


THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

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

JUN 15 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.)

**CURB'S RESPONSE TO NEW EVIDENCE AND ISSUES RAISED IN
SAGE'S REPLY TO STAFF RESPONSE TO PETITION FOR RECONSIDERATION**

COMES NOW, the Citizens' Utility Ratepayer Board (CURB), and submits its response to new evidence and issues contained in Sage Telecom, Inc.'s (Sage) Reply to Staff Response to Petition for Reconsideration. In support of its response, CURB states and alleges as follows:

1. On June 12, 2006, Sage filed its Reply to Staff Response to Petition for Reconsideration (Sage's Reply to Staff Response). In this pleading, Sage attaches and argues evidence and issues that were not included in the Response to CURB's Petition for Reconsideration filed by Sage on May 25, 2006. Had Sage included and argued these issues and evidence in its May 25th Response to CURB's Petition for Reconsideration, CURB would have filed a reply to address the new issues and evidence. CURB is responding to the newly asserted evidence and issues which were not timely included in the Response to Petition for Reconsideration filed by Sage on May 25, 2006.

I. CURB'S RESPONSE TO NEW EVIDENCE AND ISSUES

A. Sage's \$1.33 Surcharge Includes A \$1.00 Increase In The AT&T Wholesale Rate And "Other Cost Increases," Such As Employee Benefits.

2. Sage argues in its Reply to Staff Response that the "access recovery charge¹ was necessitated by an increase in Sage's underlying costs. In specific, AT&T raised the wholesale rate for access lines charged to Sage by \$1.00 on January 1, 2006."² This is the first instance in this docket where Sage has specified the amount of the increase in its wholesale rate paid to AT&T.³

3. Next, Sage decides the time is ripe to disclose that the new \$1.33 public switched network recovery charge also includes "other cost increases (such as higher costs for employee benefits)."⁴

4. These disclosures should have been forthcoming in Sage's May 25, 2006 Response to CURB's Petition for Reconsideration. Having no opportunity to determine the basis for Sage's surcharge once the docket was closed, CURB pointed out in its Petition for Reconsideration that, "[w]hat that charge encompasses is anyone's guess, given the fact Sage is already recovering an additional \$3.00 on its SLC for the increased cost of purchasing unbundled network elements from SBC resulting from the TRRO."⁵

5. However, Sage withheld these disclosures until it received Staff's Response to Petition for Reconsideration, which refers to CURB's questions regarding the basis for the proposed

¹ Sage's Reply to Staff Response refers to an "access recovery charge" while Sage's tariff filing refers to a "public switched network recovery charge."

² Sage Reply to Staff Response, ¶2.

³ In its March 23, 2006 tariff filing and its May 25, 2006 Response to Petition for Reconsideration, Sage alleged its proposed Public Switched Network Recovery Fee of \$1.33 "is intended to recover costs to access the public switched network for local service."

⁴ Sage Reply to Staff Response, ¶2. Sage does not clearly indicate that the difference between the \$1.33 public switched network recovery charge and the \$1.00 increase in its wholesale rate consists of these "other cost increases." However, Sage clearly states that "a rate increase was necessary" because of the \$1.00 increase in its wholesale rate and these other cost increases.

⁵ Petition for Reconsideration, ¶18. Also referred to in Staff Response to Petition for Reconsideration, ¶6.

public switched access recovery charge,⁶ indicates that Staff shares some concerns raised by CURB⁷ and recommends the Commission consider further investigation of the propriety of Sage's public switched access recovery charge in this docket.⁸

6. The "other cost increases (such as higher costs for employee benefits)" are of particular concern to CURB, since they are contrary to representations made to ratepayers in the Exhibits produced for the first time in the Sage Reply to Staff Response.

B. Sage's Decision To Implement Its Surcharge Was Intended To Disguise A Rate Increase.

7. After disclosing the amount of the wholesale rate increase and alleging the new surcharge includes other increased costs, Sage attempts to argue that its decision to implement the public switched network recovery charge was not an attempt to disguise a rate increase:

With respect to the first issue, **the access recovery charge was necessitated by an increase in Sage's underlying costs.** In specific, AT&T raised the wholesale rate for access lines charged to Sage by \$1.00 on January 1, 2006. **Sage intended to absorb the increased cost, but it soon became evident that** its margins were so tightly squeezed by that increase and other cost increases (such as higher costs for employee benefits) **that a rate increase was necessary.** However, by that time Sage's principal competitors in Kansas had received Commission approval of tariffs which incorporated discrete charges for access cost increases (e.g., Xpedius' tariff docket cited in footnote 4 of Sage's Reply to CURB), **so it was competitively impossible for Sage to initiate a general rate increase. For that reason – and not to pass on any government-mandated charge or to disguise a rate increase – Sage filed its proposed tariff.**⁹

8. It is difficult to follow Sage's logic. First, Sage states that because of cost increases, a "rate increase was necessary." Next, Sage alleges because other competitors had disguised their rate increases in surcharges, it was "competitively impossible for Sage to initiate a general rate increase."

