

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' RESPONSE TO ORDER
DIRECTING FILING

Come now the Complainants,¹ by and through counsel, and submit this response to the Commission's September 7, 2007 order directing them to file a pleading explaining why no mediation has yet taken place in this proceeding and showing cause why the complaint should not be dismissed without prejudice at this time.

Settlement Negotiations

1. Although the parties have not scheduled mediation sessions they have nonetheless engaged in ongoing settlement of the issues. The jointly submitted monthly reports of the case status have accurately reflected that proposals were and are still being exchanged by which to possibly eliminate not only the burden on this Commission in hearing the matter but even the cost and expense of mediation.

2. Shortly after the Commission's order staying proceedings, which was issued in November of 2004, the parties met without a mediator to assess if a compromise might be

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.

achieved unassisted by a third party. Respondent in turn proposed terms of settlement in February, 2005, which were countered by the Complainants in November of the same year. Since that time, Respondent and Complainants have exchanged settlement offers on March 8, 2006, February 21, 2007, April 4, 2007, May 30, 2007 and July 13, 2007. The offer of July 13, 2007 was made by Respondent and is under consideration by the Complainants at this time.

Status of the Law

3. During the time this matter has been in this state of suspension, the law underlying the complaint has received more and differing interpretation from the federal judiciary and the Federal Communications Commission (FCC). The Complainants, and certainly the Respondent, have weighed the various settlement offers against the landscape of the changing law in this area. Of importance to the Complainants in particular is the “refund” issue raised in the complaint. While this complaint has been pending several federal courts have referred to the FCC the duty of clarifying the obligations of the Regional Bell Operating Companies (RBOC’s) to refund to payphone service providers (PSP’s) amounts paid by them above an access line rate that conforms with the FCC mandated “New Services Test” (NST).² Complainants contend in their complaint that Respondent’s payphone access line rates are above an NST compliant level and have prayed for refunds. A decision of the FCC on this issue is reportedly forthcoming soon and when it is issued will provide the parties authoritative guidance on how refunds of this nature are to be disposed by state regulators. Complainants are hopeful that if this matter continues in a state of suspense both parties will soon have the opportunity to

² See, *TON Services, Inc. v. Qwest Corp.* 493 F.3d 1225, 1227 fn.1 (10th Cir.) for a list of those actions and their citations. Complainants also note that the Public Service Commission of Oregon is holding a proceeding in abeyance until the FCC enters a ruling on this issue. *Northwest Public Communications Council v. Qwest Corp.*, Oregon PUC, Case No. DR26/UC600, Order No. 05-208.

evaluate settlement potential of this matter in light of the upcoming FCC decision.³

4. Respecting the time needed for consideration of each offer exchanged, the Commission will observe that there are over twenty-five complainants in this matter and nearly as many positions with respect to evaluation of any offer. The mechanics of these negotiations are by their nature time consuming, and even with the vigilance attending the negotiations, the number of parties complainant in this matter compounds that factor.

Conclusion

For the foregoing reasons, the Complainants submit that this case should not be dismissed. There is certainly just cause for the Commission to decide not to dismiss the complaint. A dismissal of the instant complaint may prejudice Complainants in a subsequent refiling with respect to their entitlement to the full extent of any refunds ordered by the FCC. Preserving the complaint forecloses potential statute of limitations challenges by the Respondent. Furthermore, the efforts of the parties to forge a settlement have not been without progress and a continuation of the stay of the proceedings imposed by this Commission in November, 2004 should remain in place for those negotiations to continue.

WHEREFORE, Complainants respectfully request that this matter remain active on the Commission's docket and that proceedings remain in a state of suspense given the ongoing negotiations between the parties.

³ Even without the FCC decision in hand, Complainants are actively considering Respondent's July, 2007 offer and negotiations will carry on.

Respectfully submitted,

/s/ Mark W. Comley

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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 5th day of October, 2007, 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

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