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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

ACCEPTED/FILED

DEC 26 2013

Federal Communications Commission
Office of the Secretary

In the Matter of

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

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CC Docket No. _____

MIDWEST INDEPENDENT COIN PAYPHONE ASSOCIATION'S
PETITION

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MIDWEST INDEPENDENT COIN PAYPHONE ASSOCIATION'S PETITION

The Midwest Independent Coin Payphone Association ("MICPA"), on behalf of itself and its members, hereby petitions the Federal Communications Commission ("Commission") pursuant to Sections 1.1 and 1.2 of the Commission's Rules, 47 C.F.R. §§ 1.1, 1.2.

I. SUMMARY

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 against the requirements of the New Services Test. The Petitioner and those it represents requested investigations of, and filed two complaints by which to commence an investigation and hearing on, those rates with the objective of establishing that they are non-NST compliant and have been so since April, 1997 when the rates were first effective. The MoPSC rejected requests for investigation of the rates and charges, and dismissed both rate complaints, the latest of which was dismissed on grounds that the MoPSC lacked statutory authority, and thus jurisdiction, to reduce AT&T Missouri's pay telephone rates and charges.

The Commission has relied initially on state commissions to ensure that the rates, terms, and conditions applicable to the provision of basic payphone lines comply with the requirements of section 276 and the Commission's orders. This is a case in which a state commission has been unable to review payphone tariffs and render a compliance determination. This is not a case seeking review of an NST determination or refund order issued below, or requesting that an NST determination or refund order be remanded, modified or overturned. Rather, because of the

Missouri commission's stated lack of authority, Petitioner prays that the Commission invoke its obligations under section 276 and its Payphone Orders to promote competition among payphone service providers, ensure the widespread deployment of public payphone service and enter the following relief:

A. An order directing AT&T Missouri to submit to the Commission cost documentation supporting its currently effective tariffs for intrastate payphone service offerings ("Missouri Payphone Tariffs") along with copies of the tariffs, which tariffs have not been determined by the MoPSC to comply with section 276 of the Communications Act of 1934, as amended ("Act") and the Commission's orders and rules;

B. A determination and/or declaratory ruling that the Missouri Payphone Tariffs **are not** cost based, nondiscriminatory, and consistent with both section 276 and the Commission's *Computer III* tariffing guidelines, specifically that the **Missouri Payphone Tariffs fail** to satisfy the requirements that the Commission applies to new interstate access service proposed by incumbent LECs subject to price cap regulation (the "New Services Test" or "NST"); and

C. Order and direct AT&T Missouri to issue refunds of over charges for its payphone service offerings.

II. IMPLEMENTATION OF SECTION 276

As this Commission has held numerous times, section 276 of the Act established requirements designed to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public. In its *Payphone Reclassification Proceeding*,¹ the Commission adopted regulatory requirements

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996) (*Initial Payphone Order*), Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996) (*Payphone Reconsideration Order*), *aff'd in part and remanded in part*, *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); Second Report

implementing section 276. The Commission required, inter alia, that all incumbent LEC payphone tariffs filed at the state level be cost based, nondiscriminatory, and consistent with both section 276 and the Commission's *Computer III* tariffing guidelines.²

The Commission also determined that the rates assessed by Local Exchange Companies (LECs) for payphone services tariffed at the state level must satisfy the NST requirements that the Commission applies to new interstate access service proposed by incumbent LECs subject to price cap regulation.³ Even though the Commission relied initially on state commissions to ensure that the rates, terms, and conditions applicable to the provision of basic payphone lines comply with the requirements of section 276, it retains jurisdiction under section 276 to ensure that all requirements of section 276 and the Payphone Reclassification Proceeding are met.⁴

and Order, 13 FCC Rcd 1778 (Oct. 9, 1997) (*Second Payphone Order*), vacated and remanded, *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (Feb. 4, 1999) (*Third Payphone Order*), *aff'd*, *American Pub. Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000); *Wisconsin Pub. Serv. Comm'n; Order Directing Filings*, Bureau/CPD No. 00-01, Memorandum Opinion and Order, 17 FCC Rcd 2051, 2064, para. 42 (2002) (*Wisconsin Payphone Order*), *aff'd* *New England Pub. Comms. Council, Inc. v. FCC*, 334 F.3d 69 (D.C. Cir. 2003). (The *Initial Payphone Order* and the *Payphone Reconsideration Order* are collectively known as the *Payphone Orders*.)

² *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, ¶ 163.

³ See *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, CC Docket No. 85-229, *Report and Order*, 104 FCC 2d 958 (1986). The new services test is a cost-based test that establishes the direct cost of providing the new service as a price floor. LECs then add a reasonable amount of overhead to derive the overall price of the new service. See *Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Docket No. 89-79, *Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524 (1991).

⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, CC Docket No. 96-128, *Order*, 12 FCC Rcd 20997 (Com. Car. Bur. 1997); see also *North Carolina Utilities Commission Order Dismissing and Directing Filings*, 13 FCC Rcd 5313 (Com. Car. Bur. 1998).

The Commission exercised its retained jurisdiction in response to a letter order of the Wisconsin Public Service Commission issued November 6, 1997, in the Wisconsin Commission's Docket 05-TI-156.⁵ This Commission observed:

In the letter order, the Wisconsin Commission held that its own jurisdiction to investigate the rates charged by LECs to payphone service providers "is very narrowly circumscribed to enforcing a prohibition on cross subsidy...and discriminatory practices." The Wisconsin Commission also stated that the statutory remedies available under Wisconsin law "only address whether the retail rates charged by telecommunications utilities for competitive telecommunications service recover the underlying cost for that service." Accordingly, the Wisconsin Commission found that it lacks jurisdiction under state law to ensure that the rates, terms, and conditions applicable to providing basic payphone services comply with the requirements of section 276 of the Act and the Commission's implementing rules.⁶

The Commission then ordered the affected LECs to submit tariffs for intrastate payphone service offerings to the Commission, together with supporting documentation described later in the order.⁷

Since January, 1997, and continuing, MICPA and its members, and independent payphone providers who have associated with MICPA, have repeatedly challenged the lawfulness of the Missouri Payphone Tariffs under the Act and the Commission's *Payphone Orders* in a series of proceedings before the MoPSC.⁸ Despite repeated requests made by MICPA, its members and other independent payphone providers that the MoPSC investigate the Missouri Payphone Tariffs and conduct hearings on their lawfulness under contested case

⁵ *Wisconsin Pub. Serv. Comm'n; Order Directing Filings*, CCB/CPD No. 00-01, Order, 15 FCC Rcd 9978 (CCB rel. Mar. 2, 2000) (*Wisconsin Bureau Order*), on review *Wisconsin Payphone Order*, 17 FCC Rcd 2051 (2002) (hereafter jointly referred to as *Wisconsin Payphone Orders*).

⁶ *Wisconsin Bureau Order*, ¶ 3.

⁷ While the Commission subsequently directed the tariffs be filed with the Wisconsin Commission, because the Wisconsin Commission on reconsideration decided that it had jurisdiction, the Commission nonetheless made clear that it would conduct the tariff review where the state was unable or unwilling to do so.

