



Martha S. Hogerty
Public Counsel

State of Missouri

Mel Carnahan
Governor

Office of the Public Counsel
Harry S Truman Building
Suite - 250, Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

March 6, 2000

FILED³

MAR 06 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**Re: Nixa Area E-911 Board v. Missouri Comm South, Inc.,
Case No. TC-2000-176**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 14 copies of the **Office of the Public Counsel's Suggestions Supporting Commission Enforcement Actions**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to all counsel of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

Michael F. Dandino
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

MAR 06 2000

Missouri Public
Service Commission

Nixa Area E-911 Board,)
)
 Complainant,)
)
 v.)
)
 Missouri Comm South, Inc.)
)
 Respondent.)

Case No. TC-2000-176

OFFICE OF THE PUBLIC COUNSEL'S
SUGGESTIONS SUPPORTING COMMISSION
ENFORCEMENT ACTIONS

COMES NOW the Office of the Public Counsel (Public Counsel) and respectfully suggests to the Missouri Public Service Commission supporting the Commission imposing enforcement actions against Missouri Comm South, Inc. (MCS) arising out of the violation of Section 190.310, RSMo. 1994, Commission Rule 4 CSR 240-34.010(1)(A) and Respondent's tariff as follows:

1. Nixa Area E-911 Board filed this complaint against Respondent MCS alleging that MCS collected Nixa's 911 surcharge, failed to provide a list of uncollectible amounts required in Section 190.305, RSMo., failed to remit 911 taxes collected to Nixa as required by Section 190.310, RSMo., and failed to file quarterly returns required by Section 190.310, RSMo.

2. Based upon the Complaint, Staff's Report on the Complaint dated February 16, 2000, and Respondent's responses to Staff's data requests, Public Counsel

14

suggests that there exists sufficient cause for the Commission to proceed with the complaint and, upon notice and a hearing, order the appropriate enforcement action as provided by law and warranted by the evidence.

3. Public Counsel further suggests that, due to the gravity to the alleged statutory, regulatory, and tariff violations, the Commission should consider the full range of enforcement actions to (1) assure that all tax funds collected on behalf of Complainant and any other amounts due Complainant are paid over to Complainant, (2) assure that Respondent will take remedial steps to properly collect and pay over tax funds, (3) penalize Respondent for such violations and to deter Respondent and similarly situated telecommunications companies from noncompliance, and (4) protect the consumer and the health, safety and general welfare of the public.

4. Public Counsel suggests that the Commission has authority to audit Respondent's accounts and records to determine the extent of Respondent's violation of Section of 190.310, RSMo, Commission Rule 4 CSR 240-34.010(1)(A), and Section 3.34 of its tariff. Section 392.210, RSMo. 1994.

5. The Commission can direct its General Counsel to seek maximum penalties in circuit court pursuant to Sections 386.570 and 393.360, RSMo.

6. The Commission may also seek suspension or revocation of Respondent's certificate of authority. Section 392.410, RSMo. As part of that process, the Commission may condition the continuation of Respondent's certificate of service authority on the remittance of tax surcharge revenues previously collected. This is not an award of civil damages, but it is a condition imposed by the PSC as an exercise of its powers incidental and necessary to its general regulatory authority to enforce the statutes,

its regulations, and lawful tariffs and to prevent utilities from collecting and retaining charges not authorized by law or tariff. Unless the Commission can order Respondent to remit 911 charges collected, but not remitted, the Commission's enforcement authority will be diminished.

7. Public Counsel suggests that it is in the public interest for the Commission to assure the integrity of the 911 emergency system in Missouri by strict enforcement of statutes, rules and tariffs for the collection and remittance of surcharge revenues to the proper 911 agencies. For that reason, Public Counsel supports a thorough investigation of the facts alleged in the complaint. In addition, it suggests the broadening of the investigation to include Respondent's compliance for all telephone emergency systems in exchanges where Respondent provides service. Finally, Public Counsel asks the Commission to direct all local exchange companies to file a report with the Commission regarding the collection and remittance of 911 exchanges and direct its Staff to review such reports for compliance with the applicable statutes, PSC rules and company tariffs.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: 

Michael F. Dandino (24590)

Senior Public Counsel

P.O. Box 7800

Jefferson City, MO 65102

(573) 751-4857

(573) 751-5559

Fax (573) 751-5562

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been faxed, mailed, or hand-delivered to the following counsel of record on this 6th day of March, 2000:

Julie Kardis
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

John W. Housley
Attorney at Law
901 St. Louis Street, 20th Floor
Springfield, MO 65806

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe, Suite 301
P. O. Box 537
Jefferson City, MO 65102-0537



A handwritten signature in cursive script, appearing to read 'MRC', is written over a horizontal line.