

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

Tari Christ, d/b/a ANJ Communications, et al.)	
)	
Complainants,)	
)	
v.)	
)	Case No. TC-2005-0067
)	
Southwestern Bell Telephone Company, L.P.,)	
d/b/a Southwestern Bell Telephone Company,)	
)	
Respondent.)	

**AT&T MISSOURI'S
MOTION TO DISMISS, ANSWER, AFFIRMATIVE DEFENSES
AND OPPOSITION TO REQUEST FOR WAIVER**

AT&T Missouri,¹ pursuant to Commission Rule 4 CSR 240-2.070, respectfully submits its Motion to Dismiss, Answer, Affirmative Defenses and Opposition to Complainants'² Request for Waiver.

INTRODUCTION

The Missouri Public Service Commission should reject Complainants' third attempt to collaterally attack AT&T Missouri's payphone tariffs -- now 16 years after they were thoroughly examined and approved by the Commission. As the Commission found, and the Cole County Circuit Court affirmed, the claims Complainants are raising now are the same claims they raised

¹ Pursuant to the Commission's *Order Allowing Reversion to Previous Corporate Status*, issued June 26, 2007, in Case No. TO-2002-185, Southwestern Bell Telephone, L.P. reverted to its prior form as a Missouri corporation, with its prior name, Southwestern Bell Telephone Company. It now does business under and will be referred to in this pleading as "AT&T Missouri."

² Complainants Tari Christ, d/b/a ANJ Communications; Bev Coleman, an Individual; Commercial Communications Services, L.L.C.; Community Payphones, Inc.; Com-Tech Resources, Inc. g 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.; Bob Lindeman, d/b/a Lindeman Communications; John Mabe, an Individual; Midwest Communications 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; HKH Management Services, Inc. will be referred to in this pleading as "Complainants."

and the Commission rejected in 1997 when AT&T Missouri filed its revised tariffs for Semi-Public Telephone Service and Customer-Owned Pay Telephone Service to reflect changes required to deregulate pay telephone service as required by the Federal Communications Commission (“FCC”):

The Commission’s 1997 orders approving the tariffs were determinations on the merits. In them, the Commission found that SWBT, Sprint and Verizon’s tariffs complied with federal law. Those orders are long-since final and the Relators’ Complaint was a collateral attack. The Complaint did not include any allegation of substantially changed circumstances. Therefore, pursuant to the rule of Licata, the Commission lawfully concluded that Section 386.550 barred the Commission from reconsidering the lawfulness of the tariffs.³

Had Complainants wished to contest the Commission’s determinations, they had the right to seek review under the procedures specifically set out by statute. But they elected not to do so. Having failed to exercise their right to seek review within the statutory timeframes, they should not now, 16 years later, be permitted to collaterally attack the Commission’s prior Order and AT&T Missouri’s lawfully-approved tariff.

The Complaint is also subject to dismissal on numerous other grounds: Complainants have failed to perfect their complaint by complying with the requirements of Section 386.390(1) RSMo., which the Commission has no authority to waive; the rates are not in excess of the maximum allowable rates which AT&T Missouri was permitted to charge under the price cap statute, and the Commission is without authority to require a reduction in a rate which complies with the statutory regime; AT&T Missouri is now a competitively classified company pursuant to Sections 392.245.6 and .7 and the Commission has no jurisdiction over the level of AT&T Missouri’s rates; Complainants’ claim for retroactive refunds is barred by the filed rate doctrine and the prohibition against retroactive ratemaking; and as AT&T Missouri has not provided

³ *State of Missouri, ex rel. Tari Christ, d/b/a ANJ Communications, et al. v. Public Service Commission of the State of Missouri*, Case No. 03CV323550, slip op. at 4 (Cole County Circuit Court, November 5, 2003).

payphone service since at least 2010, 47 U.S.C. §276 no longer applies to AT&T Missouri, rendering the Commission without authority to adjudicate the Complaint under federal law.

MOTION TO DISMISS

For its Motion to Dismiss, pursuant to Commission Rule 4 CSR 240-2.070(7), AT&T Missouri states:

1. The Filed Rate Doctrine Bars this Complaint. Complainants have failed to state a claim upon which relief may be granted, in that the specific rates of AT&T Missouri alleged by Complainants to be unlawful and excessive were in fact, at all pertinent times, the lawful rates approved by, and on file with, this Commission, and thereby presumed to be lawful, just and reasonable pursuant to Missouri law and the filed rate doctrine. Accordingly, Complainants cannot recover retroactive refunds based on some alleged right to a rate different from the filed tariff rate.