⁸ See also, the *Reply Comments of the Midwest Independent Coin Payphone Ass'n* filed with this Commission in the *Wisconsin Bureau Order* on October 23, 2000 (discussing MoPSC proceedings).

procedures, the MoPSC has refused. In a decision not unlike that of the Wisconsin Public Service Commission, the MoPSC most recently concluded that it has no statutory authority to order a competitive company such as AT&T Missouri to charge a particular rate for its competitive services, and therefore lacked authority to investigate the lawfulness of the Missouri Payphone Tariffs under the requirements of the Act.⁹ As it did in the *Wisconsin Bureau Order*, the Commission should direct AT&T to submit the Missouri Payphone Tariffs to this Commission for the purposes of determining whether those tariffs comply with section 276 of the Act and the Commission's rules.

III. HISTORY OF THE MISSOURI PROCEEDINGS

MICPA is a Missouri not for profit corporation the members of which are payphone service providers.¹⁰ Independent payphone providers operating or wishing to operate in Missouri that are not members of MICPA have relied on MICPA's leadership to steer the ongoing challenge to the Missouri Payphone Tariffs.

Southwestern Bell Telephone Company, L.P. d/b/a AT&T Missouri is an incumbent local exchange carrier in Missouri and a Bell Operating Company as defined in 47 U.S.C. §153(4).

A. Case No. TT-97-345

On January, 15, 1997, AT&T filed a 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. The purpose of the filing was to comply with the

⁹ *Christ et al. v. Southwestern Bell Telephone Company LP*, Case No. TC-2005-0067; *Order Regarding AT&T Missouri's Motion to Dismiss* at 9 (2013). Attachment 1

¹⁰ Petitioner, Petitioners' member payphone providers and other independent payphone providers were intervenors or complainants in the MoPSC proceedings discussed in this section of this Petition and refer to themselves in the appropriate party status in the proceedings before the MoPSC and Missouri Courts.

Commission's orders regarding implementation of section 276 of the Act. The proposed tariff revisions were to be effective April 15, 1997.

Timely motions to suspend the Missouri Payphone Tariffs were filed with the MoPSC by MCI Telecommunications Corporation (MCI) and MICPA, each requesting an investigation of the lawfulness of those tariffs under the requirements of the Act.

On April 11, 1997, the MoPSC denied the motions to suspend filed by MCI and MICPA and wrote on page 10 of its order:¹¹

The [MoPSC] has thoroughly reviewed the many filings in this case, including the motions to suspend filed by MCI and MICPA, and finds that [AT&T's] proposed tariff revisions are in compliance with the FCC's orders, and should therefore be approved as amended. Since there is adequate information for the [MoPSC] to find that the tariff revisions comply with the directives of the FCC, the [MoPSC] finds that the suspension of the tariff revisions is unnecessary. Therefore, the applications to intervene and motions to suspend filed by MCI and MICPA should be denied.

Although written argument was submitted by MICPA and other parties to Case No. TT-97-345, the investigation was entirely one-sided, and closed from inspection by the parties who ultimately would be most affected by the decision. MoPSC Staff and AT&T, not payphone service providers, were the only parties who knew the contents of AT&T's cost studies. There was no cross-examination conducted of the preparers of those studies. The MoPSC conducted no hearing on the lawfulness of the tariffs. There was no record except that which was created by AT&T's confidential cost information, and MoPSC Staff's analysis of that cost information, all of which were outside discovery and inspection by MCI and MICPA and never quoted in the MoPSC's order. The information upon which the MoPSC relied in making its decision had not been subjected to analysis by opposing parties.

¹¹ *Order Approving Tariff Revisions, Denying Applications to Intervene, Motions to Suspend, and Motion for Protective Order, and Denying as Moot Discovery Requests, Case No. TT-97-345 (MoPSC Payphone Order)*. (1997). Attachment 2

With respect to the MoPSC's remarks that "[AT&T's] proposed tariff revisions are in compliance with the FCC's orders" and "the tariff revisions comply with the directives of the FCC," it is important to recognize that the MoPSC never stated that the tariffs complied with the New Services Test. Indeed as this Commission has recognized, it was not clear then that the New Services Test was the applicable standard for compliance. This Commission's clarification of the apposite orders and directives became effective **after** the MoPSC's decision in Case No. TT-97-345. As the Commission noted in *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) (the "*NST Refund Order*"), prior to its circa 2000 order clarifying the parameters of the New Services Test,¹² "some state commissions believed that payphone rates based on historical costs were consistent with the NST." *NST Refund Order*, ¶ 43. *See also id.* ¶¶ 10, 39. It was not until the Commission issued its clarification in 2000 that the parameters of the applicable NST cost standard became clear.

As just mentioned, the MoPSC did not find that the Missouri Payphone Tariffs met the standards of the NST. Nor did the MoPSC state that the Staff utilized the proper NST cost standard when evaluating the Missouri Payphone Tariffs. There are no data or cost figures recited in the MoPSC order that would in fact support a finding of NST compliance as the standard was later explained by the Commission, and could serve as a basis for the Staff to determine that the "cost information was sufficient justification for [AT&T's] proposed rates."¹³

¹² *Wisconsin Bureau Order*.

¹³ *MoPSC Payphone Order* at p. 8-9, Attachment 2.

Nor did the MoPSC set out conclusions of law. There is simply no finding or conclusion in the order that the Missouri Payphone Tariffs set rates that are just and reasonable in compliance with this Commission's applicable standards.

B. Case No. TW-98-207

To comply with directives of the Act and Commission implementation orders, the MoPSC opened the above referenced case on December 9, 1997 to investigate whether its rules and regulations contained barriers to free entry and exit from the competitive payphone market. Another subject addressed in the docket was public interest payphones. The Kansas Payphone Association (KPA) and MICPA intervened and moved to broaden the scope of the proceeding to include other issues related to the progress of competition in the payphone marketplace as envisioned by the Act and this Commission. MICPA proposed that the following issues be investigated as part of the proceeding:

- 1) Have the local exchange companies (LECs) filed tariffs that reflect sufficiently unbundled payphone-specific features or functions as required by the Act and the *Payphone Orders*;
- 2) Are the rates charged for those services cost-based and in compliance with *Computer III's* "New Services" Test;
- 3) Have the LECs removed all payphone cost elements from their exchange and exchange access services; and
- 4) Are the LECs treating their own payphone divisions the same as they treat independent payphone providers.

The MoPSC denied these requests and elected not to expand the scope of the proceeding beyond examination of any entry or exit barriers and public interest payphones.¹⁴

The MoPSC had still not reviewed the lawfulness or reasonableness of the Missouri Payphone Tariffs under contested case procedures.

C. Case No. TC-2003-0066.

On August 22, 2002, twenty-five payphone providers, including members of MICPA, filed a complaint with the MoPSC against Southwestern Bell Telephone Company, Sprint Missouri, Inc. and GTE Midwest Incorporated, doing business as Verizon Midwest, asserting that the respondents' payphone access line rates, and other charges related to private payphone services, were unjust, unreasonable and unlawful because they were not cost-based, recovered more than a reasonable amount of the company's common expenses, and consequently did not comply with the New Services Test. The complainants requested a Commission order directing each respondent to set payphone rates and related charges in compliance with the New Services Test and directing each respondent to pay refunds of overcharges paid by the complainants. Case No. TC-2003-0066 was assigned to the complaint.

Motions to dismiss were filed by each of the LEC respondents. On January 9, 2003, the MoPSC entered an order sustaining the motions to dismiss, ruling that: a) the complaint lacked the requisite twenty-five qualified customers or prospective customers required by Section 386.390.1;¹⁵ and b) without an allegation that an intervening change in circumstances had occurred, the complaint constituted a collateral attack on previously MoPSC-approved tariffs barred by Section 386.550. *See* discussion of Case No. TT-97-345 in Section II(A), *supra*.

