

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

Larry Hawkins,)	
)	
Complainant,)	
v.)	Case No. TC-2005-0139
)	
Comm South,)	
)	
Respondent.)	

MOTION TO DISMISS CASE

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and moves that the Commission dismiss this case. In support of its motion, Staff states:

1. The Commission's rule at 4 CSR 240-2.116(2) provides that "[c]ases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time. The last action in the case file of this matter was on June 13, 2005, when Staff filed its *Investigation and Report*.

2. The Commission's rule at 4 CSR 240-2.116(4) provides that a "case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved." Should the Commission choose not to rely upon the provisions of 4 CSR 240-2.116(2) to dismiss this matter, Staff suggests that good cause exists to support dismissal, and outlines that good cause below.

3. The record in this case supports a conclusion that this case should be dismissed. On June 13, 2005, Staff filed its *Investigation and Report* in this matter and opined that the Commission had no authority to provide the relief sought by the complainant. Specifically, Mr. Hawkins requested "some compensation for being unprofessional in dealing with my needs to have a peaceful day & night." (*Complaint*, November 22, 2004.) The Commission has "no

jurisdiction to promulgate an order requiring a pecuniary reparation or refund.” *DeMaranville, et al. v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674, 676 (Mo.App. 1978).

4. The only other request for relief made by Mr. Hawkins was that Comm South Companies, Inc. d/b/a Missouri Comm South, Inc. “get with the program.” (*Complaint*, November 22, 2004.) However, Staff found no violation of any tariff, Commission statute or order.

5. Since submitting its *Investigation and Report*, Staff has subsequently been informed that Comm South Companies, Inc. is no longer providing service in Missouri. See Appendix A (letter from Comm South Companies of October 11, 2005). Accordingly, in conjunction with this Motion in this case, Staff is filing a *Motion to Open Case and Cancel Certificates of Service Authority and Accompanying Tariffs* of Comm South Companies, Inc. d/b/a Missouri Comm South, Inc. in a new case.

6. Comm South Companies, Inc. entered bankruptcy protection in September 2003, and has indicated that it cannot afford an attorney to defend the claim in this case. However, the Director of Regulatory Affairs has provided reports to the Staff and submitted letters to the Commission to indicate how the company has handled Mr. Hawkins’ claim. See Appendix B and Appendix C (letters from Comm South Companies of May 4 and June 1, 2005).

7. In its *Investigation and Report* Staff took into account the outcome of the mediation process (that Mr. Hawkins has received an unlisted number at no charge and received credit for call traces he initiated) and additional communications with both the company and Mr. Hawkins and concluded that the complaint has been resolved.

8. As Comm South Companies, Inc. has ceased providing service in Missouri, and is also no longer providing service to Mr. Hawkins; because Mr. Hawkins’ underlying request to

have a non-published number has been accommodated at no charge and he has received credit for call traces he initiated; because Staff found no violation of any tariff, Commission statute or order; and because the Commission has no authority to provide Mr. Hawkins the relief that he has requested, Staff respectfully requests and moves that the Commission find that the Commission cannot grant the relief Mr. Hawkins has requested and dismiss this case.

WHEREFORE, the Staff recommends the Commission dismiss this case, either for lack of prosecution under 4 CSR 240-2.116(2) because approximately 218 days have elapsed since the last activity in this case, or for good cause under 4 CSR 240-2.116(4) for the reasons outlined above.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer
Senior Counsel
Missouri Bar No. 46620

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or electronically mailed to all parties of record this 17th of January 2006.

/s/ David A. Meyer



8035 E. R.L. Thornton
Suite 410
Dallas, Texas 75228

September 14, 2005

Secretary of the Commission
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65102

Dear Secretary of the Commission,

Comm South Companies, Inc. d/b/a Missouri Comm South ("Comm South") is a telecommunications carrier providing residential pre-paid local and long distance service to 260 customers throughout the State of Missouri (Case # TA-97-203, granted 10/21/1997, Case # XA-2003-0515, granted 7/6/2003). Comm South also provides service to a pay telephone provider in the state. Comm South is in Chapter 7 bankruptcy protection and is in the process of liquidating its business and its assets, including discontinuing telecommunications service. A copy of the Chapter 7 bankruptcy order is attached for your records.

In compliance with the rules of the Federal Communications Commission and Missouri CSR 240-3.560, Comm South notified customers on September 10, 2005 that it will be discontinuing residential service in thirty days. A copy of the discontinuance notice is attached. Comm South must retain its certification to provide service in Missouri for a short period of time after discontinuance of residential service in order to allow its pay telephone customer to transition to another carrier. Thereafter, Comm South will surrender its certification to the state and request its tariff be cancelled. A copy of Comm South's discontinuance notice to the Federal Communications Commission is also enclosed for your records.

