TO RESPOND**

7. Sage Telecom failed to provide any response to CURB'S Complaint, Petition and Motion. Nonetheless, the Commission denied all aspects of CURB's uncontested Complaint, Petition and Motion.

#### **IV. THE COMMISSION SHOULD RECONSIDER ITS MAY 1<sup>ST</sup> ORDER**

##### **A. The May 1<sup>st</sup> Order Erroneously Concludes Sage's Tariff Filing Was Appropriately Accepted As Filed And Effective April 1, 2006, As Requested.**

8. The Commission's finding at paragraph 1 of the Commission's May 1<sup>st</sup> Order, that "[b]ecause Sage is a price deregulated company, the tariff price changes were accepted as filed and effective April 1, 2006, as requested"<sup>1</sup> erroneously concludes the filing was appropriately accepted, and should be reconsidered. The fact that Sage is a price deregulated company does not exempt it from the requirements of Kansas telecommunications statutes, nor does it relieve the Commission of its responsibility to require just and reasonable rates.

9. Sage is a telecommunications public utility as defined by K.S.A. 66-1,187 (n). The Commission is given full power, authority and jurisdiction to supervise and control the telecommunications public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction under K.S.A. 66-1,188.

10. Unjust, unreasonably discriminatory or unduly preferential rates are declared to be unlawful and void under K.S.A. 66-1,189, and the Commission is given the power, after notice and hearing, to require all telecommunications public utilities to establish and maintain just and reasonable joint rates.

11. The Commission is further empowered under K.S.A. 66-1,192 to investigate written complaints (such as CURB's Complaint in this docket) alleging unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential rates.

12. Moreover, the public policy set forth in the Kansas Telecommunications Act, at K.S.A. 66-2001(e), includes protecting "consumers of telecommunications services from fraudulent

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<sup>1</sup> May 1<sup>st</sup> Order, ¶ 1.

business practices and practices that are inconsistent with the public interest, convenience and necessity.”

13. K.S.A. 66-117(c) allows the Commission, upon complaint or its own motion, to give notice and hold hearings on proposed changes in rates by a public utility, and to suspend the proceedings for no more than 240 days.

14. While current tariff practices typically result in expedited approval of tariff filings by price deregulated companies, the above authorities demonstrate that the Commission is authorized to suspend proceedings and investigate whether the filed tariff is just and reasonable, fraudulent, or inconsistent with the public interest - especially in tariff dockets where a written complaint has alleged the tariff is misleading and deceptive. CURB timely filed its Complaint, Petition and Motion, and this filing should have altered the routine, expedited approval process that occurs with most tariff filings for price deregulated companies. Instead, the tariff was routinely approved and the docket closed without consideration of CURB’s timely filed Complaint, Petition and Motion, and prior to the Commission’s May 1<sup>st</sup> Order. CURB respectfully requests reconsideration to the extent the Commission’s May 1<sup>st</sup> Order approves this expedited routine approval procedure where a party has intervened and contested the tariff filing.

**B. The May 1<sup>st</sup> Order Erroneously Characterizes the nature of CURB’s Complaint, Petition, and Motion.**

15. While CURB has filed one<sup>2</sup> similar pleading in a previous tariff filing docket, the Commission erroneously characterized the nature of CURB’s concerns in this docket to be of the same nature as in Docket No. 06-CCIC-016-TAR (016 Docket).

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<sup>2</sup> Contrary to the Commission’s finding at ¶ 5 of the May 1<sup>st</sup> Order (“CURB has filed similar pleadings”), CURB has only filed one similar pleading in a previous tariff filing. See Docket No. 06-CCIC-016-TAR.

16. In the 016 Docket, CIMCO Communications filed a revised tariff introducing a new Access Recovery Charge, alleged by CIMCO to be necessitated by changes resulting from the Federal Communications Commission's Triennial Review Remand Order (TRRO) regarding regional Bell operating company unbundled network element obligations. In other words, CIMCO sought and received approval by this Commission (over CURB's objections) to recover the increased cost of purchasing unbundled network elements from SBC as a result of the TRRO through a surcharge. While similar, CIMCO wasn't attempting to impose a duplicate charge to recover the entire cost of providing access to the local switched network, but only charge for the increased cost resulting from the TRRO.

17. Prior to seeking to impose its duplicative charge for a public switched network recovery charge in this docket, Sage self-imposed an additional \$3.00 per month on Kansas ratepayers for what it characterized as its "FCC Subscriber Line Charge" (SLC), which it claimed to be necessitated by its new commercial wholesale agreement with SBC.<sup>3</sup> CURB is uncertain as to the authority of Sage to self-impose this increase to the purported SLC, or, for that matter, its authority to charge a SLC at all.

