

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

In the Matter of the Applications for Private Payphone Service Authority filed by:	)	
	)	
CruiseCom Enterprises, LLC	)	File No. PA-2013-0469
	)	
Vector Phones, LLC	)	File No. PA-2013-0470
	)	
Atlantis Link, LLC	)	File No. PA-2013-0471
	)	
OutDial Networks, LLC	)	File No. PA-2013-0472
	)	
EnduraVox, LLC	)	File No. PA-2013-0473
	)	
Robidoux Ringtone, LLC	)	File No. PA-2013-0474
	)	
PayCom Voice Enterprises, L.L.C.	)	File No. PA-2013-0475
	)	
InterVox Link, L.L.C.	)	File No. PA-2013-0476
	)	
Olympic Ventures, L.L.C.	)	File No. PA-2013-0477
	)	
Countdown Communication, LLC	)	File No. PA-2013-0478
	)	
Roaming Contact, LLC	)	File No. PA-2013-0479
	)	
Economy Communications, LLC	)	File No. PA-2013-0480
	)	
All Day Saver Phones, LLC	)	File No. PA-2013-0481

**SUGGESTIONS IN OPPOSITION TO AT&T MISSOURI'S  
APPLICATION(S) TO INTERVENE**

Come now CruiseCom Enterprises, LLC, Vector Phones, LLC, Atlantis Link, LLC, OutDial Networks, LLC, EnduraVox, LLC, Robidoux Ringtone, LLC, PayCom Voice Enterprises, LLC, InterVox Link, LLC, Olympic Ventures, LLC, Countdown Communication, LLC, Roaming Contact, LLC, Economy Communications, LLC and All Day Saver Phones, LLC (the "Applicants" or "Companies"), each an applicant for certification as a payphone

provider in this state, and by and through counsel, respectfully submit these suggestions in opposition to AT&T Missouri's ("AT&T") application to intervene in their respective cases seeking payphone authorization.

Perhaps for the first time in its long history of providing telecommunications services to the public in Missouri, AT&T is opposing potential customers of those services in their efforts at qualifying to purchase them. The Commission should deny AT&T's request to interfere with the process of approving the applications above.

### DISCUSSION

The Commission is authorized to regulate payphone service providers under Section 392.520<sup>1</sup> which in part provides:

1. The commission shall have jurisdiction over the provision of private shared tenant services and customer-owned coin telephone telecommunications services, but shall subject such services to the minimum regulation permitted by this chapter for competitive telecommunications services. The commission shall exempt the provision of private shared and customer-owned coin telephone telecommunications services from the tariff filing requirements of sections 392.220, 392.230, and 392.500 and may exempt the provision of such telecommunications services from the provisions of subdivisions (1) and (3) of section 392.390 and from the provisions of section 386.370, RSMo.

The Commission has a recommended form of *Application For Certificate Of Service Authority To Provide Private Pay Telephone Service* that is available from its web site.<sup>2</sup> Limited rules applicable to pay telephones are promulgated at 4 CSR 240-33.140. Those rules basically shape the form of the payphone application for certificate of service authority.

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<sup>1</sup> Statutory references are to RSMo 2000, as updated through the current cumulative supplement, unless otherwise indicated.

<sup>2</sup> See,

<http://psc.mo.gov/CMSInternetData/Telecommunications/IndustryInformation/Applications%20for%20Telecommunications%20Certificates/Payphone%20Application.pdf>

AT&T does not dispute that the Companies have all been lawfully organized under the provisions of Chapter 347 and have acquired the necessary certificate of corporate existence from the Missouri Secretary of State. There is no sign the Applicants offend or have offended statutes that permit a person to organize a limited liability company or several limited liability companies. The Commission should conclude that each of the Applicants is a duly organized and legally valid limited liability company.

Moreover, AT&T does not challenge the ability of the applicants to provide private payphone service as they propose in the application. Each of the Applicants has submitted the information required by the application which, for each, is in full conformity with the approved form sanctioned by the Commission.

AT&T is not content with the information the Commission elicits from the applicants on the approved form. AT&T notes that the “Applicants have . . . failed to disclose to the Commission that their organizers are already parties in TC-2005-0067 through other entities they control, and their organizer’s interests in Case No. TC-2005-0067.” The Commission’s approved form of payphone application does not require such disclosures and justifiably so.

