

LAW OFFICES
OF
PHILIP R. NEWMARK
ATTORNEY AT LAW
SUITE 1910, 7777 BONHOMME
CLAYTON, MISSOURI 63105
(314) 728-5150

PHILIP R. NEWMARK

SAMUEL WHITE (1917-1966)
LOUIS WHITE (1922-1967)
IRWIN WHITE (1932-1963)

April 25, 1989

Mr. Harvey G. Hubbs
Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

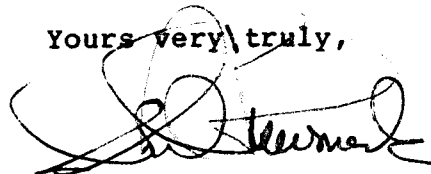
APR 27 1989

RE: Case No. TA-88-218 et al

Dear Mr. Hubbs:

Enclosed is the original and fourteen copies of the Application for Reconsideration, Rehearing and Stay of Midwest Independent Coin Payphone Association in follow-up to our fax transmission of same on Monday, April 24, 1989 to be filed in accordance with law.

Yours very truly,



Philip R. Newmark

PRN:lw

Enclosures

cc: All parties of record

FILED

APR 24 1989

PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of the)
application of American Operator)
Services, Inc. for a certificate)
of service authority to provide) Case No. TA-88-218
Intrastate Operator-Assisted)
Resold Telecommunications)
Services.)

In the matter of Teleconnect)
Company for authority to file)
tariff sheets designed to) Case No. TR-88-282
establish Operator Services)
within its certificated service)
area in the State of Missouri.)

In the matter of Dial U.S. for)
authority to file tariff sheets)
designed to establish Operator) Case No. TR-88-283
Services within its certificated)
service area in the State of)
Missouri.)

In the matter of Dial U.S.A.)
for authority to file tariff)
sheets designed to establish) Case No. TR-88-284
Operator Services within its)
certificated service area in)
the State of Missouri.)

In the matter of International)
Telecharge, Inc. for authority)
to file tariff sheets designed) Case No. TR-89-6
to establish Operator Services)
within its certificated service)
area in the State of Missouri.)

APPLICATION FOR RECONSIDERATION, REHEARING AND STAY
MIDWEST INDEPENDENT COIN PAYPHONE ASSOCIATION

Midwest Independent Coin Payphone Association referred
to as MICPA, Intervenor, by its attorney, pursuant to
Section 386.500 RSMo. 1986, and 4 C.S.R. 240-2.160 of the
Missouri Public Service Commission ("Commission") Rules of
Practice and Procedure, hereby requests reconsideration

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PUBLIC SERVICE COMMISSION

119.

and applies for a rehearing and stay of the Commission's Report and Order entered herein April 17, 1989, ("Order"), and in support of this Application states as follows:

That the conclusions of law are unlawful because they are based upon numerous and unlawful findings of fact. Many of the findings of fact are themselves based upon previous erroneous findings and fact (error compounded by error). That the numerous findings of fact as set out hereinafter are unlawful in that:

1. They are unsupported by substantial and competent evidence in violation of Article 5, Section 18 of the Missouri Constitution.
2. They are contrary to the overwhelming evidence in the record.
3. They are inconsistent with Chapters 386 and 392, R.S. 1987, as amended.
4. They are unsupported by substantial and competent evidence in the record.
5. They are unlawful, unreasonable, unjust, arbitrary, capricious and discriminatory.

The following are the findings of fact which MICPA deems to be unlawful as set out hereinabove:

1. "There was no basis to presume that the proposed service (alternative operative services) would result in additional competition which could function as a substitute for regulation in protecting the public interest."

The only witness opposing competitive operator service in Missouri, Public Counsel's witness Drainer, in response to question by Commissioner Fisher stated there was a public interest benefit to the development of a competitive operator service industry especially to small LEC's and IXC's (Vol. 4, P. 569 Hearing transcript). Additional benefits elicited on cross-examination by counsel Stewart (Vol. 4, P. 583-584 Hearing transcript).

2. "Evidence indicates there is a fundamental difference between provision of operator services to traffic aggregators (AOS) on the one hand and provision of operator services directly to end-users ancilliary to toll service (OS) the other. Where such services are provided through a traffic aggregator the end-user has little direct influence in choosing the provider." This finding is contrary to the overwhelming and substantial evidence. In fact, in the Commission's findings on page 10 that "the end-user could choose another provider if dissatisfied with rates and services" is equally applicable to traffic aggregators. This is especially true in the hospitality field. An end-user, unhappy with rates and services at one location will choose to stay at another location on his next trip. (See Public Consel witness Drainer, Vol. 4, P. 554 Hearing transcript).