18. However, as Attachment A to this Petition demonstrates, Sage did in fact self-impose this additional \$3.00 monthly fee in 2005 for the increased cost to access SBC's local network resulting from the TRRO. Now, in this docket, Sage sought and obtained this Commission's approval for an additional \$1.33 surcharge for what it characterizes as a public switched network recovery charge, which it represents is "intended to recover costs to access the public switched network for local service."<sup>4</sup> What that charge encompasses is anyone's guess, given the fact Sage is

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<sup>3</sup> Attachment A. letter from Sage President and CEO Dennis Houlihan to Sage Customers. *See also*, <http://www.nasuca.org/filings/Initial%20TIB%20Comments%20Attachments%206-24-05.pdf>.

<sup>4</sup> Sage Local Exchange Tariff, 1<sup>st</sup> Revised Page No. 21, Replacing Original Page No. 21. *See*,

already recovering an additional \$3.00 on its SLC for the increased cost of purchasing unbundled network elements from SBC resulting from the TRRO.

19. With all due respect, the Commission's decision to address CURB's concerns regarding Sage's switched access network recovery charge on a generic basis in the billing standards docket (Docket No. 06-GIMT-187-GIT) fails to acknowledge the misleading, deceptive, and duplicative nature of Sage's surcharge, and will lead to irreparable harm to consumers during the interim undeterminable time period before the Commission will issue new billing standards.

**C. The May 1<sup>st</sup> Order Fails To Consider Or Address The Merits Of CURB's Claims.**

20. The Commission failed to even consider CURB's Complaint, Petition, and Motion prior to summarily approving Sage's tariff filing. The message to Kansas ratepayers is that the Kansas Corporation Commission will provide expedited routine approval of tariffs for price deregulated companies even when timely contested with written complaints as authorized by K.S.A. 66-1,192. In doing so, the Commission denies ratepayers and other parties the rights conferred by law to contest unreasonable and unjust tariff filings, and ignores the Commission's duty and responsibility to protect ratepayers from misleading, deceptive, and duplicative charges by telecommunications public utilities. CURB therefore respectfully requests that the Commission reconsider its denial of CURB's complaint in its May 1<sup>st</sup> Order.

**D. The May 1<sup>st</sup> Order Will Result In Irreparable Harm To Kansas Ratepayers.**

21. Even assuming charges similar to Sage's switched network access recovery charge are disallowed in the billing standards docket (Docket No. 06-GIMT-187-GIT), allowing this deceptive, misleading, and duplicative fee to be charged until an order is entered in the billing standards docket will cause irreparable harm to Kansas ratepayers.

22. Although Sage's surcharge in this docket is even more misleading than the CIMCO Communications Access Recovery Charge allowed by the Commission in Docket No. 06-CCIC-016-TAR<sup>5</sup> and the additional \$3.00 monthly SLC self-imposed by Sage in 2006,<sup>6</sup> these type of charges indicate the ongoing problem with misleading, deceptive, and duplicative surcharges which receive expedited routine approval by the Commission with no analysis as to whether they are reasonable and just charges, whether they are fraudulent or inconsistent with the public interest, or whether consumers are being misled and prevented from any meaningful comparison of rates between carriers.

23. CURB attempted to ascertain this surcharge on Sage's website,<sup>7</sup> but was unable to locate any reference to a switched network access recovery charge. If CURB's counsel and consultants are unable to ascertain the existence of this charge from Sage's public website, the typical Kansas ratepayer will be likewise unable to determine its existence in attempting to compare Sage's rates to the rates of its competitors. This gives Sage an unfair competitive advantage by

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<sup>5</sup> On July 7, 2005, CIMCO Communications, Inc. (CIMCO) filed a revised tariff introducing a new Access Recovery Charge, alleged by CIMCO to be necessitated by changes resulting from the Federal Communications Commission's Triennial Review Remand Order regarding regional Bell operating company unbundled network element obligations. CURB petitioned to intervene, but was denied by the Commission. No decision on new billing standards have been issued by the Commission to date.

<sup>6</sup> See Attachment A.

<sup>7</sup> The SAGE website is located at [www.sagetelecom.net](http://www.sagetelecom.net). To locate local exchange tariffs, click on the "site map" link at the bottom. The "tariffs" link is under the "about us" link. In the alternative, see: [http://www.sagetelecom.net/files/Kansas\\_Tariff\\_Local\\_Exchange\\_Tariff.pdf](http://www.sagetelecom.net/files/Kansas_Tariff_Local_Exchange_Tariff.pdf).



disguising the actual rates charged to ratepayers, and misleads ratepayers with regard to the actual rates being charged by Sage.

24. While CURB is hopeful the Commission will prohibit these misleading, deceptive, and duplicative surcharges in the billing standards docket, consumers will continue to be misled in the interim by these Commission approved surcharges without any redress for the charges they are paying. The billing standards docket, 06-GIMT-187-GIT, was opened on August 29, 2005, initial and reply comments have been received, a workshop held, and to date no decision has been issued by the Commission. Ratepayers are being misled by these deceptive and duplicative surcharges, and the Commission should reconsider its May 1<sup>st</sup> Order.

**E. Sage's Proposed Switched Network Access Recovery Charge Was Withdrawn In Missouri After The Missouri Commission Set The Matter For Hearing.**

25. CURB would note that Sage withdrew its proposal to implement a switched network recovery charge in Missouri after the Missouri Commission set the matter for hearing to consider the objections filed by the Missouri Office of Public Counsel (similar to those made by CURB in this docket).<sup>8</sup> Given the nature of the surcharge, it is not surprising that Sage is unwilling to attempt to justify its misleading, deceptive, and duplicative surcharge in a public hearing.

26. CURB respectfully requests that this Commission reconsider its decision denying CURB the opportunity to challenge Sage's misleading surcharge in a public hearing as well.

**V. CONCLUSION**

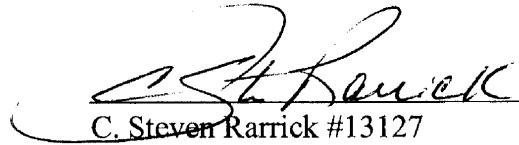
27. WHEREFORE, CURB respectfully requests that the Commission reconsider its May 1, 2006, Order, reopen the docket, approve CURB's request to intervene, approve CURB's motion to

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<sup>8</sup> Missouri Public Service Commission Case No. CT-2006-0370, Tariff No. JC-2006-0716.

defer the effective date of Sage's proposed public switched network recovery charge and suspend the tariff proceeding, and consider the complaint filed by CURB.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", written over a horizontal line.

C. Steven Rarrick #13127

David Springe #15619

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

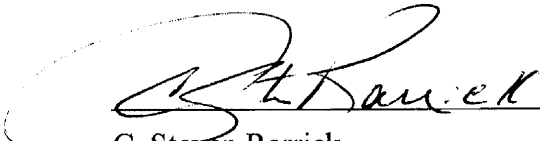
(785) 271-3116 Fax

VERIFICATION

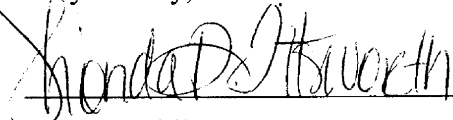
STATE OF KANSAS            )  
  )  
COUNTY OF SHAWNEE    )    ss:

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

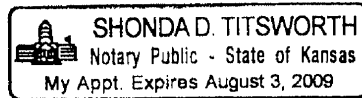
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of May, 2006.

  
Notary Public

My Commission expires:



## ATTACHMENT A



Dear Sage Customer:

Recently, you may have noticed newspaper articles about a federal court decision that overturned the rules governing local telephone service. These rules, which have been in existence since 1996, govern competitor access to the public telephone network, and the prices competitors pay the Bell telephone companies for the lines that run to your home or business.



Following the court decision, some local service providers, including AT&T, announced they would no longer compete for residential local and long distance customers.

Meanwhile, as the battle over rules was taking place in the courtroom, Sage entered into private negotiations with SBC. After several months of negotiations, Sage and SBC reached an agreement that ensures Sage customers will continue to receive service without interruption.

The agreement with SBC calls for development of new services such as high-speed Internet service as part of your local telephone service, and other enhancements such as "stutter" dial tone that alerts you to messages in your voice mailbox. These services and enhancements will be introduced in upcoming months.

The agreement also calls for an increase in the wholesale cost we pay SBC. Because of this increase in cost, it is necessary for us to raise the FCC Subscriber Line Charge \$3.00 per line starting next month. Despite this small increase, we want to make sure that you know that Sage is still your best value for local phone service.

We truly appreciate your business, and especially, the trust and loyalty of our customers. As always, we remain committed to providing you with the best in local telephone service.

Sincerely,

A handwritten signature in black ink that reads "Dennis M. Houlihan".

Dennis M. Houlihan  
President & Chief Executive Officer

P.S. If you have questions or comments about these issues, please feel free to write me at the address below or email me at [president@sagetelecom.net](mailto:president@sagetelecom.net).

104212

**CERTIFICATE OF SERVICE**

06-SAGT-1031-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 16th day of May, 2006, to the following:

LAURIE PICKLE  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
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l.pickle@kcc.state.ks.us  
\*\*\*\* Hand Deliver \*\*\*\*

KARL ANDREW, REGULATORY AFFAIRS  
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C. Steven Rarrick