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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of October, 1998.

In the matter of an Investigation of Payphone Issues Pursuant to the Telecommunications Act of 1996.	)))	**Case No. TW-98-207**

ORDER REGARDING THE INVESTIGATION OF PAYPHONE ISSUES

Procedural History

On November 14, 1997, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Open Docket. Staff indicated that the Federal Communications Commission (FCC) had issued an order regarding pay telephone reclassification and compensation provisions mandating changes in the regulation of payphone operations. Staff indicated the Commission needed to consider the following two issues: (1) whether the Commission's rules and regulations contain barriers which might impact an independent payphone service provider or local exchange company's (LEC's) ability to freely enter or exit the competitive payphone market; and (2) whether the Commission should adopt provisions which provide for payphones in areas not served by the normal operation of a competitive market, commonly referred to as public interest payphones (PIPs). On December 9, the Commission issued an Order Establishing Case, stating it was going to investigate the two specific issues raised by Staff in its motion. The Commission indicated anyone interested in participating in the investigatory case should file a Notice of Participation no later than January 9, 1998.

The following parties filed a notice of participation: AT&T Communications of the Southwest, Inc. (AT&T), COMPTEL-MO, GTE Midwest Incorporated (GTE), the Kansas Payphone Association (KPA), the Mid-Missouri Group of Local Exchange Telephone Companies[1] (Mid-Missouri Group), the Midwest Independent Coin Payphone Association (MICPA), the Small Telephone Company Group[2] (STCG), Southwestern Bell Telephone Company (SWBT), and Sprint Communications Company L.P. and Sprint Missouri, Inc. (filing jointly as Sprint). The Office of the Public Counsel (OPC) participated in this investigation representing the ratepayers of Missouri. The following participants filed a notice of participation but did not file any further statements regarding their positions on the issues the Commission was addressing: Brooks Fiber Communications of Missouri, Inc., Coin TelCo Inc., MCI Telecommunications Corporation, Premier Pay Phone, L.L.C., and the State of Missouri, Office of Administration. All of the above participants were granted participation via Order Granting Participation and Giving Notice of Appearances *Pro Hac Vice* issued February 2, 1998.

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[1] Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

[2] Bourbeuse Telephone Company, BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Iamo Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Ozark Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

A prehearing conference was held January 27 during which the parties met to discuss the issues to be addressed and to establish a procedural schedule. On March 11, Staff filed a proposed procedural schedule. On March 31, Staff submitted a Motion to Submit Straw Proposal. Staff's Straw Proposal stated that Staff believed the docket should address only the issues mandated in the FCC's payphone orders, specifically, whether or not the Commission's rules and regulations contain entry or exit barriers to the payphone market and whether or not there was a need for PIPs in Missouri.

Staff's Motion to Submit Straw Proposal was granted on April 15 and its proposed procedural schedule was adopted. In its Order Granting Motion to Submit Straw Proposal and Adopting Procedural Schedule, the Commission stated the issues to be addressed would be limited to whether any entry or exit barriers to the payphone market existed and if there was a need for a PIP program in Missouri. The Commission declined KPA's request to expand the issues to be addressed.

The Mid-Missouri Group filed its comments regarding Staff's Straw Proposal on April 16. On April 22, STCG filed its comments to Staff's Straw Proposal. On April 28, CompTel-Mo, Sprint, AT&T, SWBT, GTE, and OPC all filed comments on Staff's Straw Proposal.

MICPA filed its comments to Staff's Straw Proposal on April 28. MICPA indicated it had a difference of opinion with Staff on what the scope of the docket should be. MICPA stated that the following issues should be investigated by the Commission: (1) have the LECs filed tariffs that reflect sufficiently unbundled payphone-specific features or functions as required by the 1996 Telecommunications Act and the FCC's payphone orders; (2) are the rates charged for those services cost-based and in compliance with the "new services" test; (3) have the LECs removed all payphone cost elements from their exchange and exchange access services; and (4) are the LECs treating their own payphone divisions the same as they treat independent payphone providers. MICPA also stated the Commission should address the appropriateness of SWBT's "evergreen contracts." MICPA stated that Staff's Straw Proposal should be more ambitious and that although the issues it set out to be addressed were important, further investigation into the additional issues MICPA raised was necessary.