The conclusion was that the hospitality industry was very sensitive to the travelling public and would not and could not tolerate poor quality or unreasonable pricing. The end-user does have a choice, not only a different hotel/motel but he also has the ability to access a different carrier.

4. "Commission finds that operator services provided to traffic aggregators are a distinct and separate service from operator service provided end-users ancillary to toll service." This finding is not supported by competent and substantial evidence in the record.

5. "In the AOS market there is little competitive choice of the end-user." This finding is not supported by the evidence, to the contrary, the evidence was and is that an end-user can choose a different facility and can access a different carrier.

6. "AOS providers respond to the competitive choice of the aggregator who might primarily be influenced by the size of commission rather than the quality of the service and reasonableness of the price." This finding is purely speculative and is not supported by competent and substantial evidence. As evidenced by the testimony in the record, traffic aggregators in competition with other traffic aggregators want quality and reasonable pricing just as any end-user. They will not jeopardize the loss of clientele by providing that clientele with telecommunications of poor quality and unreasonable prices.

7. "The problem of properly transferring calls to the end-users chosen carrier is not one that lends itself readily to a regulatory solution." Since the Public Service Commission regulates the provider it can regulate the client. The PSC underestimates, by this finding, its power. The FCC appears to have handled the matter in interstate traffic and there is no reason to believe that the PSC of Missouri cannot handle the problem on an intrastate basis.

8. "By ordering AOS providers to announce their names at the inception of a call and post the names on the premises of the traffic aggregator the Commission cannot ensure that the end-user is made aware of the significance of the information." This assertion is untrue and is contrary to the evidence in the record. The evidence in the record indicated that the great bulk of end-users are not the unsophisticated, unintelligent person, which the Commission apparently believes they are, but is to the contrary, a very sophisticated, intelligent, and experienced user of the telecommunications networks and call fully understand the impact of this advice.

9. "Even if the end-user is aware of the rates charged by AOS providers, he still might be unable to reach the carrier of his choice with any expectation of having his call rated from his actual point of origin." Again this assertion is not true and not supported by evidence in the record but a contrary finding is supported by evidence in the record. The Commission should be aware that

access to most IXC's (M.C.I., Sprint, Com-Link, Teleconnect, etc.) is obtained by dialing a 1-800-xxx-xxxx or 950-xxxx number. This style of access is reliable 100% of the time. However, AT&T made the decision that they would not issue 1-800 or 950 numbers to their card members. AT&T decided it was other carriers responsibility to deliver AT&T's customers to the AT&T network, thus "splashback" was created. The Commission is now endorsing this anticompetitive behavior by determining "access" problems are a reason why AOS companies should not be allowed to operate. Regardless of AT&T's actions, private payphone owners have solved the AT&T access problem from their payphones. Where "splashback" is unreliable or creates "point of origin" billing problems, the private vendor simply programs their payphone to access AT&T through the use of speed dial numbers, i.e. *1 dials 102880 or 2 dials 0.

10. "Commission determines that the end-user of an AOS provider is bereft of a meaningful choice." MICPA asserts that this finding is based upon a series of erroneous findings and is contrary to the overwhelming evidence in the record and the conclusion which flows from that evidence.

11. "The benefits (of AOS services) are in the area of innovative services which AOS providers state that they presently have or soon will have. These include multilingual operators, voice messaging, teleconferencing, weather reports, and multiple billing options included in the use of credit cards. There is no evidence that these benefits cannot be made available to consumers by traditional operator service providers." First there is no evidence in the record that these benefits would be made available to consumers by the traditional operator service providers. The evidence in the record however demonstrates that traditional operator service providers have not developed innovative services and without alternative operator service competition history has demonstrated that that these traditional operator services will not develop or provide those services presently offered by AOS companies. It is the benefits which are listed in this finding which demonstrate the necessity for and the benefit of competitive operator services.

12. "Commission determines that operator services offered ancilliary to long distance service provided directly to end-user is in the public interest." It is not so much that we quarrel with this finding as we quarrel with drawing a distinction between operator services provided to end-users directly or through traffic aggregators. MICPA contends there is no competent and substantial or relevant evidence in the record which supports the distinction.

13. The finding that end-users can choose another provider if dissatisfied with rates and service and that the competitive market will influence such providers to offer quality service at a reasonable price or suffer the consequences of losing customers is equally applicable to traffic aggregators as it is to the end-user. Probably more so since the provision of telecommunications services to traffic aggregators clientele is only one of many services which people in the hospitality industry provide its clientele the evidence indicates that they will not jeopardize that business by poor quality and excessive rates. The competition for the business and vacationing traveler is so highly competitive that the fears of the Commission are totally unwarranted.

