



BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

ACCEPTED/FILED

In the Matter of )  
 )  
The Midwest Independent Coin Payphone Association's )  
Petition for Relief under the Commission's Payphone )  
Orders and for Declaratory Ruling )

CC Docket No. DEC 26 2013

Federal Communications Commission  
Office of the Secretary

MIDWEST INDEPENDENT COIN PAYPHONE ASSOCIATION'S  
MOTION TO HOLD PETITION IN ABEYANCE

The Midwest Independent Coin Payphone Association ("MICPA"), on behalf of itself and its members, respectfully moves the Commission to hold MICPA's petition for declaratory ruling, filed simultaneously with this motion, in abeyance pending the outcome of ongoing proceedings in federal court. Because Petitions for Review of the Commission's *NST Refund Order*<sup>1</sup> filed in the United States Court of Appeals<sup>2</sup> raise issues fundamental to those petitioner presents to the Commission in this case, holding the same in abeyance until federal appellate proceedings are final is appropriate.

**Background**

As detailed in MICPA's companion petition, in the sixteen years since this Commission entered orders requiring Regional Bell Operating Companies to comply with nonstructural safeguards designed to promote the payphone industry, the Missouri Public Service Commission ("MoPSC") has failed to analyze Southwestern Bell Telephone Company, L.P. d/b/a AT&T Missouri's ("AT&T Missouri" or "AT&T") rates for payphone access lines and related services

<sup>1</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-12, FCC 13-24 (rel. February 27, 2013) (*NST Refund Order*).

<sup>2</sup> See *Illinois Public Telecommunications Association, et. al v. FCC*, pending in the U.S. Ct. of App. for the District of Columbia Circuit, No 13-1059 et. al. (*IPTA Appeal*)

("Missouri Payphone Tariffs") against the requirements of the New Services Test ("NST"). The MoPSC has now stated that it lacks statutory authority, and thus jurisdiction, to reduce AT&T Missouri's pay telephone rates and charges and therefore declined to determine whether those rates comply with the NST.

Because of the MoPSC's stated lack of authority, MICPA's petition asks the Commission to 1) find that the Missouri Payphone Tariffs and the rates being charged Missouri payphone providers are not NST compliant and 2) issue an order directing AT&T to pay refunds for overcharges for its payphone services.

#### ***The NST Refund Order***

In its NST Refund Order, the Commission sought to provide further guidance to state commissions and payphone service providers (PSPs) regarding the requirements of section 276 of the Act and the Commission's interpretation of that provision. The Commission reinforced that Bell Operating Companies which did not have NST-compliant rates in effect could be required to issue refunds.

The Commission also denied a petition for declaratory ruling filed by the Illinois Public Telecommunications Association (IPTA) and petitions filed by four other PSP associations. Each had requested the Commission to overturn state commissions below which did not order refunds of overcharges collected by BOCs for payphone services and asked the Commission to order the Bell Operating Company involved in each case to pay refunds. The Commission concluded that the underlying state commission and court decisions denying refunds of overcharges for payphone services were not inconsistent with the Commission's regulations and declined to preempt them. The Commission also declined to order the Bell Operating Company involved in each case to pay refunds. Thus, the Commission ultimately concluded that there was

no automatic entitlement to refunds under Section 276 of the Communications Act. IPTA and two other state associations each filed a petition for review of the *NST Refund Order* with the United States Court of Appeals for the District of Columbia challenging the denial of the respective denials of their petitions ("*IPTA Review Proceeding*").

### ***Discussion***

MICPA's petition presents a case in which a state commission has been unable to review payphone tariffs and render a compliance determination. MICPA's petition also does not seek a review of an NST determination or refund order. None has been issued below. Hence, the petition is not one requesting that an NST determination or refund order be remanded, modified or overturned. The Commission is being asked to determine *ab initio* whether the Missouri Payphone Tariffs comply with the NST but the ultimate issue presented is whether the PSPs involved are entitled to refunds under the Commission's regulatory regime implementing Section 276. As shown above, the *IPTA Review Proceeding* currently pending before the Court concerns a core issue raised by petitioner in this case: the appropriateness of and a PSP's entitlement to refunds of BOC overcharges for payphone services charged pursuant to non-NST compliant rates. Because the *IPTA Review Proceeding* currently pending before the federal court raises issues central to the MICPA petition, the Commission should hold the petition in abeyance until federal appellate proceedings are final. If the Commission were to proceed at a regular pace in its consideration of the petition and render a decision contrary to the final decision in the *IPTA Review Proceeding*, it would needlessly consume the Commission's time and other resources as well as the time and resources of the parties. In addition, the disposition of the *IPTA Review Proceeding* could affect the decision by one or the other of the parties directly involved in the petition proceeding (AT&T or MICPA) to proceed and/or how to proceed. By granting this

motion, the Commission will prevent wasteful expenditure of the resources of all concerned.

AT&T will not be prejudiced if the Commission postpones review of this case while the federal courts address the *IPTA Review Proceeding*. All parties to the petition proceeding will experience the same benefit as MICPA from a final decision in the court system which oversees the Commission. Once the federal court has acted, the Commission will be able to review MICPA's petition on the basis of the ruling(s).

***Conclusion***

For all of the foregoing reasons, the Commission should grant this motion and hold this case in abeyance until the federal courts enter final orders in the *IPTA Review Proceeding*.

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 26th day of December, 2013, to Leo Bub at [lb7809@att.com](mailto:lb7809@att.com), attorney for AT&T Missouri; and MoPSC General Counsel's Office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

*/s/ Mark W. Comley* \_\_\_\_\_

Mark W. Comley