KPA filed its comments regarding Staff's Straw Proposal on April 28. KPA indicated it had several additional issues that required Commission investigation. KPA stated the Commission needed to investigate whether the monthly service fee charged by LECs in Missouri met the new service test and whether the demarcation point being established for a LEC payphone was the same as the one used for incumbent payphone providers. KPA also listed various other issues it thought needed to be addressed including local call usage charges, billing cycle practices, competitive fairness in treatment by LECs, and municipal regulations relating to taxation, permits and franchising.

On May 18, OPC filed reply comments to Staff's Straw Proposal. OPC indicated MICPA and KPA had raised various additional issues and that some of these issues were outside the range of Staff's Straw Proposal. OPC indicated that to the extent the issues raised qualified as entry or exit barriers, they should be addressed.

Sprint, STCG, SWBT, and GTE all filed additional comments on May 19. Sprint indicated MICPA and KPA were attempting to raise issues in the present proceeding that had previously been addressed in various other cases. Sprint stated this was a prohibited collateral attack and urged the Commission to decline the attempts of MICPA and KPA to expand the issues under investigation. STCG indicated that the scope of the docket should not be expanded as MICPA and KPA had requested. SWBT stated that the Commission should limit the issues to those stated in the Motion to Open Docket and that any attempts to expand the issue by MICPA and KPA should be denied. GTE indicated it was inappropriate to address the issues KPA and MICPA had raised as they were not within the scope of the docket.

KPA also filed additional comments May 19 indicating that it was in agreement with the comments submitted by MICPA. KPA stated that it disagreed with all other parties on the position that the issues raised in the Staff's Straw Proposal should be the only issues addressed.

Staff submitted responsive comments on May 19. Staff stated it felt the docket should be limited in scope to the issues stated in the Order Establishing Case issued by the Commission on December 9, 1997. Staff stated that based on the comments filed, the majority of the parties supported Staff's position and that the only three parties in disagreement were OPC, MICPA, and KPA.

In response to MICPA, Staff indicated that the issues raised by MICPA had previously been addressed by the Commission in various other dockets and were not presently before the Commission.

In response to KPA's comments, Staff stated that it did not believe the present docket should be used to revisit issues already decided by the Commission and that the issues raised by KPA fit into this category. Staff also stated that many of the issues KPA brought up were not caused by Commission rules or regulations, and that this was not the type of entry or exit barrier that was to be investigated. Staff stated, in conclusion, that the issues raised by KPA were not appropriate for this docket.

On June 2, MICPA and KPA filed a joint motion to expand the issues under investigation, seeking to expand the investigation to cover all of the issues raised in their comments. SWBT, Sprint and STCG all filed replies to this motion stating their opposition to expansion of the investigation. SWBT stated that the motion's attempt to add additional issues to the investigation was the same action attempted by KPA and MICPA previously, which had been rejected by the Commission.

On June 12, Staff filed its opposition to KPA and MICPA's motion to expand the issues under investigation. In addition, on June 10 the participants filed a motion for submission of the case stating that the submission of the case was only related to the issues addressed in Staff's Straw Proposal and not those issues raised in MICPA and KPA's motion. Staff stated the participants requested Commission review of participants' filed comments and a Commission determination based on that information. Staff indicated the participants also requested the Commission cancel the scheduled evidentiary hearing.

On June 16, the Commission issued an Order Denying Motion to Expand Issues Under Investigation and Amend Procedural Schedule and Granting Request to Submit Case on the Record Presented. The Commission reiterated its determination that the investigation was specifically opened to address whether or not the Commission's rules and regulations contained barriers to free entry to and exit from the competitive payphone market, and to address the issue of PIPs in Missouri. The Commission indicated that the additional issues raised by KPA and MICPA were not related to either Commission rules or regulations or the PIP program, and therefore the motion to expand issues was denied. The Commission also determined the comments filed by the participants were an adequate statement of the various participants' positions and the issues under investigation would be decided based on those comments.

Position of the Parties

The Commission opened this docket on December 9, 1997, to investigate the following issues: (1) whether the Commission's rules and regulations contain barriers which might impact an independent payphone service provider or local exchange company's (LEC's) ability to freely enter or exit the competitive payphone market; and (2) whether the Commission should adopt provisions which provide for payphones in areas not served by the normal operation of a competitive market, commonly referred to as public interest payphones (PIPs). The Commission will discuss below the issues presented, addressing the existence of possible entry and exit barriers separately.