With regard to the conditions the Commission would impose on alternative operator service providers in order to operate, MICPA objects to the Commission's determination that location surcharges should not appear on LEC's bills nor should nonpayment of such charges be grounds for disconnection. MICPA contends that this is discriminatory against COCOTS and is unjust, unfair, arbitrary and capricious. That

without location surcharges and the ability to force collection of same the COCOT industry cannot survive. That the surcharges enable COCOTS to recover a reasonable return on the investment as is permitted Southwestern Bell.

That the only opportunity or manner of collecting this return on investment is by billing and collecting through LEC's. That by not allowing the private payphone owner the same opportunity to earn his revenues, commission discriminates against that industry to the extent that it is in fact a prohibition and is unlawful.

That development of the COCOT industry is definitely in the public interest.

A finding that the Commission does not have jurisdiction over all traffic aggregators, it cannot effectively control the level of all location surcharges is not correct. The fact that AOS providers and COCOT owners are required to have certificates of authority and Commission approved tariffs, gives the Commission the authority to cap rates and surcharges.

The requirement by the Commission that AOS providers file tariffs reflecting the same rates for services to traffic aggregators as to end-users at the level of the end-user is arbitrary and capricious and unjust. Rates should be based upon the cost to provide the service.

THE EFFECT OF THE COMMISSION'S ORDER UPON THE PRIVATE PAYPHONE INDUSTRY.

1. The effect of the Commission's Order is to effectively eliminate the private payphone industry in the State of Missouri. But the elimination of location surcharges and the billing and collection by local LEC's has prevented the private payphone owner from earning revenues from their payphones in the same traditional manner that Southwestern Bell and other LEC's currently have the ability to do. Only LEC's will enjoy revenues and access fees from 0+ or 0-intralata/intrastate calls. The Commission should be aware as stated in their rebuttal testimony in the Southwestern Bell's current rate case that Southwestern Bell does not recover its costs of providing public payphone service through the collection of the \$.25 local call charge. In fact, Southwestern Bell stated that their payphone services only was made whole with the inclusion of toll revenues generated by their payphones. The location surcharges are the private payphones method of earning a return on their investment on the payphone equipment. The testimony in this case indicated that there is no other method for the private payphone to collect this revenue other than by the billing through the LEC and with the enforcement of such billing through disconnection for nonpayment.

2. By the limitation or the elimination of competitive alternative operator services and the revenues which it provides to the private payphone industry the Commission has added an additional "nail to the coffin of the private payphone industry in Missouri". As indicated above these revenues, i.e. location surcharges and commissions from AOS providers are vital to the survival of the industry. As noted Southwestern Bell cannot survive on local coin revenue off the payphones only.

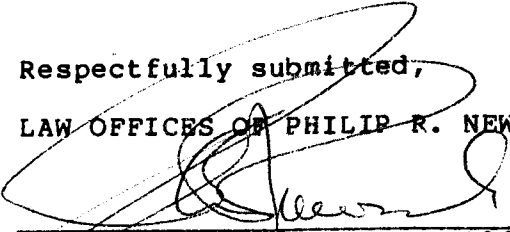
The Commission should be aware that unlike most LEC's, private payphone owners do not receive access fees from IXC's for interlata traffic received from their payphones. The Commission should also be aware that in the present Southwestern Bell rate docket Southwestern Bell has steadfastly refused to pay commissions on intra-lata traffic received from private payphone owners stating it "subsidized competition".

As hereinbefore set out the Commission's Order of April 17, 1989 is unlawful, unjust, discriminatory, arbitrary, capricious, unsupported by competent and relevant evidence in the record as a whole, unsupported by competent and lawful findings of fact and denies the applicants and intervenors due process and equal protection under the Constitution of the State of Missouri and the Constitution of the United States.

WHEREFORE, MICPA requests that the Commission grant a re-hearing on all issues, that the Commission stay the effect of its Order of April 17, 1989, that the members of MICPA and all other in the private payphone industry of Missouri will suffer irreparable harm unless said Order is stayed, and for such other and further relief as the premises require.

Respectfully submitted,

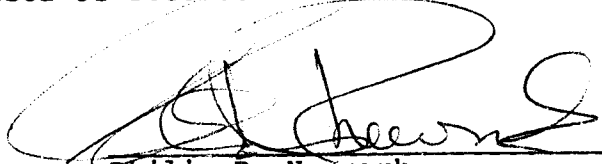
LAW OFFICES OF PHILIP R. NEWMARK



Philip R. Newmark, MBE #16861
Attorney for MICPA
7777 Bonhomme, Suite 1910
St. Louis, MO 63105
314 725 5150

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed this 25th day of April, 1989, by prepaid United States mail to all counsel of record.



Philip R. Newmark