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ORDER ESTABLISHING CASE

On November 14, 1997, the Staff of the Missouri Public Service Commission filed a Motion to Open Docket (Motion) regarding certain payphone issues pursuant to the federal Communications Act of 1934 as Amended by the Telecommunications Act of 1996 (the Act).¹ The Motion notes that the Federal Communications Commission (FCC) has issued several orders interpreting the Act's requirements and mandating state action for the restructuring of the pay telephone market. In compliance with the FCC mandate, the Motion proposes that the Commission establish a case to investigate: (1) whether the Commission's rules and regulations contain barriers to free entry and exit from the competitive payphone market; and (2) to address the issue of provision and funding of "public interest" payphones.

As indicated in Staff's Motion, the FCC issued its Report and Order re: In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act

¹ 47 U.S.C. 151 *et seq.*

of 1996, FCC 96-388, CC Docket No. 96-128, on September 20, 1996.² The Report and Order stated that the competitive market, rather than regulation, should dictate the behavior of the various parties in the payphone industry. To this end, the FCC directed each state to examine and modify its regulations applicable to payphones and payphone service providers (PSPs) to ensure the regulations are competitively neutral. The FCC indicated states should pay particular attention to those regulations which impose market entry or exit requirements, and remove those which restrict payphone competition.

Additionally, the FCC concluded that there is a need to ensure the maintenance of payphones that serve public policy interests. A payphone is a "public interest payphone" (PIP) if it: (1) fulfills a public policy objective in health, safety, or public welfare; (2) is not provided for a location provider with an existing contract for the provision of a payphone; and (3) would not otherwise exist as a result of the competitive marketplace. The FCC left the primary responsibility for administering and funding PIP programs to the states. However, the funding mechanism chosen by the state must fairly and equitably distribute the costs of such a program, and may not involve the use of subsidies prohibited by the Act.

The Report and Order directed each state to review whether it has adequately provided for public interest payphones in a manner consistent with the requirements of the Act. This review is required to be completed within two years of the issuance of the Report and Order and may be

² On November 8, 1996, the FCC released its Order on Reconsideration, FCC 96-439, in CC Docket No. 96-128. A Second Report and Order, FCC 97-371, followed in this same docket on October 9, 1997. Neither the Order on Reconsideration, nor the Second Report and Order modified the requirements for state action to remove market entry and exit barriers and ensure the existence of public interest payphones set forth in the original Report and Order.

conducted in conjunction with the state's study of the payphone marketplace.

The Commission finds that it is in the public interest to grant Staff's Motion to Open Docket and the Commission will open this investigation as Case No. TW-98-207. Any entity interested in participating in this case shall file a "Notice of Participation." Representation by a licensed attorney is not a prerequisite to participation in a case of this type. At the conclusion of the period for registration of interested participants, the Commission will publish a list of all active participants for the purpose of providing service of documents on all participants.

Thereafter, the Commission shall convene a prehearing conference for the purpose of developing proposals which may be addressed in this case. This is not a procedure which by law requires a hearing, but the Commission anticipates that one may be convened for the final presentation of the positions of the participants. This hearing would also provide an opportunity for the Commissioners to question the appropriate participants and their witnesses.

The participants in this case shall be expected to comply with the Commission's pleading and practice requirements as set out in 4 CSR 240-2.010 *et seq.* All filings and documents in this case shall be served upon every other participant simultaneous with their filing with the Commission. To ensure extensive dissemination of this order, the Commission will direct the Records Department to send a copy of this order to every certificated local exchange company, every certificated interexchange carrier, and every certificated payphone service provider in the State of Missouri. In addition, the Commission will direct its Information Office to send a copy of this order to all Members of the General Assembly and to

all newspapers in the State of Missouri as listed in the Newspaper Directory of the *Official Manual of the State of Missouri*.

IT IS THEREFORE ORDERED:

1. That Case No. TW-98-207 is established for the purpose of investigating payphone issues pursuant to the Telecommunications Act of 1996.

2. That notice of this order shall be issued by the Information Office and the Records Department as set out herein.

3. That any interested participant shall file its "Notice of Participation" not later than January 9, 1998. Every such notice shall list the participant's name, address, telephone number, fax number, and the interest which this participant has in this case.

4. That all participants shall appear for a prehearing conference at the Commission's offices on the 5th floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri, at 10:00 a.m. on January 27, 1998.

5. That any persons with special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services' Hotline — 1-800-392-4211 or TDD Hotline — 1-800-829-7541.

6. That the participants shall file a proposed procedural schedule no later than 3:00 p.m. on February 3, 1997.

7. That this order shall become effective on December 9, 1997.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer
and Murray, CC., concur.

Hennessey, Regulatory Law Judge