There is no statute or Commission rule regulating the type of business models chosen by payphone providers. There is no statute or Commission rule forbidding the common ownership of more than one authorized payphone company or entity. A person or entity involved in the payphone industry is free to create an LLC for each of the payphones in operation or to be operated, if that is the desire. There is no rule forbidding a newly formed and authorized payphone provider from exercising its rights under Chapter 386 with respect to complaints about rates. That a case exists in which these Companies may seek leave to join does not render them shams or disqualified from seeking the authority to provide service as they propose to do. In

essence AT&T argues that it is not in the public interest for the Commission to certify any applicant for payphone service which might file or join a complaint against AT&T. There is certainly no authority for that premise.

On page 3 of its application, AT&T declares that “[t]hese facts make clear that Applicants are simply attempting to gin up “complainants” in Case No. TC-2005-0067 in attempt [sic] to evade statutory and Commission requirements[.]” To the contrary, the facts are clear that AT&T will resort to extraordinary measures, even to the point of blocking new payphone customers from certification, to veil its rates for payphone access lines---rates that currently are the subject of a long standing complaint---from the sunlight of an adjudication on the merits.

Furthermore, what does appear clearly is that members within the Missouri payphone industry are sacrificially adding to their own administrative burden, revising their own business models, filing applications on behalf of affiliates for proper authority so that in compliance with Section 386.390, they can muster, if necessary, the twenty-five customers or *prospective* customers purportedly needed to at last have the lawfulness of the payphone tariffs referred to in Case No. TC-2005-0067 tested before this Commission. The Applicants have walked a path which is permitted by the Commission’s own rules in order to exercise rights and privileges as payphone providers and to avail themselves if necessary of the processes and procedures established under Section 336.390.

The question of whether enough complainants are joined in Case No. TC-2005-0067 is not yet decided. The Complainants in that matter have proposed that the time to test whether twenty-five customers or prospective customers have joined as complainants is as of the date the complaint was filed. A test of the sufficiency of the number of complainants at that time is consistent with the remedial purposes of Section 386.390. A respondent in a complaint should

not be able to “wait out” the death or demise of one or more complainants to avoid a determination on the merits. If the Commission should agree with the Complainants on that score, AT&T’s application to intervene and the Applicants’ response become academic since it is clear from the complaint itself that the statutory twenty-five qualified complainants have been joined.

The Commission has another choice. Applicants suggest it is appropriate for the Commission to revisit its decision in AT&T Communications of the Southwest, Inc. v. GTE North, Inc., 29 Mo. P.S.C. (N.S.) 591,<sup>1</sup> in which AT&T filed a complaint alleging that GTE North made errors in its revenue calculation for its 1986 carrier common line (CCL) charge tariff filing thereby violating the Commission order in Case No. TO-84-222, and unlawfully and unreasonably overcharging AT&T. The Commission wrote this conclusion of law:

The Missouri Public Service Commission has arrived at the following conclusions.

The Commission has jurisdiction over the complaint pursuant to Section 392.400.6. This section allows a telecommunications company to file a complaint as to the reasonableness or lawfulness of any rate or charge provided by a noncompetitive telecommunications company.

*Id* at 3.

In a footnote to their arguments opposing AT&T’s motion to dismiss in Case No. TC-2005-0067 the Complainants posed the question: Is it not fair and just that if there were only one payphone provider remaining in Missouri, that single provider could insist in its state public service commission that it, although alone, is entitled to rates set as required by Federal law no matter what the state complaint procedures might be. The Commission has allowed one telecommunications company---it did not require twenty-five---to file a complaint against

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<sup>1</sup>This case is also cited at 1989 WL 513607 (Mo.P.S.C.) and citations to page numbers in the text will be to this West Law publication.

another. If one complainant is all that the Commission requires to pursue the complaint in Case No. TC-2005-0067, the instant arguments between AT&T and Applicants are no longer relevant.

In sum, AT&T is trying to prevent an adjudication on the merits of the complaint filed in TC-2005-0067 under the guise of opposing payphone certifications when its opposition has nothing to do with the merits of the applications. AT&T's application to intervene in these applications is clearly inappropriate. If AT&T has just cause to challenge the qualifications of these Companies to join as parties complainant in TC-2005-0067, the issue should be taken up in that case and not at this stage.

### **CONCLUSION**

On the basis of the above and foregoing, AT&T's application(s) to intervene in the above cases should be denied.

Respectfully submitted,

/s/ Mark W. Comley  
Mark W. Comley #28847  
Newman, Comley & Ruth P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
573/634-2266  
573/636-3306 FAX  
comleym@ncrpc.com

Attorneys for Applicants

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 23rd day of May, 2013, 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](mailto:opcservice@ded.mo.gov).

/s/ Mark W. Comley  
Mark W. Comley