

**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' STATUS REPORT
AND REQUEST TO SUSPEND PROCEEDINGS FOR 180 DAYS

Come now the Complainants,¹ by and through counsel, and in support of their status report and request to suspend proceedings in this case for an additional 180 days submit the following to the Commission:

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 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 Federal Communications Commission ("FCC") would take action, in proceedings pending before the FCC that would give this

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.

Commission further guidance in its deliberations in the instant matter. On August 22, 2011, the Commission granted the Recon Motion and suspended these proceedings until February 17, 2011.

3. Complainants now come before the Commission seeking a further extension of 180 days. The basis of this request is as follows.

4. In the Recon Motion, Complainants provided an extensive background discussion of the history of the FCC proceedings. Complainants explained that despite the long-time pendency of the FCC proceedings, the proceedings had not been simply languishing before the FCC but had been active and evolving during the bulk of the time period during which they have been pending. That period of activity had been followed by the proceedings being caught up in the confusion and competition for priorities that normally attend presidential elections, followed by the flurry of activity attendant to the end of one Administration and the transition to a new Administration of a different party, to be further followed by the “ramp up” and the need of the new Administration to become familiar with open proceedings as well as develop its own “agenda” of activities.

5. Complainants also explained why developments during the time period prior to the filing of the Recon Motion, including heightened interest from various Members and Committees of the U.S. Congress in having the FCC decide the pending FCC proceedings, provided a basis for believing that the FCC would take action during the suspension of the instant proceeding ultimately ordered by this Commission in its August 22, 2011 ruling. Unfortunately, the FCC has not yet acted. Complainants nonetheless continue to believe that it is in the public interest, the interest of this Commission and the interests of all parties to this proceeding to extend the suspension of the instant proceeding to allow the FCC to act. There

have been continuing developments since the filing of the Recon Motion that continue to push the FCC toward action.

6. As explained in the Recon Motion, there were a number of Congressional inquiries to the FCC in the period prior to the filing of the Recon Request. For example, just prior to the filing of the Recon Motion, Representative Cliff Stearns had written to Chairman Genachowski of the FCC urging the FCC to get on with the vote on the draft order that had been circulated to Commissioners.² On October 7, 2011, subsequent to the filing of the Recon Motion, Chairman Genachowski responded that he had cast his vote on the matter.³ In the weeks following, there were other Congressional inquiries, including letters from United States Senators.⁴

7. More broadly, there has been considerable scrutiny of FCC procedures and delays in proceedings at the FCC. For example, on November 15, 2011, the Staffs of the House Subcommittee on Communications and Technology Committee and the Subcommittee Oversight and Investigations of the House Energy and Commerce Committee released a Staff Report on the Workload of the Federal Communications Commission (*“House Commerce Committee Staff Report”*). That report detailed the status of virtually every kind of application or matter that comes before the FCC for processing and the FCC’s record in processing them. The next day the House Subcommittee on Communications and Technology of the House Energy and Commerce Committee marked up and adopted H. R. 3309, “The Federal Communications Commission Process Reform Act of 2011.”⁵ The bill was scheduled to be marked up and approved by the full

² See Attachment 1 to the *Recon Motion*

³ See, e.g., Attachment 1

⁴ See, e.g. Attachment 2

⁵ Available at

http://republicans.energycommerce.house.gov/Media/file/Markups/FullCmte/112911/HR3309_As_Amended.pdf

Committee on Energy and Commerce on February 7, and although that date has been pushed back, the legislation has considerable momentum.⁶

8. In the meantime, following the *House Commerce Committee Staff Report*, on December 21, 2011, Representative Walden, Chairman of the House Subcommittee on Communications and Technology of the House Committee on Energy and Commerce wrote Chairman Genachowski requesting an update on the FCC's addressing backlogs since the data used in the *House Commerce Committee Staff Report* was compiled.

9. Of significance here, a provision of The Federal Communications Commission Process Reform Act of 2011 appears to be addressed directly to the delay being encountered in the FCC proceedings here. As mentioned, a draft order has been circulated by the Chairman.⁷ The Federal Communications Commission Process Reform Act of 2011 would add a new Section 13(f) {I think I sent you a note about this} to the Communications Act:[I find this format a little confusing. I think it would be better to indent and one space what is now in paragraph 10 since it is the quote of the text of the language. Then renumber the paragraphs following]

10. The Commission shall by rule establish procedures for publishing the status of all open rulemaking proceedings and all proposed orders, decisions, reports, or actions on circulation for review by the Commissioners, including which Commissioners have not cast a vote on an order, decision, report, or action that has been on circulation for more than 60 days.

