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# Exhibit E

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNION ELECTRIC COMPANY	)	
d/b/a Ameren Missouri,	)	
	)	
Plaintiff,	)	
	)	Case No. 4:11-CV-00299
v.	)	
	)	
CABLE ONE, INC.,	)	
	)	
Defendant.	)	

**PLAINTIFF'S MEMORANDUM  
IN SUPPORT OF ITS MOTION TO LIFT STAY**

**Introduction**

Plaintiff Union Electric Company d/b/a Ameren Missouri ("Ameren") has moved to lift the stay entered September 27, 2011. It has now been one year since the parties last filed Status Reports concerning this matter. Since then, there have been no developments at the FCC that impact this case in any way. This case is needlessly in limbo.

**Argument**

On September 27, 2011, this Court stayed this action at Cable One's request, and over Ameren's objection, on the grounds that the FCC has primary jurisdiction over the classification of services offered by Cable One. Clearly contemplated in the Court's Order was that a complaint would be filed with the FCC to determine the relevant issues. As Ameren explained in its April 3, 2012 Status Report (Doc. 23): (1) Cable One "has done nothing to invoke the FCC's jurisdiction by filing a pole attachment complaint or other action since this case was stayed at its request"; and (2) "[t]he FCC rules do not allow Ameren to file its breach of contract action at the FCC." Cable One has never disputed these facts, but instead has contended that this

Court's Memorandum and Order contemplated that *Ameren* might make such a filing. *Ameren* does not read this Court's Order in that manner and, in any event, such a command would be futile—pole owners such as *Ameren* cannot seek collection of unpaid pole attachment rentals at the FCC and cannot file FCC pole attachment complaints against individual attachers to seek peremptory declarations regarding the nature of their attachments. In fact, under the FCC's pole attachment rules, a utility's complaint right is awkwardly limited to contending "that a rate, term or condition for pole attachment is not just or reasonable." 47 C.F.R. § 1.1402(d)(2). As a practical matter, the FCC's pole attachment complaint process is for attachers, not pole owners such as *Ameren*.

Because of the stay, Cable One has been able thus far to invoke the doctrine of primary jurisdiction and, unless *it* chooses to initiate a proceeding at the FCC, indefinitely forestall *Ameren* from ever enforcing its state law contract rights. But as the Eighth Circuit has recognized, "the doctrine of primary jurisdiction is not a doctrine of futility." *Owner-Operator Independent Drivers Ass'n, Inc. v. New Prime, Inc.*, 192 F.3d 778, 786 (8<sup>th</sup> Cir. 1999) (quoting *Local Union No. 189, Amalgamated Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676, 686 (1965)). And that is exactly the result here: staying a case without requiring the only party who *can* invoke the FCC's jurisdiction do so renders the reference to the agency futile. The FCC cannot address an issue not before it; and *Ameren* cannot bring the issue to the FCC.

There is no issue implicated by this case that is before the FCC or the D.C. Circuit. Neither of the reconsideration petitions nor the appeal to the D.C. Circuit raises issues concerning the classification of services. According to the Statement of Issues filed at the D.C. Circuit (attached to Plaintiff's Status Report Reply (Doc. #25) as Exhibit A), the petitioners are raising issues concerning attachment rights of incumbent local exchange carriers, the new

formula for the telecom rate, and the "refund period" in complaint proceedings. The two reconsideration petitions (attached to Plaintiff's Status Report Reply (Doc. #25) as Exhibits B and C) raise issues related to operations and to the revised formula for the telecom rate, but neither implicates the classification of services.

There is no reason to continue the stay in this case. Cable One should not be permitted to invoke the doctrine of primary jurisdiction and then, as the sole party with standing to invoke the FCC's jurisdiction to resolve the issues it contends are within the FCC's primary jurisdiction, forestall further proceedings indefinitely. That result nullifies Ameren's state law contract rights and renders primary jurisdiction futile. Unless the stay is lifted, Ameren will be forever without a remedy.

WHEREFORE, Ameren requests that this Court dissolve its stay and allow this case to move forward on the merits.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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# Exhibit F

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNION ELECTRIC COMPANY	)	
d/b/a Ameren Missouri,	)	
Plaintiff,	)	Case No. 4:11-CV-00299
	)	
v.	)	
	)	JURY TRIAL DEMANDED
CABLE ONE, INC.,	)	
Defendant.	)	

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES  
IN OPPOSITION TO PLAINTIFF'S MOTION TO VACATE STAY

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IN THE UNITED STATES DISTRICT COURT  
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Plaintiff,	)	Case No. 4:11-CV-00299
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	)	JURY TRIAL DEMANDED
CABLE ONE, INC.,	)	
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**DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES  
IN OPPOSITION TO PLAINTIFF'S MOTION TO VACATE STAY**

Defendant Cable One, Inc. ("Cable One") submits this Memorandum of Points and Authorities in opposition to the Motion of Plaintiff Union Electric Company d/b/a Ameren Missouri ("Ameren") to lift the stay entered by this Court on September 27, 2011.

**I. INTRODUCTION**

In its September 27, 2011 Memorandum and Order granting in part Cable One's Motion to Dismiss, or in the Alternative for a Stay, in Deference to the Primary Jurisdiction of the FCC ("Order"), the Court determined that Ameren's claims were best addressed by the Federal Communications Commission ("FCC") pursuant to the doctrine of primary jurisdiction. *Order* at 9 ("the Court finds that referral under the primary jurisdiction doctrine is appropriate"). Specifically, the Court determined that the classification of the services offered by Cable One "affects not only the parties' obligations under their agreement, but also the treatment of the services and parties throughout the entire regulatory scheme overseen by the FCC," and thus the issues satisfied the factors to be considered in applying the primary jurisdiction doctrine. *Order* at 6, 8. The Court further ordered Ameren to "file a status report within six months of the date of

this order or upon determination by the Federal Communications Commission of its petition, whichever is earlier.” *Order* at 10.