¹⁴ *Order Regarding The Investigation of Payphone Issues, Case No. TW-98-207 (1998). Attachment 3.*

¹⁵ Missouri statutory references are to RSMo 2000, as updated through the current cumulative supplement, unless otherwise indicated.

The Complainants and the Missouri Office of Public Counsel (OPC) filed timely applications for rehearing in which they jointly argued, among other things, that the MoPSC misinterpreted Section 386.550 particularly when juxtaposed against Section 386.270 which 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.** [emphasis added]

In its order denying rehearing, the MoPSC rejected those arguments relying on opinions in *State ex rel. Licata v. PSC*, 829 S.W.2d 515, 519 (Mo. App., W.D. 1992), and *State ex rel. Ozark Border Electric Cooperative v. PSC*, 924 S.W.2d 597, 600-601 (Mo. App., W.D. 1996). The MoPSC went on to describe the manner in which the bar of Section 386.550 might be lifted:

The *Ozark Border* case, also cited by the [MoPSC] in its Order of January 9, explains how the requirement of Section 386.550 may be satisfied. **The complaint need simply contain an allegation of a substantial change in circumstances. This is not a heavy burden for a pleader to meet.** In the case of an earnings investigation, for example, a complaint might be sufficient that did no more than **plead the passage of time** since the MoPSC's last rate order and the occurrence of intervening economic fluctuations.¹⁶ [emphasis added]

The Circuit Court of Cole County, Missouri, affirmed the Commission's decision.

D. Case No. TC-2005-0067

On August 27, 2004, twenty-five payphone service providers reinitiated complaint proceedings in the MoPSC against AT&T alone alleging as before that AT&T's payphone access line rates, and other charges related to private payphone services, were unjust, unreasonable and unlawful because they were not cost-based, recovered more than a reasonable amount of the

¹⁶ *Order Denying Rehearing And Denying Complainants' Alternative Motion For Leave To Amend, Case No. TC-2003-0066*, February 4, 2003, pages 9-10. Attachment 4

company's common expenses, and consequently did not comply with the New Services Test. The complainants requested a Commission order directing AT&T to set payphone rates and related charges in compliance with the New Services Test and directing AT&T to pay refunds of overcharges paid by the complainants. The rate complaint also alleged, *inter alia*, facts complying with the MoPSC's direction on overcoming the "collateral estoppel" barrier of Section 386.550.

Under MoPSC rules a named respondent to a rate complaint may elect to request mediation before filing an answer or other response, and on October 15, 2004, AT&T exercised that option. Complainants agreed to mediate the complaint and by order dated November 10, 2004, the MoPSC suspended regular proceedings to allow mediation to proceed.

1. Proceedings Suspended.

What followed was a lengthy period of negotiation between the complainants and AT&T during which joint status reports were submitted to the MoPSC. While regular proceedings on the complaint were in suspense and the matter under periodic status review the parties were assured more opportunities for settlement or mediation. During a good portion of this period of suspense, this Commission was itself examining six separate Petitions for Declaratory Ruling filed by the Illinois Public Telecommunications Association, the Southern Public Communication Association, the Independent Payphone Association of New York, Inc., the Florida Public Telecommunications Association, Inc., the Payphone Association of Ohio and the Michigan Pay Telephone Association. The issues presented by the separate Petitions for Declaratory Ruling included whether refunds should be issued by Bell Operating Companies (BOCs) that did not have NST-compliant rates in effect, and with respect to the Michigan Pay Telephone Association's petition, whether the current payphone usage rate in Michigan was not

NST-compliant. This Commission's guidance on the refund issue was important to the complainants in the reinitiated complaint in Case No. TC-2005-0067.

During the course of the negotiations and following, complainants also sought to keep the proceeding in suspense in order to await this Commission's decision in the *NST Refund Order*. The complainants sought and were granted several delays in the reinstatement of the proceeding.

2. AT&T's Motion to Dismiss and MoPSC's Dismissal Order

Eventually the MoPSC directed AT&T to file an answer. AT&T filed its answer and a motion to dismiss the complaint on April 1, 2013.¹⁷ AT&T moved to dismiss the complaint on six grounds: 1) the filed rate doctrine; 2) the MoPSC's prohibition on retroactive rate making; 3) collateral estoppel; 4) lack of the number of requisite qualified complainants and none had signed the complaint; 5) lack of MoPSC jurisdiction under Section 276 of the Act; and 6) lack of MoPSC jurisdiction because of Missouri's "price cap" statute. AT&T's arguments on the "price cap" ground of dismissal commenced on page 11 of its motion to dismiss:

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 regulation to ensure just, reasonable and lawful rates [*footnote omitted*] 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

¹⁷ See *AT&T Missouri's Motion to Dismiss, Answer, Affirmative Defenses and Opposition to Request for Waiver*, Attachment 5.

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) [footnote omitted], 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:**

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.

[bold emphasis added; underlined emphasis found in the original]

On April 30, 2013, the payphone complainants filed suggestions opposing AT&T Missouri's motion to dismiss. In their response to AT&T's "price cap" argument, the complainants observed that the argument proceeded from the faulty predicate that a rate which was invalid *ab initio* under federal law was somehow insulated from attack by state legislation.

Complainants further contended:

But not only is AT&T's argument inconsistent with the state legislation, which was intended for a different purpose, AT&T's argument ignores entirely federal legislation and federal agency directives.

Turning to the federal legislation and agency directives first, AT&T contends it came under competitive pressure and in turn was deregulated by Section 392.245 in December of 1996. Irrespective of its status under the Price Cap Statute, AT&T filed the Payphone Tariffs in obedience to the Payphone

Orders and in acknowledgment of the supremacy of the FCC on the issues of payphone rate legality. If it had the right to ignore the FCC and refuse to file tariffs that complied with the Payphone Orders, it certainly failed to timely assert it. To accept AT&T's argument would mean that AT&T was not required under the Price Cap Statute to file new payphone tariffs as required by the FCC but it did so voluntarily anyway.

In any event, as AT&T's own chronicle of the many attempts to test the lawfulness of the rates by adjudication demonstrates, these are rates that have been under continuous challenge since they were proposed. If AT&T is correct that the Commission has no authority to reset the rate, that does not prevent the Commission from determining that the rate is not lawful because it exceeds a NST based rate and from ordering refunds. Nothing in the price cap law precludes the Commission from passing on the lawfulness of a tariffed rate which it was mandated to review and indeed had under review at the time the law was passed. The Commission is not precluded from completing that review and ordering refunds.

The fact that the Commission does have the authority to conclude its review of the rate and determine its lawfulness also makes clear the futility of AT&T's argument that the Commission cannot order a new rate. Complainants believe the Commission will, upon full review, find that the current rates do not meet the FCC's new services test standard and were therefore unlawful. Under AT&T's reasoning, the Commission would have to leave the unlawful rate in effect because the Commission cannot order a new rate.