Section 386.270 RSMo. provides:

All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.

In Missouri, the law is well settled that a tariff that has been approved by the Commission “becomes Missouri law and has the same force and effect as a statute enacted by the legislature.”⁴ Articulating this long-standing doctrine, the Missouri Supreme Court ruled that a tariff schedule of rates and charges filed and published in accordance with the public utility law:

. . . acquires the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves. It may be modified or changed only by a new or supplementary schedule, filed voluntarily, or by order of the

⁴ *Bauer v. Southwestern Bell Telephone Company*, 958 S.W.2d 568, 570 (Mo. App. 1997).

commission. Such is the construction which has been universally put upon analogous provisions of the Interstate Commerce Act . . . and we have so ruled with respect to similar provisions of our Public Service Commission Law relating to telegraph companies If such a schedule is to be accorded the force and effect of law, it is binding, not only upon the utility and the public, but upon the Public Service Commission as well.⁵

As AT&T Missouri's tariff rates acquired the force and effect of law when the Commission approved them, the Complaint must be dismissed.

2. The Retroactive Ratemaking Prohibition Bars Claims for Retroactive Refunds.

Complainants have failed to state a claim upon which relief may be granted in that their claim for retroactive refunds is barred by the prohibition against retroactive ratemaking.

For their relief, Complainants seek a refund "in the amount of the difference between the rates approved by the Commission under the New Services Test, and the rates charged by AT&T Missouri to the Complainants since April 15, 1997" plus interest.⁶ As the Commission is aware (and as set out above), the rates at issue here were approved by the Commission in its April 11, 1997 Order in Case No. TT-97-345. There, the Commission specifically found that those rates complied with the directives of the FCC and were just and reasonable.⁷

Even if the Commission were to now find that those rates should be adjusted (which AT&T Missouri denies), it is barred by law from doing so on a retroactive basis. Under the well-established prohibition against retroactive ratemaking, the Commission may not re-determine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his or her property without due process. In a case involving a fuel adjustment clause ("FAC"), the Missouri Supreme Court explained this well-established principle:

⁵ *State ex rel. St. Louis County Gas Co. v. Pub. Serv. Comm'n of Missouri*, 315 Mo. 312, 317, 286 S.W. 84, 86 (1926) (internal citations omitted).

⁶ See, Complaint, p. 16.

⁷ *Order Approving Tariff Revisions*, pp. 10-11.

Public Counsel requested in oral argument that we remand to the commission for a determination by it of the excess amounts collected by the utilities under the FAC over that which they would have collected under a just and reasonable rate, which would include rate increases properly authorized, and to order a refund of any such excess.

However, to direct the commission to determine what a reasonable rate would have been and to require a credit or refund of any amount collected in excess of this amount would be retroactive ratemaking. The commission has the authority to determine the rate to be charged, Section 393.270. In so determining it may consider past excess recovery insofar as this is relevant to its determination of what rate is necessary to provide a just and reasonable return in the future, and so avoid further excess recovery, see, State ex. rel. General Telephone Co. of the Midwest v. Public Service Comm'n, 537 S.W.2d 655 (Mo. App. 1976). It may not, however, redetermine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his property without due process. See, Arizona Grocery Co. v. Atchison, Topeka and Santa Fe R. Co., 284 US 370, 389-90, 76L.Ed. 348, 52 S.Ct. 183 (1932); *Board of Public Utility Commissioners v. New York Telephone Co.*, 271 U.S. 23, 31, 70 L.Ed. 808, 46 S.Ct. 363 (1926); *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348, 353 (1951).⁸

Thus, to the extent the Complaint seeks retroactive refunds of amounts paid under a previously approved Commission tariff, it should be dismissed.

3. The Law of the Case, Res Judicata, and Collateral Estoppel Bar this Complaint, as Does State Law. Complainants' challenge to AT&T Missouri's approved tariffs constitutes an impermissible collateral attack on the Commission's prior order approving those tariffs and should be dismissed.⁹ Section 386.550 RSMo states: "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." In

⁸ *State ex rel. Utility Consumers Council of Missouri, Inc., et al. v. Public Service Commission*, 585 S.W.2d 41, 58 (Mo. 1979).