Ameren is able to seek a determination by the FCC on the classification issue by using the declaratory ruling process established under the FCC’s rules. *See* 47 C.F.R. § 1.2(a) (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”). Ameren, however, has not exercised its opportunity under the primary jurisdiction doctrine to seek a determination from the FCC on the issue of how Cable One’s services should be classified. In its April 3, 2012 status report, Ameren reargued its opposition to the Court’s ruling that referral under the primary jurisdiction doctrine was appropriate. Ameren complained that Cable One had taken no action in response to the Court’s *Order* and predicted that the dispute would not be resolved unless the Court lifts the stay and allows the case to proceed on the merits.

Cable One filed a response to Ameren’s status report on April 4, 2012, in which it explained that the *Order* did not require or contemplate that Cable One would seek redress from the FCC. To the contrary, the *Order* specifically contemplated that Ameren would make such a filing, as is made clear in the Court’s direction to *Plaintiff* to file a status report within six months or “upon determination by the Federal Communications Commission of *its* petition, whichever is earlier.” *Order* at 10 (emphasis added).

Ameren then filed a reply to Cable One’s response on April 6, 2012, once again contending that the stay should be lifted because of Cable One’s failure to seek relief at the FCC. Ameren also asserted that it is unable to act on the Court’s primary jurisdiction referral because the FCC’s rules do not allow Ameren to file its breach of contract action at the FCC.

On April 4, 2013, more than 18 months after Court issued the *Order*, Ameren filed a motion to lift the stay. In its motion, Ameren reiterates its assertion that it is unable to act on the Court's primary jurisdiction referral and complains again that Cable One has taken no action in response to the Court's *Order*. Wholly disregarding its own inaction, Ameren argues that the continuance of the stay leaves it without a remedy. Plaintiff's Memorandum in Support of its Motion to Lift Stay at 2 ("Pl's Br.").

There is no legal or factual justification for lifting the stay in order to allow this case to move forward on the merits. Moreover, as explained in Cable One's Renewed Motion to Dismiss filed contemporaneously herewith, the Court should dismiss this proceeding without prejudice in light of Ameren's failure to comply with the Court's primary jurisdiction referral and recent legal pronouncements addressing the issues in this case. Accordingly, Ameren's motion to lift the stay should be denied.

**II. AMEREN MAY NOT USE ITS OWN FAILURE TO COMPLY WITH THE PRIMARY JURISDICTION REFERRAL TO JUSTIFY LIFTING THE STAY**

The factors the Court analyzed before applying the primary jurisdiction doctrine support continuing the stay in this case. Today, as much as in September 2011, the classification of the services offered by Cable One "affects not only the parties' obligations under their agreement, but also the treatment of the services and parties throughout the entire regulatory scheme overseen by the FCC." *Order* at 8. Lifting the stay to permit the litigation to move forward on the merits, without first obtaining a determination from the FCC on the classification issue, would put the Court in precisely the situation it sought to avoid by referring the classification issue to the FCC under the primary jurisdiction doctrine. As this Court has found in response to similar requests, "all of the reasons for deferring to the primary jurisdiction of the FCC remain in place at this time." *Southwestern Bell Tel., L.P. v. VarTec Telecom, Inc.*, No. 4:04-CV-1303

(CEJ), 2008 WL 4948475, at \*2 (E.D. Mo. Nov. 10, 2008) (denying motion to vacate stay); *Southwestern Bell Tel., L.P. v. Global Crossing Ltd.*, No. 4:04-CV-1573 (CEJ), 2008 WL 4938409, at \*2 (E.D. Mo. Nov. 10, 2008) (same). Ameren notes that “the doctrine of primary jurisdiction is not a doctrine of futility,” Pl’s Br. at 2 (internal quotation marks and citations omitted), but in this case it is only Ameren’s failure to comply with the Court’s *Order* that threatens to render the primary jurisdiction referral futile. Ameren should not be permitted to leverage its own inaction into a rationale for undoing this Court’s well-founded primary jurisdiction referral.

**A. Ameren Is Required to Seek a Determination from the FCC**

The doctrine of primary jurisdiction “requires the court to enable a ‘referral’ to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling.” *Reiter v. Cooper*, 507 U.S. 258, 268 (1993). As the Supreme Court has explained, the term “referral” is “loosely described as a process whereby a court refers an issue to an agency.” *Id.* at n.3. But as the Supreme Court recognizes, most statutes have no mechanism where a court can demand or request a determination from an agency. *Id.* Thus, it is up to the plaintiff to initiate the administrative process before the relevant agency. *Id.* A primary jurisdiction “referral” therefore allows “the plaintiff a reasonable opportunity within which to apply to the Commission for a ruling as to the reasonableness of the practice.” *Id.* (citing *Mitchell Coal & Coke Co. v. Pennsylvania R. Co.*, 230 U.S. 247, 267 (1913)). Thus, it is Ameren’s obligation, as the plaintiff, to seek a determination from the FCC on the classification of Cable One’s services.

Apparently seeking to divert attention from its own inaction, Ameren complains that Cable One “has done nothing to invoke the FCC’s jurisdiction by filing a pole attachment

complaint or other action since this case was stayed at its request.” Pl’s Br. at 1 (quoting Plaintiff’s April 3, 2012 Status Report). No support is given, or could be given, for Ameren’s assumption that Cable One is responsible for seeking FCC action. The Court’s *Order* did not require or even suggest that Cable One should file a petition with the FCC. Rather, it specifically contemplated that Ameren might make such a filing:

IT IS FURTHER ORDERED that **plaintiff** shall file a status report within six months of the date of this order or upon determination by the Federal Communications Commission of **its** petition, whichever is earlier.