⁶ Staff Response to Petition for Reconsideration, ¶6.

⁷ *Id.*, ¶ 11.

⁸ *Id.*, ¶ 10.

⁹ Sage Reply to Staff Response, ¶2 (emphasis added).

Finally, because of this alleged impossibility to raise its rates, Sage “filed its proposed tariff” for the public switched access recovery charge, but somehow this was “not to ... disguise a rate increase.” Sage admits a rate increase was necessary, but it didn’t believe it could implement a general rate increase competitively, so it implemented the surcharge to disguise the required rate increase.

C. “Similar” Surcharges Approval By Other States Do Not Justify Sage’s Deceptive Surcharge.

9. Sage argues, without any reference to official records, that “Similar tariff filings were approved in **nearly** all of the twelve states in which Sage provides service. The only states in which the discrete access recovery charge was not implemented were Ohio, where no other competitor had implemented discrete charges, so Sage could remain competitive while proposing a general rate increase, and Missouri.”¹⁰

10. Sage’s reliance on vaguely-referenced “similar” tariff filings makes it impossible for CURB to adequately respond. Were they similar in amount? Were they greater charges, or less? Did they include the same, or different “other cost increases (such as higher costs for employee benefits)” from those included in Kansas? Were those costs identified both in terms of type and amount, unlike Sage’s Kansas filing?

11. It is also unclear what Sage intends by reference to filing in “nearly” all of the twelve states in which Sage provides service? Did Sage actually file the tariff in all of the 12 states, just eleven (omitting Ohio), or some other unidentified number?

12. CURB has the impression it is participating in the old shell game,¹¹ with Sage constantly moving the shells to hide the pea (complete and accurate facts).

¹⁰ Sage Reply to Staff Response, ¶3 (emphasis added).

¹¹ See, http://en.wikipedia.org/wiki/Shell_game

13. Nonetheless, approval in another state does not, and should not, require approval in Kansas, where statutes specified in CURB's 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) and Petition for Reconsideration were specifically passed by the Kansas Legislature to protect the public interest and Kansas ratepayers from deceptive practices by telecommunications public utilities. CURB will not repeat the arguments and authorities contained in CURB's Complaint, Petition, and Motion and CURB's Petition to Intervene, but instead incorporates them herein by reference.

D. Sage Misrepresents And Conceals The Nature, Purpose, And Amount of the Surcharge.

14. Sage alleges that it "fully discloses the nature, purpose, and amount of the access recovery charge."¹² To the contrary, newly disclosed Exhibits A and B produced in the Sage Reply to Staff Response demonstrate that Sage does not fully disclose the nature, purpose, and amount, but instead conceals and misrepresents the surcharge.

1. The amount (\$1.33) of the Surcharge is not disclosed.

15. First, as far as CURB can determine, neither Sage Exhibit A nor B disclose the amount of the public switched access recovery charge. If this amount is set forth on Sage Exhibit B, it is in a font so small that a ratepayer could not ascertain it. To be fully disclosed, the \$1.33 amount should be specified in the explanation to the right on Sage Exhibit B.

¹² Sage Reply to Staff Response, ¶ 5.

2. The nature and purpose of the surcharge is misrepresented or concealed in Sage Exhibits A and B.

16. Sage Exhibits A and B to Sage’s Reply to Staff Response misrepresents the nature and purpose of the surcharge as being a “fee we have to collect,”¹³ “required by law,”¹⁴ and required by “State, Local and Federal Regulations.”¹⁵

17. Sage Exhibits A and B both specifically state that the surcharge “is used to offset increased costs incurred in gaining access to incumbent telephone company networks,” but conceal that the \$1.33 surcharge also includes “other cost increases (such as higher costs for employee benefits)”¹⁶ or that it is really a disguised rate increase.¹⁷ This is contrary to Sage’s claim that it “fully discloses the nature, purpose, and amount of the access recovery charge.”¹⁸

18. Sage goes through great pains to tell ratepayers that it does not charge for items charged by some telephone companies,¹⁹ yet conceals the fact that most carriers don’t charge a public switched access recovery charge.