⁹ *See, State ex rel. Licata, Inc. v. Public Service Com'n of State* (App.1992) 829 S.W.2d 515.

addition to that statutory bar, the Complainants' challenge is prohibited by the law of the case doctrine¹⁰ and the doctrines of res judicata and collateral estoppel.¹¹

Here, Complainants' claims have already been specifically considered and rejected by the Commission on three separate occasions. The issues being raised here by Complainants are the same issues that they, as members of the Midwest Independent Coin Payphone Association ("MICPA"), raised in Case No. TT-97-345 and which were rejected by the Commission in its April 11, 1997 Order Regarding Deregulation of Payphones. In that case, AT&T Missouri had filed revised tariffs for semi-public telephone service and customer-owned payphone telephone service to comply with the FCC's requirements to deregulate pay telephone service. In approving the tariffs, the Commission stated:

The Commission has thoroughly reviewed the many filings in this case, including the Motions to Suspend filed by MCI and MICPA and finds that SWBT's proposed tariff revisions are in compliance with the FCC's Orders, and should therefore be approved as amended.¹² Since there is adequate information for the Commission to find that the tariff revisions comply with the directives of the FCC, the Commission finds that the suspension of the tariff revisions is unnecessary.

The Commission also found that "while MICPA questions whether SWBT is pricing its services at cost-based rates, SWBT has supplied to the Staff supporting cost information which the Staff believes to be sufficient justification for SWBT's proposed rates."¹³ As a result, the Commission found that "no intrastate rate reductions are necessary in conjunction with SWBT's subsidy

¹⁰ *Czapla v. Czapla*, 94 S.W.3d 426, 428 (Mo. App. E.D. 2003) ("former adjudication is conclusive not only as to all questions raised directly and passed upon, but also as to matters which arose prior to the first appeal and which might have been raised thereon but were not"); *accord*, *Walihan v. St. Louis-Clayton Orthopedic Group, Inc.*, 891 S.W.2d 545, 547 (Mo. App. E.D. 1995).

¹¹ *State ex rel. Licata, Inc. v. Pub. Serv. Comm.*, 829 S.W.2d 515, 518 (Mo. App. W.D. 1992).

¹² *In the Matter of Southwestern Bell Telephone Company's Revision to the General Exchange Tariff*, PSC Mo. No. 35, *Regarding Deregulated Pay Telephone Service*, Case No. 97-345, Order Approving Tariff Revisions, Denying Applications to Intervene, Motions to Suspend, and Motion for Protective Order and Denying as Moot Discovery Requests, issued April 11, 1997, at p. 10 ("*Order Approving Tariff Revisions*").

¹³ *Id.*, p. 8.

calculation, and finds that the rates proposed by SWBT for its payphone services are just and reasonable.”¹⁴

This is not the first time that Complainants, through MICPA, have attempted to resurrect issues previously addressed in Case No. TT-97-345. In Case No. TW-98-207, which the Commission established in compliance with an FCC mandate,¹⁵ MICPA also alleged that AT&T Missouri’s payphone service tariffs failed to meet the New Services Test. In opposing their attempt to inject previously-resolved issues into the Commission’s investigation in Case No. TW-98-207, AT&T Missouri explained that it had provided a copy of the New Services Test referenced in the FCC’s Orders to Staff in support of the rates AT&T Missouri included in its tariff filing in Case No. TT-97-345 concerning the deregulation of payphone service. AT&T Missouri complied with the FCC’s New Services Test requirement by providing the required analysis to Commission Staff for each payphone service offered. After reviewing the new services test and other cost information, Staff stated and the Commission found that AT&T Missouri had supplied sufficient justification, including satisfaction of the New Services Test, for AT&T Missouri’s proposed tariffs to be approved. In a June 16, 1998 Order, the Commission rejected the attempt to broaden the investigation and reopen these issues.¹⁶

Complainants tried again in 2002 through the complaint they filed in Case No. TC-2003-0066. There, the Commission found -- and the Cole County Circuit Court affirmed -- that the

¹⁴ *Id.*

¹⁵ In a September 20, 1996 Order and a November 8, 1996 Order on Reconsideration, the FCC in CC Docket No. 96-128, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, directed state commissions to investigate (1) whether the Commission rules and regulations contained barriers to free entry and exit from the competitive payphone market; and (2) to address the issue of provisioning and funding of “public interest” payphones. See, Order Establishing Case, Case No. TW-98-207, *In the Matter of an Investigation of Payphone Issues Pursuant to the Telecommunications Act of 1996*, issued December 9, 1997 at p. 1.