*Order* at 10 (emphasis added). This is consistent with the Supreme Court’s description of primary jurisdiction referrals and with numerous other primary jurisdiction referrals in which the *plaintiff* is directed to seek a determination from the FCC. *Reiter*, 507 U.S. at n.3 (referral allows “the *plaintiff* a reasonable opportunity within which to apply to the Commission for a ruling as to the reasonableness of the practice”) (emphasis added); *see also Access Telecomm. v. Southwestern Bell Tel. Co.*, 137 F.3d 605 (8th Cir. 1998) (finding primary jurisdiction applied and stating plaintiff’s “next course of action regarding this claim will be to petition directly to the FCC”); *CenturyTel of Missouri, LLC v. Missouri Pub. Serv. Comm’n*, 2009 WL 82066, at \* (W.D. Mo. Jan. 12, 2009) (denying plaintiff’s motion for summary judgment, dismissing plaintiff’s claim without prejudice, referring the matter to the FCC, and directing plaintiff “to petition the FCC directly”); *DeBruce Grain, Inc. v. Union Pac. R.R. Co.*, 983 F. Supp. 1280, 1286 (W.D. Mo. 1997) (finding primary jurisdiction applied and dismissing the case without prejudice to plaintiff’s right to seek relief from the Surface Transportation Board); *Splitrock Properties, Inc. v. Qwest Commc’ns Corp.*, 2010 WL 2867126, at \*13 (D.S.D. July 20, 2010) (staying resolution of the dispute and directing plaintiff Splitrock to contact the FCC to obtain guidance on the appropriate method for bringing its matter before the FCC). Accordingly, it is

Ameren, not Cable One, that is the party with the obligation to invoke the FCC's primary jurisdiction to resolve the classification of Cable One's services.

**B. Ameren Will Not Be Deprived of a Remedy by Continuing the Stay**

Ameren argues that “[t]he FCC rules do not allow Ameren to file its breach of contract action at the FCC.” PI’s Br. at 1 (quoting Plaintiff’s April 3, 2012 Status Report). Whether or not Ameren is permitted to file its contract claims at the FCC is a red herring. As this Court recognized in its *Order*, “[r]eferral under the primary jurisdiction doctrine is issue based, not claim based.” *Order* at 6. A primary jurisdiction referral seeks the FCC’s guidance on issues within its expertise. *Id.* (citing *Splitrock*, 2010 WL 2867126). Here, the issue for referral to the FCC is not the ultimate question of whether Ameren will prevail on its breach of contract claims, but the specific question of how the services Cable One provides through its pole attachments in Missouri are classified for regulatory purposes. Resolution of the service classification issue will determine whether Cable One’s pole attachments are subject to the contractual rate for telecommunications attachments or the rate for cable attachments. *Cf. Order* at 5 (stating Ameren’s “claim relies upon the classification of [Cable One]’s services”).

If it chose to do so, Ameren *is* able to seek a determination on the classification issue by using the declaratory ruling process established under the FCC’s rules. *See* 47 C.F.R. § 1.2(a) (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”). Other utility companies have used this procedure in the past. *See, e.g., Pleading Cycle Established for Comments on Petition for Declaratory Ruling of American Electric Power Service Corporation et al. Regarding the Rate for Cable System Pole Attachments Used to*

*Provide Voice over Internet Protocol Service*, 24 F.C.C.R. 11001 (2009).<sup>1</sup> This proceeding was opened by the FCC in response to a petition filed by several utilities seeking a declaratory ruling that the telecommunications rate formula applies to pole attachments used by cable companies providing VoIP services. See WC Docket No. 09-154, Petition of American Electric Power Service Corporation, Duke Energy Corporation, Southern Company, and Xcel Energy Services Inc. for a Declaratory Ruling (filed Aug. 17, 2009).<sup>2</sup> Ameren could have participated in that proceeding by submitting a request that the FCC consider the specific services and/or the specific issues that require determination in this litigation, but it has not done so. Alternatively, Ameren also could have filed a separate petition for a declaratory ruling specific to the classification of the services offered by Cable One for purposes of applying the correct pole attachment rate under the FCC's rules, but it chose not to do so. Ameren has had and continues to have "a reasonable opportunity" to seek a determination from the FCC on the classification issues raised by this case. *Reiter*, 507 U.S. at 269.

**C. Ameren's Failure to Act Does Not Negate the Continued Appropriateness of the Primary Jurisdiction Referral**

Ameren contends that "no issue implicated by this case [ ] is before the FCC or the D.C. Circuit," Pl's Br. at 2, and thus asks this Court to allow the case to move forward on the merits. Passing on the fact that Ameren's own inaction has been a determining factor of what issues are before the FCC, Ameren is incorrect that no issues are pending before the FCC that are implicated by the classification question in this case. The classification of Cable One's services continues to be an "area of agency expertise" that would have "far-reaching consequences that

<sup>1</sup> A copy is attached hereto as Ex. 1. In previous filings, this proceeding was described as the "VoIP Pole Attachment Proceeding." See, e.g., Memorandum of Points and Authorities in Support of Cable One, Inc. Motion to Dismiss, or in the Alternative for a Stay, in Deference to the Primary Jurisdiction of the FCC, at 8 (filed Feb. 22, 2011) (hereinafter "Def's 2011 Br.").

<sup>2</sup> A copy is attached hereto as Ex. 2.

concern the promotion of uniformity and consistency in the regulatory scheme promulgated by the FCC.” *Order* at 6-7 (citing *Alpharma, Inc. v. Pennfield Oil Co.*, 411 F.3d 934 (8th Cir. 2005)) (internal citations omitted).