A. Are there any entry barriers to the payphone market caused by Commission rules or regulations?

Staff indicated that after reviewing the Commission's rules and regulations on payphones it had been unable to identify any entry barriers to the payphone market. Staff stated that, since the payphone application process had been streamlined and opened up to any interested parties, there were no longer any entry barriers to the payphone market.

GTE, the Mid-Missouri Group, CompTel-Mo, AT&T, Sprint, and SWBT all indicated they agreed with Staff's position on entry barriers. MICPA and KPA had attempted to raise various other alleged entry barriers.

This attempt was rejected by the Commission as none of the alleged barriers were related to Commission rules or regulations.

OPC stated that further investigation into possible entry barriers caused by the Commission's rules and regulations was necessary and that this investigation should also propose methods and steps to remove these barriers. OPC stated a thorough examination of the barriers and solutions to remedy them was necessary before the Commission could make a ruling.

B. Are there any exit barriers to the payphone market caused by Commission rules or regulations?

Staff indicated following its investigation, that it found only one existing exit barrier. Staff stated that 4 CSR 240-32.070(4) functioned as an exit barrier since it required telecommunications providers to maintain at least one payphone available to the public, 24 hours per day in each exchange in which the telecommunications company operated. Staff indicated the existing rule provided no compensation for maintaining this payphone and clearly constituted an exit barrier. Staff recommended this subsection of the regulation be rescinded in its entirety. Staff stated that without this section of the regulation, many existing payphones might disappear but that "this is the effect that competition should have." Staff indicated that if maintaining the payphone was economically feasible, the competitive marketplace would provide that it be maintained.

AT&T, CompTel-Mo, the Mid-Missouri Group, STCG, and Sprint all agreed with Staff's position on exit barriers. SWBT stated it supported rescinding 4 CSR 240-32.070(4) and classified it as an exit barrier. GTE also supported rescinding 4 CSR 240-32.070(4). MICPA indicated it generally agreed with Staff's analysis regarding exit barriers from the payphone market.

KPA indicated it had no objection to Staff's proposed elimination of 4 CSR 240-32.070(4). KPA had again attempted to raise various other alleged exit barriers. This attempt was rejected by the Commission as none of the alleged barriers were related to Commission rules or regulations.

OPC indicated that rescinding 4 CSR 240-32.070(4) would remove any customer protection from potential failure in the payphone market, and therefore the regulation should be maintained since it was in the public interest. OPC stated that further investigation into the exit barriers caused by the Commission's rules and regulations was necessary and that this investigation should also propose methods and steps to remove these barriers. OPC stated a thorough examination of the barriers and solutions to remedy them was necessary before the Commission could make a ruling.

C. Is there presently a need for a Pubic Interest Payphone (PIP) program in Missouri?

Staff indicated that to qualify as a PIP according to the FCC, a payphone would need to meet the following requirements: (1) It must fulfill a public policy objective in health, safety, or welfare; (2) it is not provided by a location provider with an existing contract; and (3) it would not otherwise exist as a result of the operation of the competitive marketplace. Staff recommended that the Commission not establish a PIP program in Missouri as this was arguably a social program and would be difficult to administer. Staff indicated if the Commission felt further investigation was necessary in this area, the Commission should open a separate docket that had as its sole purpose an investigation of the need for PIPs. Staff stated that the competitive payphone market should be expected to adjust and accommodate the varying needs in the payphone market and that the market should be given an opportunity to meet the needs of the public prior to the institution of a PIP program.

Staff indicated OPC advocated a more thorough investigation of the need for PIPs in Missouri but did not provide any evidence to demonstrate that the competitive marketplace would fail at ensuring the existence of payphones that serve the public policy interests of health, safety, and welfare. Staff stated that, since the emerging competitive payphone market was still in its infancy all parties would essentially have to rely on speculation in assessing the future needs and concerns in the payphone market. Staff also indicated that deregulation of the payphone market and assurance of fair compensation for all completed calls would likely cause an increase in the number of payphones available to the public and not the decrease OPC envisioned.

MICPA, AT&T, CompTel-Mo, and the Mid-Missouri Group all stated they agreed with Staff's approach regarding the establishment of a PIP program in Missouri.

