

**BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI**

Tari Christ, d/b/a ANJ Communications, et al.)	
)	
Complainants,)	
)	Case No. TC-2005-0067
Southwestern Bell Telephone Company, L.P., d/b/a)	
Southwestern Bell Telephone Company,)	
)	
Respondent.)	

**COMPLAINANTS' REQUEST TO SUSPEND PROCEEDINGS
FOR AN ADDITIONAL 180 DAYS AND FOR OTHER COMMISSION ACTION**

Come now the Complainants,¹ by and through counsel, and request that the Commission further suspend these proceedings for an additional 180 days. In addition, Complainants request Commission assistance in bringing to the attention of the Federal Communications Commission ("FCC") the need for the FCC to address this matter. In support of these requests, Complainants submit the following to the Commission:

Background

1. On July 28, 2011 the Commission entered an order directing the Respondent, Southwestern Bell Telephone Company, L.P., to answer the complaint in this proceeding. The order essentially removed the matter from the mediation phase in which it had been pending, admittedly, for a prolonged period of time.

2. On August 7, 2011, Complainants filed a Motion for Rehearing or Reconsideration of the Commission's July 28, 2011 Order (the "Recon Motion"). The relief

¹ The named complainants are Tari Christ, d/b/a ANJ Communications, Bev Coleman, an Individual, Commercial Communication Services, L.L.C., Community Payphones, Inc., Com-Tech Resources, Inc., d/b/a Com-Tech Systems, Coyote Call, Inc., William J. Crews, d/b/a Bell-Tone Enterprises, Davidson Telecom LLC, Evercom Systems, Inc., Harold B. Flora, d/b/a American Telephone Service, Illinois Payphone Systems, Inc., JOLTRAN Communications Corp., Lind-Comm, L.L.C., John Mabe, an Individual, Midwest Communication Solutions, Inc., Missouri Telephone & Telegraph, Inc., Jerry Myers, an Individual, Pay Phone Concepts, Inc., Jerry Perry, an Individual, PhoneTel Technologies, Inc., Craig D. Rash, an Individual, Sunset Enterprises, Inc., Telaleasing Enterprises, Inc., Teletrust, Inc., Tel Pro, Inc., Toni M. Tolley, d/b/a Payphones of America North, Tom Tucker, d/b/a Herschel's Coin Communications Company, and HKH Management Services, Inc.

sought in the Recon Motion was in essence for the Commission to grant a further suspension of the instant proceeding for another 180 days to see if the FCC would take action, in proceedings pending before the FCC that would give this Commission further guidance in its deliberations in the instant matter.

3. As previously explained, the FCC has had before it for a lengthy period of time petitions and other requests for rulings to address the issue of the appropriate rates for payphone line services and whether payphone services providers (“PSP”s) should be awarded refunds for payphone line rates exceeding rates that comply with the FCC’s New Services Test. Those issues are the very issues at issue before this Commission in the instant proceeding. It was the pendency of those petitions that led the Commission to defer action in the first place, and this Commission has patiently awaited FCC action, which has so far not been forthcoming.

4. On August 22, 2011, the Commission granted the Recon Motion. The Commission suspended these proceedings until February 17, 2011.

5. The FCC did not act within the period of suspension and on February 16, 2011, Complainants filed a motion requesting another 180-day suspension of the complaint (the February 16 Request). Based on the Complainants’ motion, the Commission further suspended proceedings regarding this complaint until August 15, 2012.

6. The FCC again failed to act. Complainants nonetheless believed there was grounds for a further suspension and sought one. As explained in the August 14, 2012 Complainants' Request to Suspend Proceedings for an Additional 180 Days, (“August 14, 2012 Suspension Request”) the FCC, which had for almost a year prior been operating with less than a full complement of Commissioners, was now at full strength. Members of Congress had expressed an interest in getting the matter resolved and had made legislative proposals that

would have addressed matters of this type that were not resolved within certain time frames. The matter had been raised at a congressional oversight hearing at which the new FCC Commissioners, as well as the already sitting FCC Commissioners, had made public statements expressing their intent to review this matter in the near future. Nonetheless, the FCC had not acted as of the date of this filing.