The FCC’s exclusive jurisdiction over the classification and regulation of VoIP services has been reaffirmed on several occasions. *See, e.g., Vonage Holdings Corp. v. Neb. Pub. Serv. Comm’n*, 543 F. Supp. 2d 1062 (D. Neb. 2008), *aff’d*, 564 F.3d 900 (8th Cir. 2009); *New Mexico Pub. Regulation Comm’n v. Vonage Holdings Corp.*, 640 F. Supp. 2d 1359 (D.N.M. 2009). Both of the generic VoIP classification proceedings that were discussed in Cable One’s Motion to Dismiss, Def’s 2011 Br. at 6, remain pending before the FCC. Further, the 2009 declaratory ruling proceeding initiated by the utilities on the issue of how VoIP services should be treated for purposes of pole attachment rates (Def’s 2011 Br. at 8) remains open, although the issue presented in that proceeding has been effectively rendered moot as explained below. The existence of even one open proceeding in which the FCC is considering the classification of VoIP services means that a classification determination by this Court would still risk inconsistency with the regulatory scheme. *See, e.g., VarTec*, 2008 WL 4948475, at \*1 (noting the primary jurisdiction doctrine serves two main purposes - to “ensure desirable uniformity in determinations of certain administrative questions” and to “resort to agency experience and expertise where the court is presented with a question outside its conventional expertise”) (citing *United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956)); *Access Telecomm.*, 137 F.3d at 608 (“Another reason is to promote uniformity and consistency within the particular field of regulation.”).

Ameren is also wrong about the relevance of the FCC’s April 7, 2011 decision to the classification issues present in this case. Pl’s Br. at 2-3. The FCC’s decision setting forth new

regulations governing pole attachments was recognized and discussed in the *Order* as further support for application of the primary jurisdiction doctrine.<sup>3</sup> *Order* at 8 (citing *Implementation of Section 224 of the Act*, 26 F.C.C.R. 5240 (2011) (“*April 7 FCC Order*”). In the *April 7 FCC Order*, the FCC reaffirmed that the law contemplates only two types of pole attachment rates – one for the provision of telecommunications services and one for the provision of cable services. *April 7 FCC Order* ¶ 154; see also 47 U.S.C. § 224(d), (e); 47 C.F.R. § 1.1409(e). Cable attachments used to offer commingled cable television and Internet access (cable modem) services are subject to the rate for cable television attachments. See, e.g., *Implementation of Section 703(e) of the Telecommunications Act of 1996: Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 F.C.C.R. 6777, ¶ 34 (1998), *aff'd National Cable & Telecomms. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327 (2002) (intervening history omitted).

In the *April 7 FCC Order*, the FCC recognized the parties' concerns over what pole attachment rates are applicable in the context of commingled services, “where cable operators or telecommunications carriers also provide services, such as VoIP, that have not been classified.” *April 7 FCC Order* ¶ 154. While the FCC declined to “determine more precisely the specific rate (new telecom rate or cable rate) that should apply in the context of any particular commingled services scenario,” the FCC stated that the telecommunications rate could be applied only to those services that “ultimately are telecommunications services.” *Id.* at n.466. At the same time, the FCC reaffirmed that it “has expressly declined to address the statutory classification of VoIP services.” *Id.* at n.464; see also 47 U.S.C. § 153(1) (defining “interconnected VoIP service” to be an “advanced communications service”). In upholding the FCC's determinations in the *April 7 FCC Order*, the United States Court of Appeals for the

<sup>3</sup> A copy of the FCC's April 7, 2011 Report and Order is attached hereto as Ex. 3.

District of Columbia Circuit confirmed that “telecommunications carriers equals providers of telecommunications services, and vice versa.” *American Electric Power Serv. Corp. v. FCC*, 708 F.3d 183, 187 (D.C. Cir. 2013).<sup>4</sup>

The FCC’s discussion of classification issues in the *April 7 FCC Order*, as further expanded by the D.C. Circuit, provides further support for denial of Ameren’s motion to lift the stay. The VoIP classification issue “affects not only the parties’ obligations under their agreement, but also the treatment of the services and parties throughout the entire regulatory scheme overseen by the FCC.” *Order* at 6, 8. Determining the appropriate classification of Cable One’s services involves the type of “technical or policy questions” primary jurisdiction was intended to address. *CenturyTel*, 2009 WL 82066, at \*8 (citing *Allnet Commc’n Serv., Inc. v. National Exchange Carrier Ass’n, Inc.*, 965 F.2d 1118, 1122 (D.C. Cir. 1992)). Accordingly, Ameren’s motion to lift the stay should be denied.<sup>5</sup>

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<sup>4</sup> A copy of the DC Circuit’s February 26, 2013 decision is attached hereto as Ex. 4.

<sup>5</sup> Given that the FCC has not “expressly classified” VoIP service as a telecommunications service, the cable rate is the only possible rate that can be applied to Cable One’s VoIP service. See *April 7 FCC Order* at n.466. As explained in Cable One’s Renewed Motion to Dismiss filed contemporaneously herewith, the issue of whether Cable One’s VoIP service is a telecommunications service requiring it to pay the telecommunications pole attachment rate has been resolved, and Ameren’s claims should be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's motion to lift the stay.

Respectfully submitted,

CABLE ONE, INC.



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Dated: April 15, 2013

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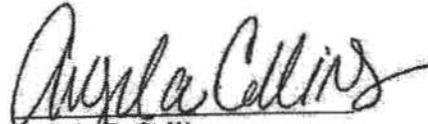
Attorneys for Defendant Cable One, Inc.

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**CERTIFICATE OF SERVICE**

NOV 12 2013

I hereby certify that, on this 15th day of April 2013, the above and foregoing Defendant's **ECG Mail Room** Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Vacate Stay was electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record: Gene J. Brockland and Brian M. Wacker, HERZOG CREBS LLP, Attorneys for Plaintiff Union Electric Company d/b/a Ameren Missouri.

  
Angela F. Collins

**LIST OF ATTACHMENTS**

1. *Pleading Cycle Established for Comments on Petition for Declaratory Ruling of American Electric Power Service Corporation et al. Regarding the Rate for Cable System Pole Attachments Used to Provide Voice over Internet Protocol Service*, 24 F.C.C.R. 11001 (2009)
2. WC Docket No. 09-154, Petition of American Electric Power Service Corporation, Duke Energy Corporation, Southern Company, and Xcel Energy Services Inc. for a Declaratory Ruling (filed Aug. 17, 2009)
3. *April 7 FCC Order - Implementation of Section 224 of the Act*, 26 F.C.C.R. 5240 (2011)
4. *American Electric Power Service Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013)

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# Exhibit G

CABLE ONE, INC.

