October 29, 2015

Meeting with FCC Staff

MoPSC Case No. TT-97-345

- On January 15, 1997, in order to comply with section 276 of the Act, AT&T (then SWB) files proposed revision to its General Exchange Tariff, PSC Mo. No. 35, Sections 18 and 34, pertaining to Semi-Public Telephone Service and Customer-Owned Pay Telephone Service.
- MICPA and others are denied intervention and no hearings are held on proposed tariff revisions.
- On April 11, 1997, MoPSC finds that "[AT&T's] proposed tariff revisions are in compliance with the FCC's Orders" and allows tariffs to become effective. No MoPSC finding in the order that tariffs are NST compliant.
- Decided pre-*Wisconsin Bureau Order* in 2000, which clarified applicability of NST and applicable guidelines.

MoPSC Case No. TW-98-207

- On December 9, 1997, MoPSC opens docket to investigate whether its rules and regulations contain barriers to free entry and exit from the competitive payphone market. MICPA allowed to intervene.
- MICPA proposes to broaden scope of proceeding to include, *inter alia,* whether LEC rates charged for payphone services cost-based and in compliance with Computer III's "New Services" Test;
- Requests to broaden scope of this proceeding were denied by the MoPSC on June 16, 1998. The proceeding is limited to examination of entry or exit barriers and public interest payphones.

MoPSC Case No. TC-2003-0066

- On August 22, 2002, MICPA members and other PSP's file a complaint against AT&T and other LEC's alleging that their payphone access line rates, and other charges for private payphone services, were non NST compliant and unjust, unreasonable and unlawful.
- On January 9, 2003, MoPSC dismisses complaint on grounds of insufficient number of qualified complainants under complaint statute and failure to allege a substantial change in circumstances.

MoPSC Case No. TC-2005-0067

- On August 27, 2004, MICPA members and other PSP's file a complaint against AT&T alleging that AT&T's payphone access line rates, and other charges for private payphone services, were non NST compliant and unjust, unreasonable and unlawful.
- With consent of the parties, MoPSC orders a suspension of the regular time line for complaint procedure to allow parties to negotiate. It also made sense to keep the proceeding in suspense in order to await FCC's decision in the *NST Refund Order.*
- Eventually MoPSC directs AT&T to answer the complaint.
- AT&T moves to dismiss complaint on grounds that MoPSC lacks jurisdiction over its rates for service including payphone rates.
- MoPSC agrees with AT&T's arguments and rules that under Missouri law, the MoPSC no longer has authority to order AT&T to charge a particular rate for its competitive services, including its payphone services.
- On June 5, 2013 MoPSC dismisses the complaint. MoPSC does not make a finding or determination that AT&T's payphone access line rates are NST compliant.

MICPA FCC Petition

- On December 26, 2013 the Midwest Independent Coin Payphone Association petitions for relief under the Commission's Payphone Orders and for a declaratory ruling. CC Docket No. WC-13-139
- MICPA requests an order 1) directing AT&T Missouri to submit to the Commission cost documentation supporting its currently effective tariffs for intrastate payphone service offerings; (2) a determination and/or declaratory ruling that AT&T's Missouri payphone tariffs are not cost based, nondiscriminatory, and not consistent with both section 276 and the Commission's Computer III tariffing guidelines and (3) an order directing AT&T Missouri to issue refunds of over charges for its payphone service offerings.

MICPA FCC Petition

- On December 26, 2013 MICPA moves to hold petition in abeyance pending the outcome of *Illinois Public Telecommunications Association, et. al v. FCC (IPTA Review Proceeding).*
- On February 7, 2014, AT&T Services, on behalf of its affiliate, Southwestern Bell Telephone Company d/b/a AT&T Missouri (AT&T) filed comments.
- On February 21, 2014, MICPA files comments in reply.

IPTA Review Proceeding

- On June 13, 2014 the United States Court of Appeals District Of Columbia Circuit affirms FCC's *NST Refund Order.*
- IPTA and other state associations move for rehearing and those motions are denied August 18, 2014.
- IPTA and other state associations petition for certiorari to US Supreme Court.
- US Supreme Court denies writs of certiorari March 23, 2015.

Status of MICPA Petition

- While the Commission never acted on the abeyance request, as a practical matter, MICPA's petition has functionally been in abeyance during pendency of the *IPTA Review Proceeding.*
- Decision in *IPTA Review Proceeding* is now final and unappealable.
- MICPA's petition is ready for disposition.

The Issues:

1. In its order issued in MoPSC Case No. TT-97-345 (the "*1997 Order*") , did the MoPSC find that AT&T's payphone rates were NST compliant?

   This is a threshold issue.

2. If not, were the AT&T rates NST compliant?

   Requires Commission determination so conduct rate case?

3. If the AT&T rates were not compliant, is this a case where refunds are required and/or will be ordered?

4. What is the amount of the refunds and to whom will they be paid?

Addressing the Issues

- In the interest of time and available resources, MICPA proposes a modification of the FCC's regular procedures:
  - Render a declaratory ruling on the effect of the *1997 Order*

    and at the same time

  - Determine whether refunds of overcharges would be ordered in this case.

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Questions and thanks