¹⁶ See, *In the Matter of an Investigation of Payphone Issues Pursuant to the Telecommunications Act of 1996*, Case No. TW-98-207, Order Denying Motion to Expand Issues Under Investigation and Amend Procedural Schedule and Granting Request to Submit Case on the Record Presented, issued June 16, 1998, at p. 2.

claims Complainants raised were the same as those they raised and the Commission rejected in

1997. The Court, affirming the Commission's dismissal of the complaint, stated:

The Commission's 1997 orders approving the tariffs were determinations on the merits. In them, the Commission found that SWBT, Sprint and Verizon's tariffs complied with federal law. Those orders are long-since final and the Relators' Complaint was a collateral attack. The Complaint did not include any allegation of substantially changed circumstances. Therefore, pursuant too the rule of Licata, the Commission lawfully concluded that Section 386.550 barred the Commission from reconsidering the lawfulness of the tariffs.¹⁷

As the Commission previously examined AT&T Missouri's payphone tariff rates and found them just and reasonable, the current Complaint is nothing more than an impermissible collateral attack --albeit 16 years later -- on the Commission's order approving those rates. Here, Complainants raise nothing beyond what they either have or could have raised in their prior complaints. Accordingly, the Complaint should be dismissed.

4. The Complaints Have Failed to Perfect the Complaint. Complainants have also failed to state a claim upon which relief may be granted in that they have failed to perfect their complaint by complying with the requirements of Section 386.390(1) RSMo., which the Commission has no authority to waive.

Section 386.390(1), RSMo (2000) requires the complaint to be signed by not fewer than 25 consumers or purchasers or prospective consumers or purchasers of telephone service:

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

¹⁷ *State of Missouri, ex rel. Tari Christ, d/b/a ANJ Communications, et al. v. Public Service Commission of the State of Missouri*, Case No. 03CV323550, slip op. at 4 (Cole County Circuit Court November 5, 2003).

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 the 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 body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service. (emphasis added).

Commission Rule 4 CSR 240-2.070(4) contains a similar requirement:

(4) Formal Complaints. A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, 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. The formal complaint shall contain the following information:

(A) The name and street address of each complainant and, if different, the address where the subject utility service was rendered;

(B) The signature, telephone number, facsimile number, and email address of each complainant or their legal representative, where applicable;

(C) The name and address of the person, corporation, or public utility against whom the complaint is being filed;

(D) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(E) The relief requested;

(F) A statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made;

(G) The jurisdiction of the commission over the subject matter of the complaint; and

(H) If the complainant is an association, other than an incorporated association or other entity created by statute, a list of all its members.

(5) No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of alderman or a majority of the council or other legislative body of any town, village, county or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, sewer or telephone service as provided by law. Any public utility has

the right to file a formal complaint on any of the grounds upon which complaint are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

As the complaint itself shows, not one of the Complainants have signed it, much less the required 25. Complainants seek to get around this requirement by asking the Commission to waive it. The Commission, however, has no authority to waive this statutory requirement, as it is jurisdictional. In dismissing Complainants' nearly identical prior complaint in Case No. TC-2003-0066 for failure to join the necessary 25 customers or prospective customers as complainants, the Commission held strict compliance with the statute was required:

. . . here, a statute or controlling judicial decision imposes a specific pleading requirement on an administrative complaint. Strict compliance is required with such specific and jurisdictional pleading requirements.¹⁸ As discussed in the Order of January 9, the Commission's special complaint authority in Section 386.390.1 is expressly conditioned upon the joining of at least 25 customers or prospective customers as complainants. This requirement, by the unambiguous terms of the statute, is jurisdictional.¹⁹

Complainants have had 16 years to sign the complaint, and no basis exists for excusing this jurisdictional requirement.