19. Examples of the misrepresentations or omissions discussed above are set forth below:

The lowdown on taxes, fees and other charges.
Taxes for this. Fees for that. It can all be very confusing. That’s why we wanted to provide you with this information so you can better understand **the taxes and fees we have to collect**. And the ones we don’t.²⁰

¹³ Sage Reply to Staff Response, Exhibit A, p. 1.

¹⁴ Sage Reply to Staff Response, Exhibit A, p. 2.

¹⁵ Sage Reply to Staff Response, Exhibit A, p. 1.

¹⁶ Sage Reply to Staff Response, ¶ 2.

¹⁷ Sage Reply to Staff Response, ¶ 2 (“Sage intended to absorb the increased cost, but it soon became evident that ... a rate increase was necessary.”).

¹⁸ Sage Reply to Staff Response, ¶ 5.

¹⁹ Sage Reply to Staff Response, Exhibit A, p. 2.

²⁰ Sage Reply to Staff Response, Exhibit A, p. 1 (emphasis added).

The following taxes and fees are collected pursuant to state and local regulations:

...

Public Switched Network Recovery Charge **This charge is used to offset increased costs incurred in gaining access to incumbent telephone company networks.***

* This charge is not a tax or fee imposed by a government entity.²¹

Q. Why am I charged taxes and service fees?

A. Every telephone company has to collect some taxes and fees, **as required by law. However, we DON'T charge for certain fees that other phone companies do.** For an explanation of taxes, fees, and other charges, please see the back of this brochure.²²

STATE, LOCAL AND FEDERAL REGULATIONS

...

Public Switched Network Recovery Charge **This charge is used to offset increased costs incurred in gaining access to incumbent telephone company networks.***

* This charge is not a tax or fee imposed by a government entity.²³

²¹ *Id.* (emphasis added).

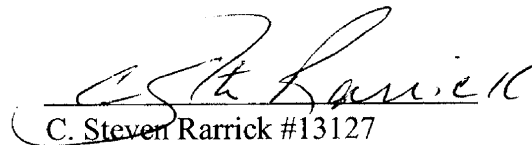
²² Sage Reply to Staff Response, Exhibit A, p. 2 (emphasis added).

²³ Sage Reply to Staff Response, Exhibit A, p. 1 (emphasis added).

II. CONCLUSION

20. WHEREFORE, based on the above arguments, CURB respectfully requests that the Commission reconsider its May 1, 2006, Order, reopen the docket, approve CURB's request to intervene, rescind the approval of Sage's proposed public switched network recovery charge and suspend the tariff proceeding, and consider the complaint filed by CURB.

Respectfully submitted,



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

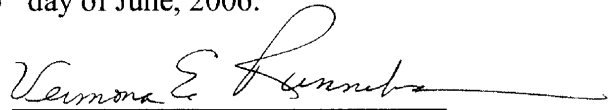
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

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

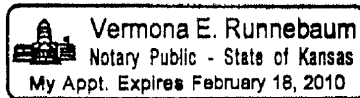
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 15th day of June, 2006.


Notary Public

My Commission expires:



CERTIFICATE OF SERVICE

06-SAGT-1031-TAR

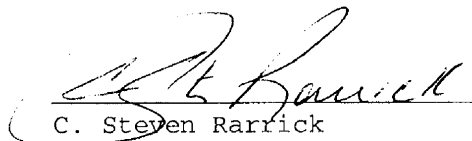
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 15th day of June, 2006, to the following:

BRET LAWSON, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
b.lawson@kcc.state.ks.us
**** Hand Deliver ****

KARL ANDREW, REGULATORY AFFAIRS
SAGE TELECOM, INC.
805 CENTRAL EXPRESSWAY SOUTH
SUITE 100
ALLEN, TX 75013-2789
Fax: 214-495-4790

ROBERT W MCCAUSLAND, VICE PRESIDENT
REGULATORY AFFAIRS
SAGE TELECOM, INC.
805 CENTRAL EXPRESSWAY SOUTH
SUITE 100
ALLEN, TX 75013-2789
Fax: 214-495-4790
rmccausland@sagetelecom.net

MARK P. JOHNSON, ATTORNEY
SONNENSCHN NATH & ROSENTHAL LLP
4520 MAIN STREET
SUITE 1100
KANSAS CITY, MO 64111
Fax: 816-531-7545
mjohnson@sonnenschein.com


C. Steven Rarrick