If you have any questions about the foregoing, don't hesitate to communicate with the undersigned.

Thank you.

Sheri Pringle
Director, Regulatory Affairs
Comm South Companies, Inc.
214-355-7005
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Enclosures



8035 E. R.L. Thornton
Suite 410
Dallas, Texas 75228

May 4, 2005

Mr. Dale Hardy Roberts
Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

RE: Case No. TC-2005-0139 Answer to Hawkins Letter filed 5/2/05

Mr. Roberts,

As directed by your Order in the above referenced case, following is Comm South Companies, Inc.'s Answer to Mr. Hawkins letter filed 05/02/05.

Mr. Hawkins claim that "mediation never occurred", is correct in the fact that an actual "meeting" between Mr. Hawkins, Mr. Levin and myself did not happen. Actually, Mr. Levin, from the University of Columbia, and I conversed via email on February 25, 2005 and I suggested to Mr. Levin that changing Mr. Hawkins number might take care of the issue. According to an email I received from Mr. Levin on February 28, 2005, Mr. Levin spoke with Mr. Hawkins who requested his number be changed immediately.

That same day (2/28/05) I called Mr. Hawkins to ensure that he did want his number changed and to inquire if he wished to have his new number non-published. As with all conversations I have ever had with Mr. Hawkins, he got upset that I had called him and proceeded to become abusive and then hung up on me. So I had to call him back as I had not received an answer from him as to whether he wanted the number non-published. After I received his answer that he did want his number non-published, he hung up on me again.

An order was sent to SWB immediately that same day to request a number change for Mr. Hawkins. Comm South does not have the option of choosing a new number from SWB. SWB assigns a new number. Nor do we have access to any history attached to the number that is assigned. Therefore Mr. Hawkins claim in his letter that "the so called new # was an old # that, has been passed around to at least 5 different people" is not under the control of Comm South.

May 4, 2005

Mr. Dale Hardy Roberts
Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

RE: Case No. TC-2005-0139

Once we had changed Mr. Hawkins number, I informed Mr. Levin of what had occurred and I believe he assumed that mediation would not be necessary, as the issue had been taken care of with the number change. It's also my belief that Mr. Levin notified the commission that mediation would not be necessary as well.

As to Mr. Hawkins statement regarding the increase in his phone bill, Comm South normally charges \$5.00 per month for a non-published number, however in my brief conversations with Mr. Hawkins, I had not been able to convey that message to him. Mr. Hawkins was billed for the non-published number, however since I was unable to convey those charges to him previously I agreed to give him credit for the non-published service. He has since been given credit for all of these charges and is now receiving the non-published number free of charge.

As to Mr. Hawkins statement that "Ms. Pringle is supposed to refrain from talking to me" it was noted on the account that customer service representatives should only speak with the account holder and this was based on advice from Ms. Gay Fred of the MPSC. Mr. Hawkins is not the account holder. Annie Hawkins is the account holder of record and because of this fact and because Mr. Hawkins has always been extremely abusive to everyone he has spoken with on the phone, Ms. Fred suggested we were only obligated to speak with the account holder. I have worked closely with Ms. Fred on this account because of the difficulty of the customer involved and our desire to stay in compliance with the MPSC customer rules and I believe that she can also provide input to this case.

Please let me know if anything further is required.

Sincerely,

Sheri Pringle
Director - Regulatory Affairs
Comm South Companies, Inc.
214.355.7005
springle@commsouth.net



8035 E. R.L. Thornton
Suite 410
Dallas, Texas 75228

June 1, 2005

Mr. Dale Hardy Roberts
Secretary of the Missouri PSC
P.O. Box 360
Jefferson City, MO 65102-0360

RE: Case No. TC-2005-0139 Response to Second Notice of Noncompliance

Dear Mr. Roberts,

Missouri Comm South (MCS) is in receipt of the order dated May 27, 2005 regarding the Second Notice of Noncompliance. MCS responded to the order dated May 4, 2005 however, according to the latest order referenced above, that response was not accepted because I am not an attorney. As stated in previous responses, MCS is in Chapter 11 bankruptcy and has been since September 2003. Because MCS was not able to afford an attorney in Missouri to represent us and file the response, we originally opted for arbitration. Mr. Jim Levin of the MU School of Law did contact both parties in this case (however not at the same time) and a resolution was reached.

Since we cannot afford an attorney and the commission is not willing to accept my response, I don't know how we can possibly comply with the above order. Please let me know how to proceed as MCS wishes to be in compliance but cannot pay an attorney to file the response that I have already filed.

Sincerely,

Sheri Pringle
Director-Regulatory Affairs
Missouri Comm South, Inc.
214.355.7005
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