

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

DEC 13 1999

Missouri Public
Service Commission

NIXA AREA E-911 BOARD,)
)
Complainant,)
)
vs.)
)
MISSOURI COMM SOUTH, INC.)
)
Respondent.)

Case No. TC-2000-176

MOTION TO STRIKE

Comes now Comm South Companies, Inc. d/b/a Missouri Comm South, Inc. and for its Motion to Strike states the following to the Commission:

1. In the prayer of its complaint, Complainant has requested the Commission:

to order the Respondent to provide an accounting of all amounts collected on behalf of the Complainant, to provide an accounting of all service users in the Complainant's area serviced by the Respondent, to remit all taxes collected on behalf of the Complainant to the Complainant, to comply with all statutory requirements and procedures governing the Respondent's collection of taxes on behalf of the Complainant, and for any other relief deemed just and equitable by the Commission.

2. As stated in American Petroleum Exchange v. Public Service Commission, 172

S.W.2d 952, 955 (Mo. 1943):

The commission "has no power to declare or enforce any principle of law or equity" (*State ex rel. Jenkins v. Brown*, 323 Mo. 382, 19 S.W.2d 484) and as a result it cannot determine damages or award pecuniary relief. *State ex rel. Laundry, Inc. v. Public Service Comm.*, 327 Mo. 93, 34 S.W.2d 37; *Lusk v. Atkinson*, 268 Mo. 109, 186 S.W. 703. Neither may the commission abate a nuisance or award consequential damages. *Chicago R. I. & P. Ry. Co. v. State Highway Comm.*, 322 Mo. 419, 17 S.W.2d 535

3. An accounting is a suit in equity. Smith v. Hackelman, 467 S.W.2d 61, 63

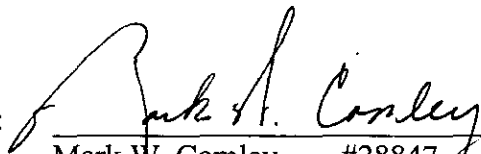
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(Spr.Ct.App.1971).

4. Relief in the form of any accounting or an award of money of any kind cannot be granted by this agency since such are beyond its jurisdiction.

WHEREFORE, Respondent respectfully requests that the Commission strike so much of Complainant's prayer which requests an accounting or a pecuniary award.

Respectfully submitted,

By: 

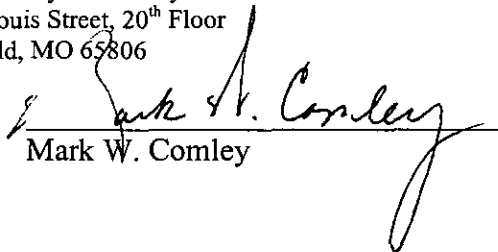
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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand delivered, on this 13th day of December, 1999, to:

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