11. New Section 13(g) would require the FCC to establish deadlines for taking action in all proceedings involving requests for FCC action.

⁶ See Telecommunications Report *TRDaily*, February 3, 2011, available at <http://www.tr.com/online/trd/2012/td020312/index.htm>.

⁷ As discussed in the *Recon Motion*, under prevailing FCC procedures the Chairman circulates a draft of a proposed Commission action for vote by the Commissioners, and once the Commissioners have voted the item out, it becomes an official action of the FCC. In the instant case, from the Chairman's letter, *see* Attachment 1, hereto, it is public information that the Chairman has circulated a draft order to govern the proceedings at issue and has cast his vote on the item.

12. In sum, the Subcommittee has put into a proposed law steps that would directly address the dilemma Complainants and this Commission face: waiting for the FCC to act on an item already in circulation by requiring the Commission to set a deadline for action and by requiring disclosure of Commissioners not acting within a designated time so that parties could address their energies directly where they are likely to yield action.⁸

13. While a legislative proposal is by no means binding on the FCC, the dissatisfaction reflected in current procedures may spur FCC action on this item. There can of course be no assurances. But the additional investment of time, with no expenditure of additional Commission resources, warrants a further delay.

14. The parties and the Commission have already waited a long time for FCC guidance. There is a good reason for that. While the Commission has authority to proceed, FCC action would presumably provide dispositive guidance to the Commission and ensure there would not be twists or turns that could require the unraveling of Commission actions or the need to revisit and reopen them. 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.

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

⁸ While Complainants have not provided the specific legislative history of these provisions, it seems clear that new Section 13(f) is a response to the FCC proceedings at issue here. Only one other item has been on circulation to the FCC Commissioners longer, and only one other has been on circulation for barely six months. *See* FCC Items on Circulation.” at www.fcc.gov. (Checked on 2/5/12.)

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 16th day of February, 2012, 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



FEDERAL COMMUNICATIONS COMMISSION

October 7, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Cliff Stearns
U.S. House of Representatives
2306 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Stearns:

Thank you for your letter regarding independent payphone service providers and the payphone proceeding pending before the Commission.

As you note in your letter, the Commission is considering petitions for declaratory ruling from payphone providers seeking refunds from Bell Operating Companies in several states. Individual state public utility commissions have jurisdiction over the access line rates that payphone providers purchase to provide their service. In the petitions before the Commission, independent payphone associations from the states of Illinois, Mississippi, New York, Florida, Ohio, and Michigan request that the Commission preempt the decisions by each of the individual state commissions.

The issues that are before the Commission in these multiple petitions raise complex and unique procedural facts. The Commission has compiled an extensive record of evidence submitted by payphone service providers and interested parties from several states. On the basis of that record, I circulated a final order on this item to my colleagues and have entered my vote.

Please be assured that the Commission recognizes the importance of payphones and will give full consideration to all the facts and issues raised by the parties. I appreciate the opportunity to provide feedback on this important matter. If I can provide any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Julius Genachowski". The signature is fluid and stylized, with a long horizontal stroke extending to the right.

Julius Genachowski



Federal Communications Commission
Washington, D.C. 20554

October 17, 2011

The Honorable Mark Kirk
United States Senator
230 South Dearborn St.
Suite 3900
Chicago, IL 60604

Dear Senator Kirk:

Thank you for your letters regarding the correspondence you received from your constituents about the payphone compensation proceeding in CC Docket No. 96-128 pending before the Commission.

As you point out in your letter, the Commission is considering a petition for declaratory ruling from the Illinois Public Telecommunications Association seeking refunds from Bell Operating Companies. This petition is one of several that are being considered in the pending proceeding. Individual state public utility commissions have jurisdiction over the access line rates that payphone providers purchase to provide their service. In the petitions before the Commission, independent payphone associations from the states of Illinois, Mississippi, New York, Florida, Ohio, and Michigan request that the Commission preempt decisions by each of the individual state commissions.

The issues that are before the Commission in these multiple petitions raise complex issues based on unique procedural facts. The Commission has compiled an extensive record of evidence submitted by payphone service providers and interested parties from several states. On the basis of that record, Commission Chairman Julius Genachowski circulated a final order on this item to the Commissioners and has entered his vote.

Please be assured that the Commission recognizes the importance of payphones and will give full consideration to all the facts and issues raised by the parties. I appreciate the opportunity to provide feedback on this important matter. If I can provide any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Albert M. Lewis".

Albert M. Lewis
Chief, Pricing Policy Division
Wireline Competition Bureau