There are two difficulties with AT&T's reasoning. The first is that it would lead to the paradox of leaving an unlawful rate in effect, which surely was not the intent of the legislature. And this leads to the second difficulty with AT&T's reasoning: if the rate were determined to be unlawful and AT&T persisted in charging the rate, payphone providers would periodically be able to sue for refunds of the excess above the lawful rate. As a practical matter, AT&T would have to amend the tariff or there would be periodic, wasteful litigation.¹⁸

On June 5, 2013, the MoPSC entered its *Order Regarding AT&T Missouri's Motion To Dismiss* ("*MoPSC Dismissal Order*").¹⁹ The MoPSC rejected the Complainants' position and agreed with AT&T's jurisdictional argument that the MoPSC lacked authority under the "price cap" statute to adjust the complained of payphone access line rates and related charges:

¹⁸ *Complainants' Response To AT&T Missouri's Motion To Dismiss* at 20-21. Attachment 6.

¹⁹ Attachment I.

AT&T Missouri's motion to dismiss asserts multiple grounds upon which the [MoPSC] should dismiss the complaint. The [MoPSC] will address two of those grounds in detail as together they are dispositive. The first ground asserted by AT&T Missouri is that the [MoPSC] no longer has authority under either federal or state law to set the rates the company may charge its payphone customers.

AT&T Missouri points out that the foundation of the Complainants claim is 47 U.S.C. 276. That section of the federal statutes is designed to prevent Bell operating companies, such as AT&T Missouri, from subsidizing their own payphone service or otherwise discriminating against independent payphone providers. As the Complainants explain in their complaint, the requirement that AT&T Missouri's payphone rates comply with the New Services Test pricing formula is founded on section 276. AT&T Missouri now asserts that it has not provided its own payphone service since at least 2010 and therefore the [MoPSC] no longer has authority to adjudicate the complaint under federal law.

AT&T Missouri's argument may be correct, but the [MoPSC] has no basis for considering that argument for purposes of the current motion to dismiss the complaint on the pleadings. For purposes of the motion to dismiss, the [MoPSC] is only evaluating whether the complaint is sufficient to state a claim that the [MoPSC] can address. At this point, there is no evidence before the [MoPSC] that would establish as a fact that AT&T Missouri no longer provides its own payphone service. Indeed, for purposes of considering the motion to dismiss, the [MoPSC] must presume that the Complainant's allegation to the contrary is true. As a result, AT&T Missouri's argument that it is no longer subject to 47 U.S.C. 276 cannot be the basis for the dismissal of the complaint.

AT&T Missouri also argues that the [MoPSC] no longer has authority to set AT&T Missouri's payphone rates because of changes in Missouri law. The [MoPSC] takes administrative notice of the fact that AT&T Missouri is currently a competitive company for purposes of regulation by this [MoPSC]. Missouri law provides:

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 rate 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 392.500.²⁰

²⁰ See, Section 392.245.5(6).

Thus, under Missouri law, the [MoPSC] no longer has authority to order AT&T Missouri to charge a particular rate for its competitive services, including its payphone services.²¹

On July 3, 2013, the complainants filed an application for rehearing of the *MoPSC Dismissal Order* pursuant to Missouri statute and MoPSC rules. With respect to the MoPSC's conclusion that Section 392.245 precluded MoPSC from reducing the payphone rates, the complainants argued that as alleged in the complaint, the Missouri Payphone Tariffs were unlawful when the MoPSC first reviewed and approved them. Subsequently enacted statutes allowing liberalized regulation of AT&T's rates and charges did not cleanse the Missouri Payphone Tariffs from that initial unlawfulness, or immunize them from scrutiny and correction by the MoPSC. Complainants further argued:

Federal law guarantees the Complainants an NST compliant payphone access line rate commencing on April 15, 1997 and continuing. The [MoPSC] has concluded that state law preempts the federal law which makes that guarantee. Even if the [MoPSC] has no authority to reset the rate prospectively, which Complainants do not concede, that certainly does not prevent the [MoPSC] from determining that the current rate is unlawful because it exceeds a NST based rate and ordering refunds. Nothing in Section 392.245, RSMo (Cum. Supp. 2012), precludes the [MoPSC] from passing on the lawfulness of a tariffed rate which it was mandated to review and indeed had under review at about the time the law was passed.²² The [MoPSC] is not precluded from completing that review, and it is not precluded from ordering refunds. Plainly, this [MoPSC] has not lost its power and authority to rectify the consequences of AT&T's collection of charges based on unjust, unreasonable and unlawful rates.

On July 31, 2013, the MoPSC entered a two page order denying complainants' application for rehearing²³ without discussion of the merits. The MoPSC closed its case file in

²¹ Attachment 1 at 4-5.

²² The revisions to Section 392.245 relied upon by the MoPSC for its decision were enacted in SB 507, Laws of 1996, Missouri General Assembly.

²³ Attachment 7

this matter on September 3, 2013. Complainants have exhausted all available remedies at the MoPSC.

IV. DISCUSSION AND REQUEST FOR RELIEF

In April, 1997, AT&T's payphone access lines rates were approved by the MoPSC without an investigation and subsequent hearing. MICPA asserts that those rates do not comply with the New Services Test. Those rates have been in effect since April 15, 1997 and are still in effect. AT&T has overcharged Missouri payphone service providers for local exchange network services since April 15, 1997, and has collected significant amounts of dial-around compensation for which it was not eligible, both in direct violation of the *Payphone Orders*.²⁴

Section 276 of the Act establishes requirements designed to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public. In implementing section 276, the Commission has required that incumbent LECs file tariffs for basic payphone lines at the state level and that LEC rates should be cost based, nondiscriminatory, and consistent with both Section 276 and *Computer III* tariffing guidelines; specifically, those rates must satisfy the requirements that the Commission applies to new interstate access service proposed by incumbent LECs subject to price cap regulation (the NST). Although the Commission has relied in the first instance on state commissions to ascertain that tariffed rates, terms, and conditions applicable to the provision of basic payphone lines comply with the requirements of section 276, it has also determined that when state commissions are unable to review those tariffs, LECs operating in such states may be required to file and justify them in this Commission. The Commission retains jurisdiction under Section 276 to ensure that all requirements of Section 276 and its payphone orders are met.

²⁴ See *supra* note 1.

MICPA, and those Missouri independent payphone providers with which it is aligned, have been unceasing in their efforts to move the MoPSC toward open proceedings by which to test whether the Missouri Payphone Tariffs satisfy the NST. Starting with the denial of MICPA's request for intervention, investigation and hearing filed in the *Missouri Payphone Order*, and continuing through the recent *Missouri Dismissal Order*, the MoPSC has repeatedly refused lawful appeals and has not tested the Missouri Payphone Tariffs against the standards of the NST. Therefore, at this hour, the MoPSC **has never made** a determination that the Missouri Payphone Tariffs satisfy the NST.

This Commission has entertained a series of petitions for declaratory rulings submitted by associations of payphone providers in which it was asked to overturn a state commission's finding or determination that payphone rates were NST compliant or that payphone rates were non-NST compliant but payphone providers were not entitled to refunds for overcharges. This Commission has also considered petitions asking for clarification and resolution of state commission decisions purportedly inconsistent with the *Payphone Orders*; petitions seeking guidance on the effect of the end user common line charge (EUCL) on payphone line rates; and petitions requesting rulings on proper tests to calculate overhead allocations under the NST. MICPA's petition is unlike any the Commission reviewed and ruled upon in the *NST Refund Order*.

In the *Missouri Dismissal Order*, the MoPSC determined that it "no longer has authority to order AT&T Missouri to charge a particular rate for its competitive services, including its payphone services." The MoPSC's stated lack of authority to review the Missouri Payphone Tariffs invokes this Commission's obligations under section 276²⁵ and the Commission's *Payphone Orders* to promote competition among payphone service providers and ensure the

²⁵ 47 U.S.C. § 276 (b)(1).

widespread deployment of public payphone service. Accordingly, and as it did in the *Wisconsin Order*, the Commission should enter the relief requested in this petition.

