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Robert W. Hedrick  
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October 3, 2002

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
Jefferson City, MO 65101

**FILED<sup>4</sup>**  
OCT 03 2002  
Missouri Public  
Service Commission

Re: TC-2003-0066

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of MOTION OF RESPONDENT SPRINT MISSOURI TO DISMISS AND STRIKE COMPLAINT ALLEGATIONS and ANSWER OF SPRINT MISSOURI, INC. in the above referenced case.

Sincerely,



Paul H. Gardner

PHG/alh  
Enclosure(s)

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

Tari Christ, d/b/a ANJ Communications; Bev Coleman,  
an Individual; Commercial Communications Services,  
L.L.C.; Community Payphones, Inc; Coyote Call, Inc.,  
William J. Crews, d/b/a Bell-Tone Enterprises;  
Illinois Payphone Systems, Inc.; Jerry Myers, d/b/a  
Jerry Myers Phone Co; John Ryan, an Individual;  
JOLTRAN Communications Corp.; Bob Lindeman,  
d/b/a Lindeman Communications; Monica T. Herman,  
d/b/a M L Phones; Midwest Communications  
Solutions, Inc; Bark B. Langworthy, d/b/a Midwest  
Telephone; Missouri Public Pay Phone Corp.;  
Missouri Telephone & Telegraph, Inc.; Pay Phone  
Concepts, Inc; Toni M. Tolley, d/b/a Payphones of  
America North; Jerry Perry, an Individual; PhoneTel  
Technologies, Inc.; Sunset Enterprises, Inc.;  
Teletrust, Inc.; Tel Pro, Inc.; Vision Communications,  
Incorporated and Gale Wachsnicht, d/b/a  
Wavelength, LTD.,

Complainants,

v.

Southwestern Bell Telephone Company, L.P.,  
d/b/a Southwestern Bell Telephone Company;  
Sprint Missouri, Inc., d/b/a Sprint; and GTE  
Midwest Incorporated, d/b/a Verizon Midwest,

Respondents.

**FILED<sup>4</sup>**

OCT 03 2002

Missouri Public  
Service Commission

Case No. TC-2003-0066

**MOTION OF RESPONDENT SPRINT MISSOURI, INC. TO DISMISS**

COMES NOW Respondent Sprint Missouri, Inc. d/b/a Sprint (hereinafter "Sprint"), pursuant to Commission Rule 4 CSR 240-2.070 (6), and for its Motion to Dismiss for Failure to State a Claim, states as follows:

1. Complainants fail to state a claim on which relief can be granted in that the New

Services Test promulgated and applied by the FCC in the FCC payphone orders was applied only to Bell Operating Companies (BOCs). The FCC found that it lacked jurisdiction to apply the New Services Test to non-BOC Local Exchange Companies (LECs). See Memorandum and Opinion and Order, In the Matter of Wisconsin Public Service Commission Order Directing Filings, FCC 02-25; Bureau 1 CPD No. 00-01 paragraphs 31, 42 (Wisconsin Order). As a non-BOC LEC, Sprint was never required to comply with the New Services Test by order or rule of the FCC or the Missouri Public Service Commission ("Mo PSC"). No law, rule or order within the jurisdiction of the Mo PSC required Sprint's adherence to the New Services Test in order for payphone line rates charged by Sprint to be just and reasonable under Missouri law.

2. Complainants fail to state a claim on which relief can be granted because the Mo PSC found in Case No. TT-97-421 that the payphone line rates charged by Sprint complied with the FCC directives and Complainants allegations that such rates are unjust, unreasonable and unlawful constitute an unlawful collateral attack on Sprint's tariffs and the Commission's Order in Case No. TT-97-421 in violation of Section 386.550 RSMo.