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Missouri P.S.C. Tariff No. 1  
Original Adoption Notice Page

~~OCT 22 2004~~  
By TC-04-0311  
Public Service Commission  
**MISSOURI**  
ADOPTION NOTICE

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**MISSOURI**  
Public Service Commission

Effective May 28, 1997, Post-Newsweek Cable, Inc. changed its corporate name to Cable One, Inc. Cable One, Inc. will continue to operate the public utility formerly named Post-Newsweek Cable, Inc.

Cable One, Inc. hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed by it, all tariffs, schedules, rules, notices, contracts, authorities or other instruments whatsoever, filed with the Public Service Commission, State of Missouri, by the Post-Newsweek Cable, Inc. prior to May 28, 1997.

By this notice it also adopts and ratifies all supplements or amendments to any of the above schedules, etc., which the Post-Newsweek Cable, Inc. has filed with said Commission.

Issued: October 21, 1997

Effective: November 20, 1997

ISSUED BY: Thomas P. Basinger, Vice-President  
Post-Newsweek Cable, Inc.  
4742 North 24th Street  
Suite 220  
Phoenix, AZ 86016

**FILED**  
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98-31  
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Post-Newsweek Cable, Inc.

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MISSOURI

TITLE SHEET

MISSOURI INTEREXCHANGE TELECOMMUNICATIONS TARIFF

OF

POST-NEWSWEEK CABLE, INC

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services provided by Post-Newsweek Cable, Inc. ("Post-Newsweek" or the "Company") within the State of Missouri. This tariff is on file with the Missouri Public Service Commission. Copies may be inspected during normal business hours at the Company's principal place of business at 4743 North 24th Street, Suite 220, Phoenix, AZ 85016.

Post-Newsweek operates as a competitive telecommunications company as defined by Case No. TO-88-142 within the State of Missouri.

DATE OF ISSUE: March 17, 1997

Thomas P. Basinger, Vice-President  
Post-Newsweek Cable, Inc.  
4742 North 24th Street  
Suite 220  
Phoenix, AZ 85016

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Post-Newsweek Cable, Inc.

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WAIVER OF RULES AND REGULATIONS

Pursuant to Case No. TA-97-\_\_\_\_\_, the following statutes and rules have been waived for purposes of offering telecommunications services as set forth herein:

STATUTES

Section 392.240(1)	Rates-reasonable average return on investment.
Section 392.270	Property valuation.
Section 392.280	Depreciation rates.
Section 392.290	Issuance of stocks and bonds.
Section 392.310	Issuance of stocks and bonds.
Section 392.320	Issuance of stocks and bonds.
Section 392.330	Issuance of stocks and bonds.
Section 392.340	Reorganization.

COMMISSION RULES

4 CSR 240-10.020	Income on depreciation fund investments.
4 CSR 240-30.010(2)(C)	Posting exchange rates at central offices.
4 CSR 240-32.030(1)(B)	Exchange boundary maps.
4 CSR 240-32.030(1)(C)	Record of access lines.
4 CSR 240-32.030(2)	Records kept within state.
4 CSR 240-30.040	Uniform System of Accounts.
4 CSR 240-32.050(3-6)	Telephone directories.
4 CSR 240-32.070(4)	Coin telephones.
4 CSR 240-33.030	Inform customers of lowest priced service.
4 CSR 240-33.040(5)	Finance fee.

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CHECK SHEET

Sheets 1 through 25, inclusive, of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

SHEET	REVISION
1	Original
2	Original
3	Original
4	Original
5	Original
6	Original
7	Original
8	Original
9	Original
10	Original
11	Original
12	Original
13	Original
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25	Original

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Section 4-Rates .....	20

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SYMBOLS

The following are the only symbols used for the purpose indicated below:

- D - Delete or Discontinue
- I - Change Resulting In An Increase to a Customer's Bill
- M - Moved From Another Tariff Location
- N - New
- R - Change Resulting In A Reduction to A Customer's Bill
- T - Change In Text or Regulation But No Change In Rate or Charge

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TARIFF FORMAT

MO. PUBLIC SERVICE COMMISSION

A. **Sheet Numbering** - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. **Sheet Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file with the MPSC. For example, the 4th revised Sheet 14 cancels the 3rd revised sheet 14. Because of various suspension periods, deferrals, etc. the MPSC follows in its tariff approval process, the most current sheet number on file with the Commission is not always the tariff page in effect. Consult the Check Sheet for the sheet currently in effect.

C. **Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to the next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a)
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

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D. **Check Sheets** - When a tariff filing is made with the MPSC, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.) The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on file with the MPSC.

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MAR 17 1997

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

MO. PUBLIC SERVICE COMMISSION

**Access Line** - An arrangement which connects the customer's location to Carrier.

**Account Codes** - Optional, customer defined digits that allow the customer to identify the individual user, department or client associated with a call.

**Off-Line** - service provided on a regular switched line.

**On-Line** - Service provided via a dedicated line.

**PNC** - Used throughout this tariff to mean POST-NEWSWEEK CABLE, INC. unless clearly indicated otherwise by the text.

**Authorization Code** - A numerical code, one or more of which are available to a customer to enable him/her to access the carrier, and which are used by the carrier both to prevent unauthorized access to its facilities and to identify the customer for billing purposes.

**Authorized User** - A person, firm, corporation, or any other entity authorized by the Customer to communicate utilizing the Carrier's service.

**Customer** - The person, firm, corporation, or other entity which orders, cancels, amends or uses service and is responsible for payment of charges and compliance with the Company's tariff.