Moreover, Complainants do not meet the numerical requirement in Section 386.390(1), RSMo (2000) and 4 CSR 240-2.070(5) for "not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of . . . telephone service." To the best of AT&T Missouri's knowledge, information and belief:

- Only four Complainants are customers of AT&T Missouri's payphone tariff;

¹⁸ *Abrams v. Ohio Pacific Exp.*, 819 S.W.2d 338, 342 (Mo. banc 1991) (time limitations); *Farmer v. Barlow Truck Lines, Inc.*, 1998 WL 418740, *4 (Mo. App., W.D. 1998) (procedure for review of awards).

¹⁹ *Tari Christ, d/b/a ANJ Communications, et al., v. Southwestern Bell Telephone Company, L.P., et al.*, Case No. TC-2003-0066, *Order Denying Rehearing and Denying Complainants' Alternative Motion for Leave to Amend*, issued February 4, 2003, p. 6.

- At most, only 13 Complainants are certificated by the Commission to provide pay telephone service (3 of which are only maintaining their certificates in order to pursue this complaint); and
- Nine of the corporate Complainants have been administratively dissolved.

Without the requisite authority to lawfully conduct business and to provide public telecommunications service in Missouri, the Commission has made clear that a claimant cannot constitute a prospective purchaser or prospective consumer as contemplated by Section 386.390(1) or 4 CSR 240-2.070(3):

Of those potential purchasers, it is clear to the Commission that one, possibly two, of them are not yet certificated to provide telecommunications services within the State of Missouri and therefore they could not be potential purchasers of SWBT's switched access service within Missouri.

...

A telecommunications business which has neither sought nor received the necessary authority to conduct business in Missouri could not constitute a prospective purchaser or prospective consumer as contemplated by Section 386.390.1. Therefore, one, possibly two, of the Complainants cannot be considered to be consumers or purchasers or prospective consumers or purchasers for purposes of this statute.²⁰

Accordingly, the Complaint does not meet the prerequisites for bringing a complaint as set forth in Section 386.390.1 and 4 CSR 240-2.070(3) and should be dismissed.

5. The Price Cap Statute Bars this Complaint. Complainants have failed to state a claim upon which relief may be granted because their Complaint is barred by the Missouri price cap statute. Section 392.245 RSMo (2000) authorizes the Commission to employ price cap

²⁰ *MCI Telecommunications Corporation, Inc., et al. v. Southwestern Bell Telephone Company*, Case No. TC-97-303, Report and Order, issued September 16, 1997 at pp. 14, 15-16.

regulation to ensure just, reasonable and lawful rates²¹ and subparagraph 2 of that section makes price cap regulation mandatory once the statutory criteria for such regulation has been met:

A large incumbent local exchange company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent companies service area. (emphasis added).

As the Commission is aware, an alternative local exchange telecommunications company (Dial U.S.) began providing alternative local service in January 1997 in Springfield, Missouri, thus subjecting AT&T Missouri to price cap regulation in accordance with the statute. Pursuant to Section 392.245(3),²² AT&T Missouri's maximum allowable rates are those which were in effect on December 31, 1996. Any rate equal to or less than the rates in effect on December 31, 1996, are deemed just and reasonable as a matter of law under Section 392.245. As the rates at issue in this proceeding are not in excess of the maximum allowable rates which AT&T Missouri was permitted to charge under price cap regulation, the Commission is without authority to require a reduction in those rates as they comply with the statutory regime.

AT&T Missouri has since become a competitively classified company under Section 392.245(7). As a result, the Commission has no jurisdiction over the level of AT&T Missouri's rates:

²¹ Section 392.245(1) states:

The commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. As used in this chapter, **"price cap regulation"** shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section. (emphasis added, bold in original).

²² Section 392.245(3) states:

Except as otherwise provided in this section, the maximum allowable prices established for a company under subsection 1 of this section shall be those in effect on December 31 of the year preceding the year in which the company is first subject to regulation under this section. Tariffs authorized under subsection 9 of this section shall be phased in as provided under such tariffs as approved by the Commission.

If the services of an incumbent local exchange telecommunications company are classified as competitive under this subsection, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment, upon filing tariffs which shall become effective within the time lines identified in section 392.500.

Since AT&T Missouri's rates were not in excess of the maximum allowable rates the price cap statute permitted it to charge, and AT&T Missouri is now a competitively classified company, the Commission has no jurisdiction to require any change in rates. Accordingly, the Complaint should be dismissed.