REQUEST FOR RELIEF

MICPA respectfully requests that the Commission enter the following:

- 1) an order directing Southwestern Bell Telephone Company, L.P. d/b/a AT&T Missouri to submit to the Commission cost documentation supporting its currently effective tariffs for intrastate payphone service offerings (“Missouri Payphone Tariffs”) along with copies of the tariffs, which tariffs have not been determined by the MoPSC to comply with section 276 of the Act and the Commission’s orders and rules along with supporting cost information to show those rates complied at the time they were put in effect and have remained in compliance with the Commission’s NST;
- 2) A determination and declaratory ruling that the AT&T Missouri Payphone Tariff **are not** cost based, nondiscriminatory, and consistent with both section 276 and the Commission’s *Computer III* tariffing guidelines, specifically that **they fail** to satisfy the requirements that the Commission applies to new interstate access service proposed by incumbent LECs subject to price cap regulation (the “new services test”);
- 3) an order directing AT&T Missouri to issue refunds of over charges for its payphone service offerings;
- 4) an order directing such other proceedings as are appropriate to grant the relief herein requested; and

5) such other relief as deemed necessary to enforce the Commission's *Payphone Orders*.²⁶

Respectfully submitted,

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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, attorney for AT&T Missouri; and MoPSC General Counsel's Office at gencounsel@psc.mo.gov

/s/ Mark W. Comley

Mark W. Comley

²⁶ Petitioners recognize that the disposition of this case could be affected by the Petition for Review of the Commission's *NST Refund Order*. 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. Accordingly Petitioners have concurrently filed a motion seeking to hold disposition of this matter in abeyance pending the Court's decision in that matter.

EXHIBITS TO

**MIDWEST INDEPENDENT COIN
PAYPHONE ASSOCIATION'S
PETITION**

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
June, 2013.

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

ORDER REGARDING AT&T MISSOURI'S MOTION TO DISMISS

Issue Date: June 5, 2013

Effective Date: July 5, 2013

This complaint has been pending since August 27, 2004, when the Complainants, a group of payphone service providers, filed a complaint against Southwestern Bell Telephone Company, L.P. d/b/a Southwestern Bell Telephone Company. (Southwestern Bell Telephone Company now does business as AT&T Missouri and will be referred to as such in this order.) The Complainants and AT&T Missouri agreed to mediation in 2004, and the Commission stayed these proceeding to allow meditation to proceed. Despite periodic prodding from the Commission, this complaint remained stayed for mediation until July 28, 2011, when the Commission ended the stay of proceedings and ordered AT&T Missouri to file its answer.

INDEX TO EXHIBITS

- Attachment 1 Mo PSC Order Regarding AT&T Missouri's Motion to Dismiss, dated June 5, 2013; Case No. TC-2005-0067
- Attachment 2 MoPSC Order Approving Tariff Revisions, Denying Applications to Intervene, Motions to Suspend, and Motion for Protective Order, and Denying as Moot Discovery Requests, dated April 11, 1997; Case No. TT-97-345
- Attachment 3 MoPSC Order Regarding the Investigation of Payphone Issues, dated October 8, 1998; Case No. TW-98-207
- Attachment 4 Mo PSC Order Denying Rehearing and Denying Complainants' Alternative Motion for Leave to Amend, dated February 4, 2003; Case No. TC-2003-0066
- Attachment 5 AT&T Missouri's Motion to Dismiss, Answer, Affirmative Defenses and Opposition to Request for Waiver, dated April 1, 2013; Case No. TC-2005-0067
- Attachment 6 Complainants' Response to AT&T Missouri's Motion to Dismiss, dated April 30, 2013; Case No. TC-2005-0067
- Attachment 7 Mo PSC Order Denying Application for Rehearing, dated July 31, 2013; Case No. TC-2005-0067

The Complainants asked the Commission to reconsider its order directing AT&T Missouri to file its answer, explaining that proceedings on the complaint should remain suspended while the parties awaited guidance from an anticipated ruling from the Federal Communications Commission (FCC). At the Complainant's urging, the Commission reconsidered its order and further suspended these proceedings to await a ruling from the FCC.

On February 26, 2013, the Commission denied the Complainant's request for a further suspension and ordered AT&T Missouri to file its answer by April 1, 2013. Coincidentally, the FCC released its long-awaited order on February 27, 2013.¹ AT&T Missouri filed its answer, accompanied by a motion to dismiss, on April 1, 2013. At the Commission's direction, Staff and the Complainants responded to the motion to dismiss on April 30, 2013. AT&T Missouri replied on May 20, 2013.

AT&T Missouri's motion to dismiss asks the Commission to dismiss the complaint on the pleadings. In deciding such a motion, the Commission must decide "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings"² That means the well pleaded facts of the non-moving party's pleading are accepted as true for purposes of the motion.³ Thus, in deciding AT&T Missouri's motion, the Commission must accept the factual allegations of the complaint as true. It is also important to remember that the motion to dismiss currently before the Commission is not a motion for summary determination. For that reason, the Commission cannot consider factual allegations outside the four corners of the pleadings.

¹ Despite the long wait for the FCC to issue the order, nothing in that order is dispositive of this complaint.

² *Ocello v. Koster*, 354 S.W.3d 187, 197 (Mo 2011), citing *RGB2, Inc. v. Chestnut Plaza, Inc.* 103 S.W.3d 420, 424 (Mo. App. 2003).

³ *Ocello v. Koster*, at 197.

Before examining AT&T Missouri's motion to dismiss, the Commission must first consider the details of the complaint. The Complainants are a group of competitive independent payphone service providers who are either present or prospective customers of network services including payphone access line service and other associated services that are offered under rates, terms and conditions set forth in AT&T Missouri's tariffs. The complaint alleges that in 1996 Congress amended the Federal Communications Act to promote competition in the public payphone field. In particular, 47 U.S.C. §276 imposes certain restrictions on Bell operating companies, such as AT&T Missouri, to prevent them from subsidizing or discriminating in favor of their own payphone services.

One of the restrictions placed on Bell operating companies is a requirement that network services made available to payphone providers be provided at rates that comply with the New Services Test pricing formula as established by Federal regulations at 47 C.F.R. §61.49. In implementing that regulation, the FCC required the Bell operating companies to submit tariffs for basic payphone service to the appropriate state commissions for approval. AT&T Missouri submitted payphone service tariffs to this Commission and the Commission approved those tariffs in Case No. TT-97-345, to be effective on April 15, 1997.

The Complainants assert that there has been a substantial change in circumstances since the Commission approved AT&T Missouri's payphone tariffs. In particular, they assert that subsequent interpretations of the New Services Test set forth by the FCC call into doubt whether the AT&T Missouri tariffs that the Commission approved in 1997 comply with that test. The Complainants assert that since those tariffs do not comply with the New Services Test, the payphone rates charged by AT&T Missouri since 1997 are unjust and

unreasonable and are above what is allowed by applicable law. They ask the Commission to set new rates for AT&T Missouri's payphone services. Further they ask the Commission to order AT&T Missouri to calculate the difference between the old and new payphone rates and refund the difference, with interest, to the Complainants.