**Company** - AIT unless otherwise clearly indicated by the context.

**Carrier** - Any authorized telecommunication carrier.

**Commission** - The Missouri Public Service Commission.

**Day** - From 8:00 a.m. up to but not including 5:00 p.m. local time Monday through Friday.

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Evening - From 5:00 p.m. up to but not including 11:00 p.m. local time Sunday through Friday.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, CONT'D**

**Holidays** - The Company observes the following holidays: New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**LDCS** - Long Distance Telephone Calling Services provided to a customer at his, her or its locations either switched or dedicated.

**LEC** - Local Exchange Company.

**MPSC** - Missouri Public Service Commission.

**Night/Weekend** - From 11:00 p.m. up to but not including 8:00 a.m. Sunday through Friday, and 8:00 a.m. Saturday up to but not including 5:00 p.m. Sunday.

**Special Access Origination** - Where originating access between the customer and the interexchange carrier is provided on dedicated circuits. The cost of these dedicated circuits is billed by the LEC or other access provider consistent with MPSC rules and orders directly to the end user.

**V & H Coordinates** - Geographic points which define the originating and terminating points of a call in mathematical terms so that the airline mileage of the call may be determined. Call mileage is used for the purpose of rating calls.

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MO. PUBLIC SERVICE COMMISSION

SECTION 2 - RULES AND REGULATIONS

2.1 Undertaking of POST-NEWSWEEK CABLE, INC.

The Company is a facilities-based interexchange resale carrier that provides its services over the networks of major facilities-based carriers from whom it purchases transport services.

The Company's services are furnished for communications originating at specified points within the State of Missouri under terms of this tariff.

The Company operates the communications services provided herein in accordance with the terms and conditions set forth under this tariff. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities as required in MPSC rules and orders, when authorized by the Customer, to allow connection of a Customer's location to the Company service. The Customer shall be responsible for all charges due for such service arrangement.

The Company's services are provided on a monthly basis unless otherwise provided, and are available twenty-four hours per day, seven days per week.

2.2 Limitations

2.2.1 Service is offered subject to the availability of the necessary facilities and subject to the provisions of this tariff.

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By TC-040311

SECTION 2 - RULES AND REGULATIONS, CONTD.  
MISSOURI

2.2 Limitations, CONTD.

- 2.2.2 The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control, or when the Customer is using service in violation of provisions of this tariff, or in violation of the law.
- 2.2.3 The Company does not undertake to transmit messages, but offers the use of Carrier facilities when available, and the Company will not be liable for errors in transmission or for failure to establish connections.
- 2.2.4 All services provided under this tariff are directly controlled by the Company and the Customer may not transfer or assign the use of service without the express written consent of the Company.
- 2.2.5 Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service.

2.3 Use

Services provided under this tariff may be used for any lawful purpose for which the service is technically suited.

2.4 Liabilities of the Company

- 2.4.1 The Company's liability for damages arising out of mistakes, interruptions, omissions, delays, errors, or defects in transmission which occur in the course of furnishing service or facilities, in no event shall exceed an amount equivalent to the proportionate charge to the Customer for the period during which the faults

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MISSOURI PUBLIC SERVICE COMMISSION

SECTION 2 - RULES AND REGULATIONS, CONT'D.

in transmission occur. The customer shall be credited for an interruption of two hours or more at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit formula: Credit =  $\frac{A}{720} \times B$

A - Outage time in hours

B - Total monthly charge for affected facility.

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MISSOURI

2.4.2 The Company shall not be liable for claim or loss, expense or damage (including indirect, special or consequential damage), for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this tariff, if caused by any person or entity other than the Company, by any malfunction of any service or facility provided by any carrier, by an act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond the Company's direct control.

2.4.3 The Company shall not be liable for, and shall be fully indemnified and held harmless by Customer against any claim or loss, expense, or damage (including indirect, special or consequential damage) for defamation, libel, slander, invasion, infringement or copy-right or patent, unauthorized use of any trademark, tradename, or service mark, unfair competition, interference with or misappropriation or violation of any contract, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data, information, or other content revealed to, transmitted, or used by the Company under this tariff; or for any act or mission of the Customer; or for any personal injury or death of any person caused directly or indirectly by the installation, maintenance, location, condition, operation, failure, presence, use or removal of equipment or wiring provided by the Company, if not directly caused by negligence of the Company.

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SECTION 2 - RULES AND REGULATIONS, CONTD.  
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2.4.4 No agent or employee of any carrier shall be deemed to be an agent or employee of the Company.

2.4.5 The Company shall not be liable for any defacement of or damages to the premises of a Customer resulting from the furnishing of services which is not the direct result of the Company's negligence.

2.5 Deposits

The Company may require deposits from Customers. In the event the Company deems it necessary to request a deposit from Customers, it will comply with Commission rules and regulations. The Company will not require deposits from residential customers.

2.6 Advance Payments

The Company may require an advancement payment from Customers. In the event the Company deems it necessary to request an advance payment, it will comply with Commission rules and regulations. In the event Customer's monthly statement is less than the advance payment, the remainder of the advance payment will be applied to Customer's next bill(s) until the total advance payment is expended.

2.7 Taxes

All state, local and federal taxes (i.e., gross receipts tax, sales tax, municipal utilities tax and federal excise taxes) are listed as separate line items and are not included in the quoted rates.

2.8 Installation and Termination

Service is installed upon mutual agreement between the Customer and the Company. The service agreement does not alter rates specified in this tariff.

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**SECTION 2 - RULES AND REGULATIONS, CONT'D.**

**2.9 Payment for Service And Billing**

The Customer is responsible for payment of all regulated charges for service furnished.