6. The Commission has no Jurisdiction under 47 U.S.C. §276.

Complainants base their claim on 47 U.S.C. §276, which states:

SECTION 276. [47 U.S.C. 276] PROVISION OF PAYPHONE SERVICE.

- (a) NONDISCRIMINATION SAFEGUARDS.- After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service –
 - (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and
 - (2) shall not prefer or discriminate in favor of its payphone service.

AT&T Missouri, however, has not provided payphone service since at least 2010. 47 U.S.C. §276 therefore no longer applies to AT&T Missouri, rendering the Commission without authority to adjudicate the Complaint under federal law

ANSWER

For its Answer, AT&T Missouri states:

Nature of Complaint²³

AT&T Missouri denies all allegations contained in the narrative “Nature of the Complaint.”

²³ For ease of reference, AT&T Missouri's Answer will follow the headings, and in the section titled “Parties” the numbering, used within Complainants' Complaint.

The Parties

1. AT&T Missouri denies that Complainant Tari Christ, d/b/a ANJ Communications (ANJ), is authorized to provide private pay telephone service in Missouri.
2. AT&T Missouri denies that Complainant Bev Coleman is authorized to provide private pay telephone service in Missouri.
3. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 3 of the Complaint concerning Complainant Commercial Communications Services, L.L.C.
4. AT&T Missouri denies that Complainant Community Payphones, Inc. (ComPay) is a Missouri corporation in good standing and that it is authorized to provide private pay telephone service in Missouri.
5. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 5 of the Complaint that Com-Tech Resources, Inc., d/b/a Com-Tech Systems (Com-Tech), is a Texas corporation in good standing. AT&T Missouri denies that Com-Tech Resources, Inc., d/b/a Com-Tech Systems (Com-Tech), is a corporation in good standing in Missouri and that it is authorized to provide private pay telephone service in Missouri.
6. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 6 of the Complaint that Coyote Call, Inc. is a Kansas corporation in good standing. AT&T Missouri denies that Coyote Call, Inc. is a corporation in good standing in Missouri. AT&T Missouri is without sufficient information to admit or deny the allegation that Coyote Call, Inc. is authorized to provide private pay telephone service in Missouri.

7. AT&T Missouri denies that Complainant William J. Crews, d/b/a Bell-Tone Enterprises, is authorized to provide private pay telephone service in Missouri.

8. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 8 of the Complaint concerning Complainant Davidson Telecom, LLC (DTLLC).

9. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 9 of the Complaint concerning Complainant Evercom Systems, Inc. (Evercom).

10. AT&T Missouri denies that Complainant Harold B. Flora, d/b/a Amnerican Telephone Service, is authorized to provide private pay telephone service in Missouri.

11. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 11 of the Complaint concerning Complainant Illinois Payphone Systems, Inc. (IPS).

12. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 12 of the Complaint concerning Complainant JOLTRAN Communications Corp. (JOLTRAN).

13. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 13 of the Complaint concerning Complainant Bob Lindeman, d/b/a Lindeman Communications.

14. AT&T Missouri denies that Complainant John Mabe is authorized to provide private pay telephone service in Missouri.

15. AT&T Missouri denies that Midwest Communication Solutions, Inc. (MCSI) is a Missouri corporation in good standing. AT&T Missouri is without sufficient information to

admit or deny the allegations that Midwest Communication Solutions, Inc. (MCSI) is authorized to provide private pay telephone service in Missouri.

16. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 16 of the Complaint concerning Complainant Missouri Telephone & Telegraph, Inc.

17. AT&T Missouri denies that Complainant Jerry Myers is authorized to provide private pay telephone service in Missouri.

18. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 18 of the Complaint that Pay Phone Concepts, Inc. (PPC) is a Kansas corporation in good standing. AT&T Missouri denies that Pay Phone Concepts, Inc. (PPC) is a corporation in good standing in Missouri and that it is authorized to provide private pay telephone service in Missouri.

19. AT&T Missouri denies that Complainant Jerry Perry is authorized to provide private pay telephone service in Missouri.

20. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 20 of the Complaint that PhoneTel Technologies, Inc. (PhoneTel) is an Ohio corporation in good standing. AT&T Missouri denies PhoneTel Technologies, Inc. (PhoneTel) is a corporation in good standing in Missouri and that it is authorized to provide private pay telephone service in Missouri.