AT&T Missouri's motion to dismiss asserts multiple grounds upon which the Commission should dismiss the complaint. The Commission will address two of those grounds in detail as together they are dispositive. The first ground asserted by AT&T Missouri is that the Commission no longer has authority under either federal or state law to set the rates the company may charge its payphone customers.

AT&T Missouri points out that the foundation of the Complainants claim is 47 U.S.C. 276. That section of the federal statutes is designed to prevent Bell operating companies, such as AT&T Missouri, from subsidizing their own payphone service or otherwise discriminating against independent payphone providers. As the Complainants explain in their complaint, the requirement that AT&T Missouri's payphone rates comply with the New Services Test pricing formula is founded on section 276.⁴ AT&T Missouri now asserts that it has not provided its own payphone service since at least 2010 and therefore the Commission no longer has authority to adjudicate the complaint under federal law.⁵

AT&T Missouri's argument may be correct, but the Commission has no basis for considering that argument for purposes of the current motion to dismiss the complaint on the pleadings. For purposes of the motion to dismiss, the Commission is only evaluating whether the complaint is sufficient to state a claim that the Commission can address. At this point, there is no evidence before the Commission that would establish as a fact that

⁴ Complaint, Paragraphs 36-37.

⁵ Motion to Dismiss, Paragraph 6.

AT&T Missouri no longer provides its own payphone service. Indeed, for purposes of considering the motion to dismiss, the Commission must presume that the Complainant's allegation to the contrary is true. As a result, AT&T Missouri's argument that it is no longer subject to 47 U.S.C. 276 cannot be the basis for the dismissal of the complaint.

AT&T Missouri also argues that the Commission no longer has authority to set AT&T Missouri's payphone rates because of changes in Missouri law. The Commission takes administrative notice of the fact that AT&T Missouri is currently a competitive company for purposes of regulation by this Commission.⁶ Missouri law provides:

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 rate 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 392.500.⁷

Thus, under Missouri law, the Commission no longer has authority to order AT&T Missouri to charge a particular rate for its competitive services, including its payphone services.

The second ground AT&T Missouri asserts as a basis for dismissing the complaint is its claim that the Complainants have no legal right to challenge the validity of AT&T Missouri's existing payphone rates. Furthermore, AT&T Missouri asserts that even if the Commission were to find those rates to be invalid, it has no authority to order refunds as requested by the Complainants.

⁶ *In the Matter of Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Application for a Commission Finding that 55% of AT&T Missouri's Total Subscriber Access Lines are in Exchanges Where Its Services have been Declared Competitive.* Declaration of Competitive Status, File No. TO-2009-0063, Issued November 26, 2008.

⁷ Section 392.245.5(6), RSMo (Supp. 2012). Under Section 392.500 RSMo (Supp. 2012), tariff filings that would decrease rates are effective on one day's notice to the Commission. Tariff filings to increase rates require ten-day's notice.

AT&T Missouri's current payphone rates were established by tariff, effective on April 15, 1997. The Commission approved those tariffs in an order issued on April 11, 1997.⁸ Missouri law regarding the effect of utility tariffs is quite clear. Section 386.270, RSMo 2000 states:

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.

Thus, once AT&T Missouri's tariff went into effect, that tariff acquired:

the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves. ... If such a schedule it 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.⁹

As a result, AT&T Missouri's payphone rates that were put into effect by its 1997 tariff are the company's lawful rates and remain in effect.

The complainants seek to attack the lawfulness of AT&T Missouri's payphone services tariff by attacking the lawfulness of the Commission's order that approved that tariff. In their response to AT&T Missouri's Motion to Dismiss, the Complainants argue that the Commission's order that approved AT&T Missouri's tariff was unlawful because the Commission did not conduct a hearing under contested case procedures before issuing its order approving the tariff and did not make findings of fact and conclusions of law in its order approving the tariff.

The Complainants' argument that the Commission was required to conduct a hearing and make findings of fact and conclusions of law when it approved AT&T

⁸ *In the Matter of Southwestern Bell Telephone Company's Revision to the General Exchange Tariff*, PSC Mo. No. 35, *Regarding Deregulated Pay Telephone Service.*, 6 Mo. P.S.C. 3d 216 (1997).

⁹ *State ex rel. St. Louis County Gas Co. v. Pub. Serv. Com'n of Mo.* 315 Mo. 312, 317, 286 S.W. 84, 86 (Mo.

Missouri's tariff is legally incorrect. First, the Commission's decision whether to suspend a filed tariff is a noncontested case for which there is no automatic right to a hearing.¹⁰ Second, in a noncontested case the Commission is not required to make findings of fact.¹¹

More importantly, the Complainant's attempt to collaterally attack the Commission's 1997 order is precluded by Missouri law. Section 386.550, RSMo 2000 states: "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." That means, "if a statutory review of an order is not successful, the order becomes final and cannot be attacked in a collateral proceeding."¹² Consequently, the Commission's 1997 order approving AT&T Missouri's payphone rates cannot be challenged in this proceeding.

Just because the Commission's 1997 order is not subject to collateral attack does not mean AT&T Missouri's payphone rates can never be challenged. Instead, the Complainants can challenge those rates without engaging in a forbidden collateral attack by alleging a change in circumstances that would render those rates no longer in the public interest.¹³ The Complainants have made such an allegation in their complaint and for the purposes of this motion, the Commission must presume that allegation to be correct. However, at this point, the Complainants' attempt to challenge AT&T Missouri's payphone rates runs headlong into the previously established fact that the Commission no longer has statutory authority to modify the rates charged by a competitive company such as AT&T Missouri. Thus the Commission no longer has authority to determine whether the rates AT&T Missouri charges for payphone service are in the public interest.

1926).

¹⁰ *State ex rel. Coffman v. Pub. Serv. Com'n*, 121 S.W.3d 534 (Mo. App. W.D. 2003).

¹¹ *State ex rel. Public Counsel v. Pub. Serv. Com'n*, 210 S.W.3d 344 (Mo. App. W.D. 2006).

¹² *State ex rel. Licata, Inc. v. Pub. Serv. Com'n*, 829 S.W.2d 515 (Mo. App. W.D. 1992).

The Commission no longer has authority to alter AT&T Missouri's competitive rates, but can it, as the Complainant's ask, order the company to make refunds for past overcharges? Clearly, the Commission has no authority to order such refunds. First, since AT&T Missouri's payphone rates were lawfully established in 1997 and have remained the company's lawful rates since that time, there could be no factual basis for any refund. Second, even if there were some factual basis for ordering a refund, the Commission has no legal authority to do so.

The Missouri Supreme Court has held that retroactive ratemaking is not allowed under Missouri law. In the words of the court, "[the Commission] 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."¹⁴ Thus, the Commission has no authority under state law to order AT&T Missouri to make any refunds to the Complainants.

That leaves open the question of whether this Commission is required under federal law to order AT&T Missouri to make refunds to the Complainants. The FCC has indicated that there is no "absolute right to refunds" in cases such as this that have been addressed by other state commissions. Instead, the FCC notes that "in deciding whether to award refunds, the state commissions properly looked to applicable state and federal law and regulations and decided for reasons specific to each state's analysis, not to order refunds."¹⁵ The Commission concludes that nothing in federal law requires it to order AT&T Missouri to make refunds to the Complainants.

¹³ *State ex rel. Ozark Border Elec. Co-op v. Pub. Serv. Com'n*, 924 S.W.2d 597, 601 (Mo. App. W.D. 1996).

¹⁴ *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Com'n*, 585 S.W.2d 41, 58 (Mo. 1979).