- (A) Service is provided and billed in arrears on a monthly (30 days) basis.
- (B) The customer shall have at least 21 days from the rendition of a bill to pay the charges at which time the charges become delinquent.
- (C) The Company may require a deposit if the Customer is unable to establish a good credit rating, or if the Customer has undisputed charges in two (2) out of the last twelve (12) billing periods which have become delinquent. The deposit shall not exceed estimated charges for two months' service based on the average bill during the preceding twelve months or in the case of new applicants, two months' average monthly bill for all subscribers within a customer class. The deposit shall bear interest at a rate of 9% simple interest per annum, and will be returned upon satisfactory payment of all undisputed charges during the last 12 billing periods, or discontinuance of service.
- (D) At the time an application for service is made, an applicant may be required to pay an amount equal to at least one month's service and/or service connection charges, which may be applicable to the customer's account on the first bill rendered.

**2.10 Cancellation by Customer**

Customer may cancel service by providing 30 days written notice to the Company.

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MO. PUBLIC SERVICE COMMISSION

SECTION 2 - RULES AND REGULATIONS, CONT'D.

2.11 Interconnection

Service furnished by the Company may be connected with the services for facilities of other carriers. The customer is responsible for all charges billed by other carriers for use in connection with the Company's service. Any special interface equipment or facilities necessary to achieve compatibility between carriers is the responsibility of the customer.

2.12 Refusal or Discontinuance by Company

The Company may discontinue the service under the following circumstances, provided suitable notice has been given to the customer, as required:

- (A) Non-payment of any sum due to the Company for service for more than twenty-eight (28) days beyond the date of rendition of the bill for such service.
- (B) A violation of or failure to comply with any regulation governing the furnishing of service.
- (C) An order of a court or other government authority having jurisdiction which prohibits the Company from furnishing service.
- (D) Failure to post a required deposit.
- (E) Material misrepresentation of identity in obtaining service or the use of service in a manner that in the opinion of the Company constitutes fraud or abuse.

Service shall not be disconnected unless written notice by first class mail is sent or delivered to the Customer at least five (5) days prior to the date of the proposed discontinuance. At least twenty-four (24) hours preceding discontinuance, a reasonable effort shall be made to contact the Customer to advise him of the proposed discontinuance and what steps must be taken to avoid it.

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SECTION 2 - RULES AND REGULATIONS, CONT'D. MO. PUBLIC SERVICE COMM

2.13 Interruption of Service

Credit allowances for interruptions of service which are not due to the Carrier's testing or adjusting, to the negligence of the Customer, or to the failure of channels, equipment or communications systems provided by the Customer, are subject to the general liability provisions set forth in Section 2.4 herein. It shall be the obligation of the Customer to notify Carrier immediately of any interruption in service for which a credit allowance is desired by Customer. Before giving such notice, Customer shall ascertain that the trouble is not within his or her control, or is not in wiring or equipment, if any furnished by Customer and connected to Carrier's terminal. Interruptions caused by Customer-provided or Carrier-provided automatic dialing equipment are not deemed an interruption of service as defined herein since the Customer has the option of using the long distance network via local exchange company access.

2.14 Inspection, Testing, and Adjustment

Upon reasonable notice, the facilities provided by the Carrier shall be made available to the Carrier for tests and adjustments as may be deemed necessary by the Carrier for maintenance. No interruption allowance will be granted for the time during which such tests and adjustments are made.

2.15 Tests, Pilots, Promotional Campaigns and Contests

The Company and/or the Carrier may conduct special tests or pilot programs and promotions at their discretion to demonstrate the ease of use, quality of service and to promote the sale of its services. The Company and/or the Carrier may also waive a portion or all processing fees or installation fees for winners of contests and other occasional promotional events sponsored or endorsed by either the Company and/or the Carrier. From time to time, the Company may waive all processing fees for a Customer.

These promotions will be approved by the MPSC with specific starting and ending dates with promotions running under no circumstances longer than 90 days in any 12 month period.

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SECTION 2 - RULES AND REGULATIONS, CONT'D.

2.16 Cost of Collection and Repair

The Customer is responsible for any and all costs incurred in the collection of monies due the Company and/or the Carrier including legal and accounting expenses. Customer is also responsible for recovery costs of Carrier-provided equipment and any expenses required for repair or replacement of damaged equipment.

2.17 Late Fee

A late fee of 1.5% monthly may be charged on any undisputed past due balances beginning 30 days from the mailing date of the bill.

2.18 Return Check Charges

A fee of \$15.00 or five percent of the amount of the check, whichever is greater, may be charged for each check returned for insufficient funds.

2.19 Reconnection Charge

A reconnection fee of \$50.00 per occurrence may be, at the discretion of the Company, charged when service is re-established for customers who have been disconnected for non-payment.

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SECTION 3 - DESCRIPTION OF SERVICE

3.1 Timing of Calls

- 3.1.1 Long distance usage charges are based on the actual usage of the Company's network services. The Company will determine that a call has been established when the called party's stations answers. When the station answers is determined by hardware answer supervision in which the local telephone company sends a signal to indicate an answer. A call is terminated when either party hangs up.
- 3.1.2 Unless otherwise specified in this tariff, the minimum call duration for billing purposes is eighteen seconds.
- 3.1.3 Unless otherwise specified in this tariff, usage is measured and rounded to the next higher six second increment for billing purposes.
- 3.1.4 There is no billing applied for incomplete calls.
- 3.1.5 The Company service is Accessed by dialing "1".

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3.2 Calculation of Distance

Usage charges for all mileage sensitive products are based on the airline distance between the servicing wire center locations associated with the originating and terminating points of the call.

The distance between the originating and terminating points is calculated by using the "V" and "H" coordinates of the serving wire centers as defined by BellCore (Bell Communications Research), in the following manner:

Step 1 - Obtain the "V" and "H" coordinates for the serving wire center of the Customer's switch and the destination point.

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SECTION 3 - DESCRIPTION OF SERVICE, CONT'D.

Step 2 - Obtain the difference between the "V" coordinates of each of the Rate Centers. Obtain the Difference between the "H" coordinates.

Step 3 - Square the differences obtained in Step 2.

Step 4 - Add the squares of the "V" difference and "H" difference obtained in Step 3.