21. AT&T Missouri denies that Complainant Craig D. Rash is authorized to provide private pay telephone service in Missouri.

22. AT&T Missouri denies that Complainant Sunset Enterprises, Inc. (Sunset) is a Missouri corporation in good standing and that it is authorized to provide private pay telephone service in Missouri.

23. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 23 of the Complaint that Telaleasing Enterprises, Inc. (TEI) is an Illinois corporation in good standing. AT&T Missouri denies Telaleasing Enterprises, Inc. (TEI) is a corporation in good standing in Missouri and that it is authorized to provide private pay telephone service in Missouri.

24. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 24 of the Complaint that Teletrust, Inc. is a Texas corporation in good standing. AT&T Missouri denies that Complainant Teletrust, Inc. is corporation in good standing in Missouri. AT&T Missouri is without sufficient information to admit or deny the allegation that Teletrust, Inc. is authorized to provide private pay telephone service in Missouri.

25. AT&T Missouri denies that Complainant Tel Pro, Inc. (TelPro) is a Missouri corporation in good standing and that it is authorized to provide private pay telephone service in Missouri.

26. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 26 of the Complaint that Complainant Toni M. Tolley, d/b/a Payphones of America North, is authorized to provide private pay telephone service in Missouri.

27. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 27 of the Complaint that Complainant Tom Tucker, d/b/a Herschel's Coin Communications Company, is authorized to provide private pay telephone service in Missouri.

28. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 28 of the Complaint that HKH Management Services, Inc. (HKH) is a Missouri corporation in good standing and is authorized to provide private pay telephone service in Missouri.

29. AT&T Missouri admits that Complainants Evercom Systems, Inc.; Illinois Payphone Systems, Inc.; Midwest Communication Solutions, Inc.; and Missouri Telephone & Telegraph are AT&T Missouri customers. AT&T Missouri denies the remaining allegations contained in paragraph 29.

30. AT&T Missouri opposes and denies that Complainants have the right to request a waiver of the 4 CSR 240-2.070(4)(A) requirement that their formal complaint contain the “signature of each complainant” and the “name and street address of each complainant and, if different, the address where the subject utility service was rendered.” The requirement that the Complaint be signed by each complainant is a statutory requirement, which this Commission has no authority to waive. *See* Section 386.390(1), RSMo (2000). Moreover, the Commission will need this information to determine whether the Complaint, on its face, is properly perfected. Section 386.390(1), RSMo (2000) and 4 CSR 240-2.070(5) require the complaint to be signed by “not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of . . . telephone service.” The requirement that each complainant sign the complaint and provide the address where service was taken will be needed by the Commission to make the determination of whether a complainant is a purchaser or prospective purchaser of the service.

AT&T Missouri also denies that compliance with these requirements would be overly burdensome, either for Complainants or the record. Complainants have had 16 years to sign the complaint and provide service location information. And to the best of AT&T Missouri’s

knowledge, information and belief, Complainants' representation that service locations "could approach several thousand separate locations" is grossly overstated. To the extent location data is proprietary, the Commission's "Confidential Information" rules provide adequate protection. *See* 4 CSR 240-2.135(2).

31. AT&T Missouri²⁴ admits that it is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri, as each of those phrases is defined in Section 386.020, RSMo. AT&T Missouri admits that it provides local exchange telecommunications service to payphone service providers in Missouri. AT&T Missouri denies that it provides payphone service in competition with Complainants or that it is a noncompetitive telecommunications company. AT&T Missouri denies that the Commission has jurisdiction over Complainants' complaint. All correspondence, pleadings, orders, decisions, and communications directed to AT&T Missouri in this proceeding should be sent to:

Leo J. Bub
Robert J. Gryzmala
Attorneys for Southwestern Bell Telephone Company
d/b/a AT&T Missouri
909 Chestnut Street, Room 3518
St. Louis, Missouri 63101

32. AT&T Missouri is without sufficient information to admit or deny the allegations contained in paragraph 32 of the Complaint.

33. AT&T Missouri states that the Missouri statute referenced in paragraph 33 of the Complaint speaks for itself and no response is necessary.