¹⁵ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 13-24, Paragraph 41, (Released February 27,

To summarize, the Commission concludes it has no authority to order a competitive company such as AT&T Missouri to charge a particular rate for its competitive services, including its payphone services. Furthermore, the Commission concludes that the Commission has no legal authority to order AT&T Missouri to make a refund to customers of its payphone services even if the Commission were to find that the company's payphone rates were improperly calculated in 1997. Together, those two conclusions mean the Commission cannot grant the relief the Complainants seek and therefore their complaint must be dismissed.

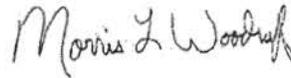
AT&T Missouri also contends the Complainants have failed to properly perfect their complaint by failing to comply with the requirements of Section 386.390(1), RSMo 2000. This argument about deficiencies in the complaint is not dispositive because, even if the Commission found in AT&T Missouri's favor, the Complainants could cure any such deficiencies by amending their complaint. Since the Commission concludes that the complaint must be dismissed on the previously described grounds, the Commission will not address these additional arguments.

THE COMMISSION ORDERS THAT:

1. The complaint of Tari Christ d/b/a ANJ Communications, et al. against Southwestern Bell Telephone Company, L.P. d/b/a Southwestern Bell Telephone Company is dismissed.

2. This order shall become effective on July 5, 2013.

BY THE COMMISSION



Morris L. Woodruff
Secretary

R. Kenney, Chm., Jarrett, Stoll, and
W. Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 11th
day of April, 1997.

In the Matter of Southwestern Bell Telephone)
Company's Revision to the General Exchange) CASE NO. TT-97-345
Tariff, PSC Mo. No. 35, Regarding Deregulated)
Pay Telephone Service.)

ORDER APPROVING TARIFF REVISIONS, DENYING APPLICATIONS TO INTERVENE,
MOTIONS TO SUSPEND, AND MOTION FOR PROTECTIVE ORDER,
AND DENYING AS MOOT DISCOVERY REQUESTS

On January 15, 1997, Southwestern Bell Telephone Company (SWBT) filed a 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. The purpose of the filing is to propose initial tariff changes required to deregulate Pay Telephone Service as required by the Federal Communications Commission (FCC). See *In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order (Fed. Comm. Comm'n, Sept. 20, 1996) and Order on Reconsideration (Fed. Comm. Comm'n, Nov. 8, 1996). The proposed tariff revisions bear an effective date of April 15, 1997. SWBT filed substitute sheets on February 19 and on March 24.

On February 24, 1997, MCI Telecommunications Corporation (MCI) filed with the Missouri Public Service Commission (Commission) five documents: an application to intervene; a motion to suspend SWBT's proposed tariff revisions, including an accompanying affidavit by Lane Kollen, Certified Public Accountant (C.P.A.) and Certified Management Accountant (C.M.A.), and accompanying exhibits; a Motion For Protective Order, Attachment 2
Page 1 of 10

with an exemplar of a protective order used by the Public Utility Commission of Texas; a first request for production of documents directed to SWBT; and a first set of interrogatories directed to SWBT. MCI states in its application to intervene that it has an interest in this proceeding different from that of the general public because the proposed tariff revision may affect MCI's interests as a purchaser of access services and as a provider of intrastate long distance services. MCI states that it opposes SWBT's tariff revision for the reasons set forth in its motion to suspend.

In essence, MCI states in its motion to suspend that in order for SWBT to become eligible for the compensation amount of \$45.85 per payphone per month established by the FCC, SWBT must first remove the payphone subsidies from its regulated operations. MCI contends that based upon the methodology used at the interstate level, the intrastate deregulated payphone revenue requirement associated with the removal of payphone investment and associated expenses is approximately \$22.007 million, and thus SWBT should be required to reduce its intrastate common carrier line (CCL) revenues by \$22.007 million. In support of this claim, MCI filed an affidavit executed by Lane Kollen, C.P.A. and C.M.A. Thus, MCI requests that the Commission suspend SWBT's proposed tariff revisions regarding the deregulation of pay telephone service, in order to allow MCI to complete its discovery regarding SWBT's tariff filing, and to provide an opportunity for a hearing on the removal of the payphone subsidy.

SWBT filed a response on March 4, 1997, stating that MCI's motion for protective order and discovery requests are premature. SWBT also objects to the use of a protective order similar to that used in the State of Texas for the arbitration of interconnection agreements, on the

basis that such a protective order would allow MCI's in-house experts to review highly confidential cost and marketing information. SWBT adds that use of the Commission's standard protective order would not prejudice MCI since MCI has already hired an outside expert to be involved in this case. In addition, SWBT filed a second response on March 6, which responded to the merits of MCI's motion to suspend. SWBT states that MCI does not identify a subsidy, but instead only identifies a revenue requirement without taking offsetting revenues into account. SWBT identified a potential subsidy of \$579,557 from the 1994 rate design approved by the Commission. However, since 1994, SWBT instituted an Optional Payment Plan in Case No. TT-96-21, which effectively eliminated the subsidy. Moreover, SWBT contends that use of the cost of capital recommended by MCI in its arbitration case with SWBT, Case No. TO-97-40, 9.71 percent, would reduce the cost recovery shortfall to 0. Even use of the cost of capital utilized by the Commission in the arbitration case, 10.03 percent, would result in a substantial reduction of the subsidy from \$579,557 to \$40,557.

On March 10, the Staff of the Commission (Staff) filed its response to MCI's motion to suspend. Staff states that it disagrees with the quantification set forth in the affidavit of Lane Kollen, since it ignores the revenue associated with SWBT's intrastate payphone service. Staff states that it has been working with SWBT in an attempt to reconcile all differences raised by the tariff filing, but believes that it is unnecessary to suspend the tariffs as MCI has requested. MCI subsequently filed a reply to Staff's response on March 19. MCI recognizes that the calculation of the payphone subsidy at the intrastate jurisdiction involves the calculation of the revenue requirement associated with SWBT's Missouri payphone operations as offset by the payphone revenues that support that revenue requirement. The core of MCI's argument is that the Commission

should suspend SWBT's proposed tariffs and grant MCI intervention in order to allow MCI to proceed with its discovery requests and assist the Commission in determining the appropriate amount of the payphone subsidy to be removed from intrastate CCL rates. Finally, SWBT filed a reply to MCI's reply to Staff's response on March 27. SWBT points out that MCI failed to address the rate of return issue inherent in the subsidy calculation. The potential subsidy was calculated using the FCC's authorized return of 11.25 percent. SWBT notes that if the Commission used either the 10.03 percent return used in the arbitration case with MCI, or the 9.99 percent return authorized in SWBT's last rate case, Case No. TC-93-224, the purported subsidy would be less than \$50,000.