3. Complainants fail to state a claim on which relief can be granted because Complainants allegation in paragraph 41 of their Complaint that "the payphone line rates charged by....Sprint....must comply with the New Services Test" in order to be just and reasonable under Missouri law does not assert a violation of law, rule or Commission Order as required by Section 386.330 and 386.390 RSMo. State ex rel. Ozark Border Electric v. Public Service Com'n, 924 S.W. 2d 547, 600 (Mo. App. W.D. 1996). Nothing in Section 392.200 RSMo or any rule or order of the Mo PSC mandates application by Sprint of the New Services Test in costing or pricing payphone line rates or network services.

4. Complainants fail to state a claim on which relief can be granted in that they request the Mo PSC to “order Sprint to calculate and pay the Complainants the difference between the rates charged to the Complainants since April 15, 1997 and the date of the implementation of the Commission’s orders in this proceeding.” (Complaint, p. 16). Complainants also request that “the Commission grant the Complainants interest on all repayments of overcharges...” The Mo PSC has no jurisdiction to grant the requested relief because it has no jurisdiction to promulgate an order requiring a pecuniary reparation or refund B.G. DeMaranville v. Fee Fee Trunk Sewer, Inc., 573 S.W. 2d 674, 676 (Mo. App. E.D. 1978). While the Mo PSC can make orders to remedy matters within its jurisdiction prospectively, it cannot grant monetary relief from compensation for past overcharges or damages. May Department Stores Co. v. Union Electric L.P. Co., 107 S.W. 2d 41, 58 (Mo. 1937).

5. Complainants have failed to state a claim on which relief may be granted by failing to comply with the provisions of the Commission’s rules, in that the complaint violates the provisions of Section 386.390, RSMo 2000.

Section 386.390.1, RSMo 2000, provides as follows:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission; **provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other**

legislative violation occurred, or **not less than twenty-five consumers or purchasers, or prospective consumers of purchasers, of such** gas, electricity, water, sewer or **telephone service**. (Emphasis added).

Commission Rule 4 CSR 240-2.070 (3) contains similar prohibitions regarding the filing of formal complaints as to the reasonableness of rates or charges.

The Complaint lists twenty-five different people or entities that purportedly are “customers, or prospective customers, of network services that are made available to companies that provide pay telephone services to end users....under rates, terms and conditions set forth in the Respondents’ tariffs that are later described herein.” (Complaint, paragraph 26, p. 6). However, there is no allegation that all twenty-five customers or prospective customers subscribe, or could subscribe, to such service from Respondent Sprint. In fact, to the best of Sprint’s information at this time, it is only currently providing service to two of the Complainants, Midwest Communications Solutions, Inc. and Phonetel Technologies, Inc. There are no allegations that the other complainants are located within Sprint’s territory or authorized to provide service in Sprint’s territory, As such, the Complaint fails to allege facts that confer standing on Complainants to maintain the Complaint against Sprint.

6. Complainants fail to state a claim on which relief can be granted in that their claims for refunds and interest are premised upon retroactive application of the New Services Test to Sprint and would constitute unlawful and unreasonable retroactive ratemaking.

7. Complainants fail to state a claim on which relief can be granted in that their proposed retroactive application of the New Services Test to Sprint’s rates and network services violates Article I, Section 13 of the Constitution of Missouri which prohibits the retrospective application of administrative regulations. The relief requested in the Complaint would impair Sprint’s rights under its existing tariffs and imposes new obligations, duties and disabilities with


respect to past transactions governed by Sprint's tariffs. Missouri Nat. Educ. Ass'n. v. Missouri State Bd. of Educ., 34 S.W. 3d 266 (Mo App. W.D. 2000).


WHEREFORE, Sprint requests that the Commission dismiss the Complaint for Failure to State a Claim for the reasons set forth in this Motion and for any other relief that Commission deems just and reasonable.

Respectfully submitted,

**SPRINT MISSOURI, INC. d/b/a SPRINT**

  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed via U.S. Mail, postage prepaid, this 3rd day of October, 2002 to:

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