Step 5 - Divide the sum of the square obtained in Step 4 by ten. Round to the next higher whole number if any fraction results from the division.

Step 6 - Obtain the square root of the whole number obtained in Step 5. Round to the next higher whole number if any fraction is obtained. This is the distance between the originating and terminating serving wire centers of the call.

Formula:

$$\sqrt{\frac{(V_1 - V_2)^2 + (H_1 - H_2)^2}{10}}$$

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3.3 Minimum Call Completion Rate

Customers can expect a call completion rate of not less than 90% during peak use periods for all 1+ services. The call completion rate is calculated as the number of call completed (including calls completed to a busy line or to a line which remains unanswered by the called party) divided by the number of calls attempted.

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SECTION 3 - DESCRIPTION OF SERVICE, CONT'D.

3.4 Service Offerings

- 3.4.1 Long Distance Calling Service - is offered through LDDS and is a direct access dial "1" service.
- 3.4.2 Telephone Calling Card Service Remote Access service is offered either alone or in conjunction with LDCS service as an optional feature. Remote Access to LDCS service is utilized by Customers when off the network by dialing a 1-800 number and entering an authorization code and dialing the number for which the Customer desires to be connected.
- 3.4.3 Prepaid Telephone Cards ("Prepaid Calling Cards"). The Company offers Prepaid Calling Cards which are sold to Customers by retail outlets and utilized on any non-restricted telephone to place calls by dialing a 1-800 number and utilizing a pin number.

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SECTION 4 - RATES

4.0 Rates

4.1 General

Each Customer is charged individually for each call placed through the Carrier at the rates forth below.

Customers are billed based on their use of the long distance service.

4.2 Rates and Charges

LDCS Usage Rates

Usage rates apply per time of day and day of week, including Holidays, as shown in the following chart.

Rate Period Chart

	MON	TUES	WED	THUR	FRI	SAT	SUN
8:00 AM to 5:00 PM*	DAY RATE PERIOD						
5:00 PM to 11:00 PM*	EVENING RATE PERIOD						EVENING RATE PERIOD
11:00 PM* to 8:00 AM*	NIGHT RATE PERIOD						

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\* To, but not including. The rate for a call between stations whose access lines are associated with the same LDDS Central Office is the zero mileage rate.

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SECTION 4 - RATES, CONT'D.

4.3. Schedule of Rates

1. Schedule A (switched)

This schedule applies to calls between two on-network stations which use local exchange service access lines or between an on-network station which uses a local exchange service access line and an off-network station or between two off-network stations within the State of Missouri.

Dollar volume of calls	Rates		
	Each		
	6 Seconds or Fraction		
	<u>Day</u>	<u>Eve</u>	<u>Ngt</u>
\$0 - \$200	\$0.0212	\$0.0212	\$0.0212
\$201 - \$1500	\$0.0197	\$0.0197	\$0.0197
\$1501 - and above	\$0.0172	\$0.0172	\$0.0172

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SECTION 4 - RATES, CONT'D.

2. Schedule B (dedicated)

This schedule applies to calls between an on-network station which uses a special access line (dedicated lines) and either an on-network station that uses a local exchange service access line or an off-network station in Missouri.

<u>Dollar volume of calls</u>	<u>Rates</u>		
	<u>Each</u>		
	<u>6 Seconds or Fraction</u>		
	<u>Day</u>	<u>Eve</u>	<u>Ngt</u>
\$0 - \$200	\$0182	\$0182	\$0182
\$201 - \$1500	\$0167	\$0167	\$0167
\$1501 - and above	\$0142	\$0142	\$0142

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SECTION 4 - RATES, CONT'D.

- 3. a) 800 Inbound (Switched) This schedule applies to calls between two on-network stations which use local exchange service access lines or between an on-network station which uses a local exchange service access line and an off-network station or between two off-network stations within the State of Missouri via a 1-800 number.

<u>Dollar volume of calls</u>	<u>Rates</u>		
	<u>Each</u>		
	<u>6 Seconds or Fraction</u>		
	<u>Day</u>	<u>Eve</u>	<u>Ngt</u>
\$0 - \$200	\$0.0220	\$0.0220	\$0.0220
\$201 - \$1500	\$0.0204	\$0.0204	\$0.0204
\$1501 - and above	\$0.0179	\$0.0179	\$0.0179

- b) 800 Inbound (Dedicated) This schedule applies to calls between an on-network station which uses a special access line (dedicated lines) and either an on-network station that uses a local exchange service access line or an off-network station in Missouri via a 1-800 number.

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Dollar volume of calls	Rates		
	Each		
	6 Seconds or Fraction		
	Day	Eve	Ngt
\$0 - \$200	\$0.0190	\$0.0190	\$0.0190
\$201 - \$1500	\$0.0174	\$0.0174	\$0.0174
\$1501 - and above	\$0.0149	\$0.0149	\$0.0149

4. Schedule C

Remote Access (Telephone Calling Card)

From an off-network station a caller dials a 1-800 telephone number which gives the caller access to the LDCS network, the caller then enters an authorization code which allows the dialing of the desired number.

Rates

Usage charges for intrastate calls are charged at a rate specified below per minute based upon the amount of monthly usage and are billed in 6-second increments with the exception of the first 30 seconds which is billed in 30-second increments:

Dollar Rate	Volume of Calls
\$0.26	0 - 50
\$0.25	51 - 100
\$0.24	101 - 200
\$0.23	201 +

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5. Prepaid Card Service Rates

The intrastate rate for prepaid calling cards is \$.25 for each minute for all intrastate calls. Charges for Prepaid Card Calling Service are in 60-second increments for completed calls. There are no charges for incomplete calls.

6. Private Line

Rates for private line services offered on an individual case basis (ICB) will be structured to recover the Company's cost of providing the services. Terms of specific ICB contracts will be made available to the Commission upon request on a proprietary basis.

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