SWBT indicated there was no reason to set up a PIP program before there is a demonstrable need and that the competitive marketplace would be the best tool to provide for PIPs. SWBT stated that the payphone market is an extremely competitive one; therefore payphone providers had an incentive to place payphones. SWBT indicated that, following the introduction of competition to the payphone market the number of payphones available to the general public had increased.

GTE stated it agreed with Staff's position that the competitive payphone market should be given an opportunity to meet the public's need for payphones prior to a PIP program being established by the Commission. GTE indicated that, by allowing the competitive marketplace to work the Commission could then later determine where payphones did not exist and where there was a public need for those payphones. GTE also expressed concerns over how a PIP program would be funded and stated that, if at a later time the Commission revisited the PIP issue, an explicit funding program should be established that reimburses payphone service providers for the costs incurred in establishing and providing service to PIP locations.

Sprint stated that until the competitive marketplace had an opportunity to operate and adjust it could not be determined whether PIPs were needed to address a legitimate public health, safety, and welfare concern, or whether that concern was being left unmet.

STCG stated the requirement that there be a payphone in each exchange found in 4 CSR 240-32.070(4) could not be considered a PIP program under the FCC guidelines, as it was not funded "fairly and equitably." STCG indicated that requiring LECs to continue to provide a payphone in each exchange with no means of funding an often unprofitable service did not comply with the FCC guidelines regarding PIPs. STCG stated that until there had been a trial by competition a determination of whether or not PIPs were needed could not be made. STCG also stated that if OPC believed PIPs were really necessary OPC should offer some proposal for consideration that meets the FCC guidelines rather than merely suggesting that the current requirement regarding one payphone per exchange be retained.

OPC indicated further investigation into the current state mechanisms that ensure the provision of PIPs was needed. OPC stated that, although the FCC had not mandated a national PIP program, the FCC had indicated a need to ensure the maintenance of payphones that serve the public policy interests of health, safety, and welfare in locations where they would not otherwise be provided as a result of the operation of the market.

OPC indicated 4 CSR 240-32.070(4) offered the solution to the provision of PIPs in Missouri and that rescinding this section of the regulation should not occur unless the Commission established some alternative mechanism to ensure the existence of PIPs in Missouri. OPC indicated that there was no evidence that Missouri's current requirement that LECs maintain at least one payphone in each exchange in which they operate was an inappropriate means of providing PIPs.

OPC indicated a review of the PIP program would need to include an examination of the need for public payphones, whether such a need had been or would be provided by the market, and if not, what mechanisms should be adopted to provide for such a need. OPC indicated this investigation would need to evaluate whether specific payphones would disappear in a competitive marketplace and whether those phones were needed for the public policy objectives of health, safety, or welfare. OPC stated that the mere fact that this evaluation would be "difficult" did not justify not making an effort. OPC indicated a final step in the investigation of the PIP issue involved a determination of an appropriate mechanism to provide PIPs and also a determination of what would be the appropriate funding mechanism for PIPs.

OPC stated Staff's Straw Proposal did not adequately address the PIP issue. OPC indicated further investigation into the current mechanisms and proposed alternatives for providing PIPs was necessary, and until that was accomplished, OPC could not agree with Staff's conclusion that a PIP program would be "cumbersome, expensive, and inefficient to operate." OPC indicated further evidence needed to be presented by the parties regarding whether or not any current payphones satisfied the FCC's definition of a PIP.

KPA recommended the Commission establish PIP guidelines, as there is currently a need for PIPs. KPA indicated the Missouri Universal Service Fund or some other funding source should be implemented to support these phones.

Discussion

The Missouri Public Service Commission wishes to thank all the participants for their efforts in addressing the issues presented. The comments of the participants were helpful in reaching the determinations stated below.

The Commission finds that there are presently no entry barriers to the competitive payphone market.

The Commission finds that a potential exit barrier to the competitive payphone market was sufficiently identified by the participants. The majority of the participants felt 4 CSR 240-32.070(4) qualifies as an exit barrier and should be rescinded. The Commission shall take the necessary steps to begin the rule-making process needed to review that rule.

IT IS THEREFORE ORDERED:

1. That the investigation of payphone issues conducted by the Missouri Public Service Commission pursuant to the Telecommunications Act of 1996 is concluded.

2. That this order shall become effective on October 20, 1998.

3. That this case may be closed on October 21, 1998.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
and Murray, CC., concur.
Schemenauer, C., absent.

Harper, Regulatory Law Judge