7. But since this Commission last acted² and Complainants' last report to the Commission, there are indications that the payphone petitions are now under active review for action. Several of the state payphone groups who filed the original petitions seeking FCC review have conducted several additional meetings. In the same time frame as the August 14, 2012 Suspension Request was filed, there were meetings directly with the two new Commissioners. There have also been renewed meetings and discussions with Commissioners' legal staffs. Moreover, there have also been additional materials submitted to these offices. In addition, there have been additional renewed meetings with the FCC Wireline Competition Bureau staff involved in processing these matters and preparing Commission orders. Renewed discussions have also occurred between the petitioning payphone providers and the FCC's Office of General Counsel. Since the August 14, 2012 Suspension Request, the affected local exchange carriers, AT&T and Verizon, have responded with meetings of their own and by also submitting additional materials.

8. The rounds of new meetings suggest that there may be renewed active discussions of the payphone petitions, as opposed to their awaiting action in Commissioners' offices with no active consideration under way. When coupled with the congressional interest discussed in the August 14, 2012 Suspension Request, Complainants submit that it is appropriate for the

² On the basis of the August 14, 2012 Suspension Request, the Commission suspended the proceedings until February 12, 2013.

Commission to continue to await an FCC ruling given developments at the federal level for another six months.

9. At the same time, Complainants recognize that the Commission may desire to ensure that the FCC is aware that this Commission is awaiting action by the FCC in order to conclude proceedings that are pending before this Commission. Accordingly, Complainants have attached to this Request a draft letter that this Commission could send to the FCC Commissioners. (FCC Rules provide for such filings if they are placed in the public record of the proceeding.)

10. As noted in previous filings, the parties and the Commission have waited a long time for FCC guidance and Complainants assert there is still good reason for pursuing that course. While the Commission has authority to proceed, FCC action would presumably provide dispositive guidance to the Commission and eliminate the likelihood of a Commission decision in tension with the FCC Order. The Commission has already, correctly in Complainants' view, accepted any risk, such as may be, that parties or evidence needed to resolve this matter may grow stale. There is little risk of any further, to the extent there has been any thus far, loss of information needed for the Commission to address this matter. But the additional investment of time, with no expenditure of additional Missouri Commission resources, warrants yet a further delay.

WHEREFORE, Complainants respectfully request that the Commission extend the suspension period for this case for at least another 180 days.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley #28847
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102
573/634-2266
573/636-3306 FAX
comleym@ncrpc.com

Attorneys for Complainants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 11th day of February, 2013 to Leo Bub at lb7809@att.com; General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.

/s/ Mark W. Comley

Mark W. Comley

The Honorable Julius Genachowki
Chairman
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Dear Chairman Genachowski:

EX PARTE CONTACT

*Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of
1996;*

*Petition of the Illinois Public Telecommunications
Association for Declaratory Ruling*

CC Docket No. 96-128

The Missouri Public Service Commission (“Missouri Commission”) requests that the Commission resolve the above referenced petition and accompanying petitions as promptly as practicable. At a minimum, the Missouri Commission requests that the Commission provide some indication of the time frame for bringing the above referenced matter to resolution. The basis of this request is as follows.

The Missouri Commission understands that the Commission has determined that state commissions reviewing rates charged to payphone providers by Bell Operating Companies are to apply the Commission’s New Services Test. What is less clear is whether Commission Orders require that a Bell Operating Company must issue refunds to the affected payphone providers if the rates charged were not in compliance with the New Services Test during the period covered by the Commission’s orders. The Missouri Commission has pending a proceeding that involves this latter issue: whether AT&T, the local exchange carrier and formerly Southwestern Bell Co., should be required to issue refunds in the event the rates currently at issue are found not to be in compliance with the Commission’s New Services Test.

Beginning on August 27, 2011, at the request of the payphone providers involved in that case, the Missouri Commission has three times delayed the start of the proceeding based upon representations that there were indications, because of congressional interest or public statements made by individual Commissioners, that the Commission was close to resolving this matter. The extent to which the matter is further delayed has become a recurring issue for the Missouri Commission.

Definitive Commission guidance would be extremely useful to the Missouri Commission in resolving this matter on the merits. The Missouri Commission is of course capable of interpreting the relevant Commission Orders and rendering a decision on the basis of that interpretation. But any such interpretation would be subject to challenge by the party unhappy with the result as not being the final word until the Commission has spoken. Accordingly, the Missouri Commission requests prompt Commission action to issue its ruling in the above referenced matter. In any event, it would provide guidance to the Missouri Commission in determining the extent of any further deferral of resolution of the matter on the merits if the Commission would provide some guidance as to when it might issue its ruling interpreting its Orders.

Thank you very much for your consideration.

Sincerely,

CC: Comm'r Robert McDowell

Comm'r Mignon Clyburn

Comm'r Jessica Rosenworcel

Comm'r Ajit Pai