²⁴ A copy of Southwestern Bell Telephone Company's registration of the fictitious name "AT&T Missouri" was filed with the Commission on July 17, 2007, in Case No. TO-2002-185. The company has since been converted into a Delaware corporation. *See*, Certificate of Conversion from the Missouri Secretary of State, dated October 3, 2012 (which was filed with the Commission on December 4, 2012 in Case No. IO-2013-0323).

The FCC and Payphone Orders

34. AT&T denies the allegations contained in paragraphs 34-42 of the Complaint. To the extent Complainants attempt to paraphrase or quote FCC orders, orders of the Missouri Commission or public filings made with the FCC, AT&T Missouri states that the referenced orders or filings speak for themselves and no response is necessary.

SWBT's Payphone Rates

35. AT&T Missouri admits that its tariff rates being challenged by Complainants were approved by the Commission in Case No. TT-97-345 and that those tariffs are currently on file with the Commission and speak for themselves. AT&T Missouri denies the remaining allegations contained in paragraphs 43-55 of the Complaint. To the extent Complainants attempt to paraphrase or quote FCC orders, orders of the Missouri Commission or public filings made with the FCC, AT&T Missouri states that the referenced orders or filings speak for themselves and no response is necessary.

36. To the extent that AT&T Missouri has neither specifically admitted nor denied any allegations contained in the Complaint, AT&T Missouri specifically denies those allegations.

AFFIRMATIVE DEFENSES

1. Complainants fail to state a claim upon which relief can be granted.
2. Complainants' claims are barred by laches, waiver, estoppel, and failure to mitigate.
3. Complainants' Complaint is barred by *res judicata*, collateral estoppel, and the law of the case.
4. Complainants' claims are barred by State law.

5. Complainants' claims are barred by applicable statutes of limitations.
6. The relief sought by Complainants is barred by the Commission's lack of authority to award damages.
7. Complainants' request for a retroactive refund constitutes unlawful and impermissible retroactive ratemaking in violation of federal and state law.
8. Complainants' request for a retroactive refund is barred by the filed rate doctrine.
9. Complainants' claims are barred because AT&T Missouri is no longer subject to 47 U.S.C. § 276.

OPPOSITION TO REQUEST FOR WAIVER

AT&T Missouri opposes Complainants' request to waive the 4 CSR 240-2.070(4)(A) requirement that their formal complaint contain the "signature of each complainant" and the "name and street address of each complainant and, if different, the address where the subject utility service was rendered."

The requirement that the Complaint be signed by each complainant is a statutory requirement, which this Commission has no authority to waive. See Section 386.390(1), RSMo (2000). Moreover, the Commission will need this information to determine whether the Complaint, on its face, is properly perfected. Section 386.390(1), RSMo (2000) and 4 CSR 240-2.070(5) require the complaint to be signed by "not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of . . . telephone service." The requirement that each complainant sign the complaint and provide the address where service was taken will be needed by the Commission to make the determination of whether a complainant is a purchaser or prospective purchaser of the service.

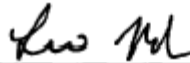
Compliance with these requirements will not be overly burdensome, either for Complainants or the record. Complainants have had 16 years to sign the complaint and provide service location information. And to the best of AT&T Missouri's knowledge, information and belief, Complainants' representation that service locations "could approach several thousand separate locations" is grossly overstated. To the extent location data is proprietary, the Commission's "Confidential Information" rules provide adequate protection. *See* 4 CSR 240-2.135(2). Accordingly, the Commission should deny Complainants' request to waive 4 CSR 240-2.070(4)(A).

WHEREFORE, having fully answered, AT&T Missouri requests the Commission to enter an Order dismissing Complainants' Complaint.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY,
D/B/A AT&T MISSOURI

BY



LEO J. BUB

#34326

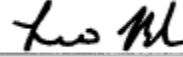
ROBERT J. GRYZMALA

#32454

Attorneys for AT&T Missouri and AT&T Communications
909 Chestnut Street, Room 3518
St. Louis, Missouri 63101
314-235-2508 (Telephone)/314-247-0014(Facsimile)
leo.bub@att.com

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on April 1, 2013.



Leo J. Bub

General Counsel
Cully Dale
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102
general.counsel@psc.mo.gov
cully.dale@psc.mo.gov

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
PO Box 537
Jefferson City, MO 65102

Public Counsel
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov