

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

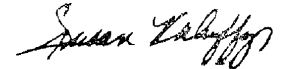
Before: Brian J. Moline, Chairman  
Robert E. Krehbiel, Commissioner  
Michael C. Moffet, Commissioner

STATE CORPORATION COMMISSION

MAY 25 2006

In the Matter of Sage Telecom, Inc. Filing )  
Tariff Revisions Adding a Public Switched )  
Network Recovery Charge, Adding More )  
Plan Minutes to Specified Plans, and Making )  
Rate Changes. )

Docket No. 06-SAGT-1031-TAR

 Docket  
Room

**RESPONSE TO PETITION FOR RECONSIDERATION**

Comes now Sage Telecom, Inc. (“Sage”), by its undersigned counsel, and in response to the Petition for Reconsideration filed by the Citizens Utility Ratepayer Board (“CURB”), states the following:

1. In its Petition for Reconsideration, CURB overlooks the basic fact that the access recovery charge in question is fully disclosed, so consumers may make an informed decision in determining whether to subscribe to Sage’s service. As long as the existence and amount of the charge is disclosed -- as it clearly is -- the Commission acted correctly in allowing the tariff to take effect. CURB’s Petition should be denied.

2. Sage initiated this proceeding on March 23, 2006, with the filing of proposed tariff changes which, *inter alia*, included a “public switched network recovery charge” (“access recovery charge”). The tariff sheets filed with the transmittal letter bore an effective date of April 1, 2006. On March 28, 2006, CURB filed a pleading titled Complaint, Petition to Intervene, and Motion to Defer the Effective Date of Proposed Public Switched Network Recovery Charge and Suspend Proceeding (the “Complaint”). Although CURB correctly noted that Sage was proposing to add long distance minutes to several residential and business service

plans (in fact Sage proposed to double the number of free minutes under these plans), and to change monthly recurring rates for several local service plans and vertical services, CURB challenged only the access recovery charge. Thus, at least with respect to the tariff changes other than the access recovery charge, no opposition was raised and those changes went into effect on April 1, 2006, as Sage proposed.

3. Sage does not contest CURB's argument that the Commission has the power to regulate Sage's rates, including the access recovery charge. CURB Petition, pp. 4-5. However, simply because the Commission has the power to do something does not perforce mean that it should exercise that power. As the Commission observed in its May 1 Order, the billing standards docket offers an appropriate forum to consider the access recovery charge.

4. In the tariff filing, Sage indicates that the access recovery charge "...is a monthly recurring charge which is applied on a per customer access line basis. This fee is intended to recover costs to access the public switched network for local service." Local Exchange Tariff, Section. 2.18, 1<sup>st</sup> Revised Page No. 21. In its Complaint, CURB alleged that the access recovery charge is "a deceptive practice to conceal a rate increase from ratepayers." Complaint, ¶ 8. In rejecting CURB's request for a suspension of the access recovery charge, the Commission correctly indicated that CURB made the same argument in *In the Matter of CIMCO Communications, Inc. Filing Tariff Revisions Introducing a New Access Recovery Charge*, Docket No. 06-CCIC-016-TAR, and that the Commission had rejected that argument in a September 12, 2005, Order. In the Order in *CIMCO Communications* and the May 1, 2006, Order in the captioned docket, the Commission observed that the pending billing standards docket, Docket No. 06-GIMT-187-GIT, is an appropriate forum for resolving the issues raised by

access recovery charges.<sup>1</sup> CURB chose not to appeal the Commission's resolution of the access recovery charge issue in *CIMCO Communications*, so it should not be allowed to raise precisely the same issue in this docket.

5. Further, as the Commission noted in the *CIMCO Communications* Order of September 12, 2005, CURB could raise its concerns about access recovery charges in the billing standards docket. In fact, CURB did precisely that in its Comments in the billing standards docket. Filed on October 28, 2005, these Comments include a section in which CURB argues that "Misleading and Inappropriate Surcharges Should be Prohibited." CURB Comments, Docket No. 06-GIMT-187-GIT, pp. 4-6. In that section, CURB accuses two carriers, CIMCO Communications and Sage, of engaging in a practice of using misleading names to camouflage rate increases. CURB accuses Sage, without proof other than the amount of the applicable rates, of hiding a rate increase in the amount of its Subscriber Line Charge, charging that "[c]amouflaging increased wholesale costs in the subscriber line charge, rather than including it in tariffed rates, misleads consumers..." CURB Comments, ¶ 12. CURB proceeded to list eight more companies which have implemented various cost recovery charges. However, in an apparent attempt to inflate its statistics, CURB went one step too far in including four wireless carriers among the eight listed carriers; the Commission has no power to regulate wireless rates.

6. Of course, the basic problem with CURB's argument is that Sage is hiding nothing. The access recovery charge is clearly identified and defined in the revised tariff sheets,

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<sup>1</sup> In its Petition for Reconsideration, CURB argues that actions in Missouri should inform the Commission's ruling in this proceeding. CURB fails to note that the Missouri Office of Public Counsel objected to Sage's access recovery charge due to alleged noncompliance with the Missouri billing standards. The Missouri PSC Staff's concerns were alleviated by Sage's agreement to amend its billing format to eliminate any inference that the access recovery charge was government mandated. The proceedings in Missouri demonstrate that this Commission has dealt with Sage's tariff filing correctly, by treating it as a billing standards issue.

and the amount of the charge is also clearly provided, in Section 4.1.16 on Original Page 57.1. The consumer, both residential and business, is given clear guidance from the Sage tariff as to the existence, purpose, and amount of the access recovery charge. The same can be said for the access recovery charges tariffed by other carriers. The Commission has now seen several of these access recovery charges, and has allowed each of them to take effect.<sup>2</sup> If there is concern about failure to disclose, the Commission has by implication rejected that concern by refusing to suspend the tariffs. Sage's full disclosure of its tariffed charges allows customers to make informed comparisons with other providers (assuming, of course, that the tariffs of the competing providers also make full disclosure of their charges). If the Commission continues to have a concern about how the access recovery charges are described in the tariffs, it can resolve that concern in the context of the billing standards docket.

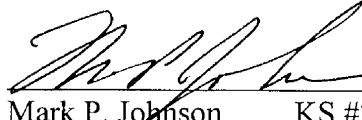
7. In short, the Commission correctly resolved the access recovery charge issue in this docket. The Commission may address this issue in the billing standards docket. In the meantime, consumers are made fully aware of the access recovery charge through the tariff, are given clear notice that this charge is imposed on a per line basis, and may make their choice to subscribe to Sage's service with full knowledge that they know what the charges will be. CURB may not as a matter of policy like access recovery charges, but as long as they are fully disclosed -- and Sage's tariff does precisely that -- the Commission should allow them to become effective.

Wherefore, Sage respectfully requests that the Commission deny CURB's Petition for Reconsideration.

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<sup>2</sup> See, for example, *In the Matter of the Application of Xspedius Management Co. Switched Services, LLC Filing Tariff Revision to Implement its Access Recovery Charge*, Docket No. 06-XSST-406-TAR; *In the Matter of Inmate Calling Solutions, LLC Filing Tariff Revisions Increasing the Company's Billing Cost Recovery Fee*, Docket No. 06-INMC-654-TAR; *In the Matter of T-Netrix Telecommunications Services, Inc. Filing Tariff Revisions Increasing the Billing Cost Recovery Fee*, Docket No. 06-TNEC-791-TAR.

Respectfully submitted,



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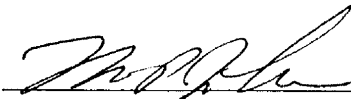
ATTORNEYS FOR SAGE TELECOM, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via First-Class United States mail, postage prepaid, on this 25<sup>th</sup> day of May, 2006, to:

C. Steven Rarrick  
David Springe  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604

Eva Powers  
Bret Lawson  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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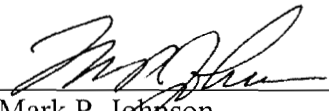
Mark P. Johnson

VERIFICATION

STATE OF MISSOURI     )  
  )  
COUNTY OF JACKSON    )     ss.

I, Mark P. Johnson, being duly sworn upon oath, depose and state that I am an attorney for Sage Telecom, Inc., I am authorized to make this verification on its behalf, I have read the foregoing, know the contents thereof, and the statements contained therein are true to the best of my knowledge, information and belief.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Mark P. Johnson

Subscribed and sworn to before me this 25<sup>th</sup> day of May, 2006.

  
\_\_\_\_\_  
Notary Public

My commission expires:

**ERIN E. MILLER**  
**Notary Public - Notary Seal**  
**STATE OF MISSOURI**  
**Jackson County**  
**My Commission Expires: June 29, 2007**