On March 24, Midwest Independent Coin Payphone Association (MICPA) also filed a motion to suspend and application to intervene. MICPA raises approximately ten issues:

1. SWBT's tariff does not unbundle coin line features from the basic payphone line, and thus, SWBT should be required to tariff "basic payphone lines" for its COCOT and coin line services, and separately tariff the features or functionalities used with the basic lines.
2. MICPA contends that Answer Supervision - Line Side Service and SCOCs service are priced well above their cost, and since SWBT only charges for these services for COCOT lines while including these services at no cost for coin lines, SWBT may not be pricing its COCOT and line features at cost-based rates, and therefore SWBT must be required to disclose its methods for pricing COCOT and coin lines.
3. SWBT's tariff claims that it will provide coin line service only "where the necessary facilities are available," therefore, SWBT must be required to disclose in which areas coin line service is "unavailable" and how many, if any, payphones it has currently installed in such areas, in order to ensure that no discrimination is taking place.
4. Since the FCC orders permit payphone service providers to set coin line end user rates for intraLATA toll calls and the rating of local calls, SWBT must permit independent payphone providers to set the initial time period, the overtime periods, and all rates corresponding to these

rates for local calls, so that the independent payphone providers are not required to use the preferred local rates of SWBT's payphone division. In addition, SWBT should clarify in its tariff that payphone providers can set directory assistance rates and the rates for Directory Assistance Call Completion.

5. SWBT should be required to amend its tariffs to provide that all non-emergency operator assisted calls will be sent to the operator service provider selected by the payphone service provider.
6. SWBT should announce what its number assignment policy is and how the policy is applied to SWBT's payphone division and other payphone service providers.
7. SWBT provides independent payphone providers using COCOT lines with an "07" code, which merely indicates the presence of calling restrictions and can be assigned to a variety of non-payphone lines, while using a unique "27" code which identifies calls as payphone calls for its coin lines. Consequently, having a unique screening code automatically transmitted to the IXC provides SWBT payphones with a tremendous advantage in the collection of per-call payphone compensation, and thus SWBT should clarify in its tariff that it will provide payphone service providers using COCOT lines with a screening code that uniquely identifies their lines as payphone lines.
8. Since operator services are a regulated service separable from SWBT's deregulated payphone service, SWBT must consequently demonstrate that it is not subsidizing its payphone operations or discriminating between its payphone operations and other payphone service providers in the provision of such services.
9. That to the extent there are any differences in call set up timing between COCOT lines and coin lines, or between any independent payphone provider and the SWBT payphone division, SWBT must describe the differences in detail and explain to the Commission what steps it will take to equalize timing in accordance with the FCC's requirements.
10. SWBT should be required to describe the procedures it uses to ensure that SWBT's payphone division pays taxes on the revenue earned from its payphones.

On April 4, 1997, SWBT filed a response to MICPA's motion to suspend. That response may be summarized as follows:

1. SWBT has met the FCC's requirements because the coin line features utilized by SWBT's payphone operations are part of the coin line and these features are offered as part

of the SmartCoin line to other payphone providers under the same terms and conditions. There is no requirement that SWBT separately tariff Call Screening, Coin Supervision, or any of the other functionalities discussed by MICPA.

2. SWBT explains that the cost of providing Answer Supervision for a COCOT line is greater than the cost to provide the same function for dumb sets using SmartCoin service, since SmartCoin is by definition a switch-based coin functionality which uses this existing signaling, at minimal cost, to indicate that the call has been answered and billing should begin, while the Answer Supervision feature provided with smart sets must by necessity deliver the signal from the central office to the customer's pay telephone set.
3. SWBT will provide SmartCoin lines in any central office which currently serves any SWBT payphones. Where SWBT has dumb payphones, its competitors will be able to purchase SmartCoin lines or COCOT lines.
4. The measurement of local calls from payphones is not a service which SWBT provides to its own payphone division, therefore it is not required to provide it for other payphone providers. Since all directory assistance calls are operator handled, these calls have rates set by the payphone provider. The same is true for Directory Assistance Call Completion.
5. Currently, almost all private payphones are smart sets using COCOT service, which allows the payphone service provider to select their own operator service provider and intraLATA carrier through programming in the smart payphone. However, subscribers using dumb sets with SmartCoin service cannot select the operator service provider for intraLATA traffic until intraLATA dialing parity is implemented. Nevertheless, neither the Federal Telecommunications Act of 1996 nor the FCC requires SWBT to implement intraLATA dialing parity for payphones sooner than for any other phones. In addition, the telephone company switch cannot determine in advance whether the caller dialing "0" is making an emergency call.
6. SWBT will assign new payphone numbers randomly to both its own payphone operations and to independent payphone service providers.
7. The FCC has already ruled that SWBT may provide originating line screening (OLS) by means of SWBT's Line Information Data Base (LIDB) for all SmartCoin lines. ANI "27" digits will be provided as ANI II. For all COCOT lines, ANI "07" digits will be provided as ANI II, and a screening code discretely identifying the line as

a payphone will be provided to the IXC as part of the originating line number screening response from LIDB.

8. SWBT's operator services are not part of SWBT's deregulated payphone service, and therefore operator services are not addressed in this filing.
9. SWBT's network does not differentiate between payphone service providers when handling call set up.
10. Deregulation will not affect the imposition of any municipality's taxing policies, therefore MICPA's request is irrelevant to this docket.

Staff filed a memorandum on April 4 containing its overall recommendation regarding SWBT's proposed tariff sheets. The memorandum contained an extensive discussion of the background of this case, including an analysis of the FCC orders, the merits of the motions to suspend, and an analysis of whether the proposed tariff changes comply with the FCC orders. By way of background, Staff indicates that the FCC orders require local exchange companies (LECs) to (1) remove subsidies; (2) offer cost-based rates; (3) offer payphone services to competitors in a nondiscriminatory manner consistent with how it provides those same services to its own payphone operations; (4) apply the multiline business SLC to all lines to which a payphone is attached; (5) establish demarcation points for payphone service providers at parity with that which it provides to its own payphone operations; and (6) obtain state-approved tariffs prior to the receipt of dial-around compensation from interexchange carriers (IXCs) for its payphones. Currently dial-around compensation is set at \$45.85 per payphone per month. On October 7, 1997, this compensation will be set at \$.35 per call, and on October 7, 1998 this compensation will be set at the market rate (local coin rate) in the absence of a specific agreement between the IXC and the payphone provider.

With regard to SWBT's subsidy calculation, Staff maintains that use of the last Commission-authorized rate of return (9.99 percent) is more

appropriate than using the interstate rate of return. Use of the 9.99 percent rate of return yields approximately \$17,000 of revenue in excess of costs for SWBT's intrastate payphone operations. For this reason, Staff believes that no intrastate rate reductions are necessary. The Commission's accounting department has reviewed SWBT's subsidy calculation, and has found SWBT's methodology to be appropriate. However, Staff specifically rejects SWBT's arguments that it is no longer under rate base/rate of return regulation and its argument that no revenue reduction is necessary because of prior rate reductions such as the Optional Payment Plan and Educational Discount, which exceed the subsidy amount. Staff recommends that the Commission reserve judgment in this proceeding as to whether SWBT is no longer under rate base/rate of return regulation, and recommends that the Commission find invalid SWBT's argument that revenues should not be reduced as a result of the institution of the Optional Payment Plan and Educational Discounts.

With regard to MICPA's motion to suspend, Staff states that MICPA wants SWBT to unbundle payphone service to an extent far beyond what has been contemplated by the FCC's orders. Staff is opposed to further unbundling because the FCC's requirements have been met, and because further unbundling may not be wise from a public policy standpoint. For example, the answer supervision utilized by dumb phones is an integral part of the central office functionality and should not be unbundled from "the basic payphone line." In addition, Staff notes that SWBT will not be the "primary beneficiary of its own low coin rates," since payphone service providers may utilize dumb phones under SWBT's proposed tariff filing just as SWBT does. Further, 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. With regard to MICPA's request that SWBT be required to disclose how many payphones it has and in what areas, Staff points out that this information is available to MICPA through SWBT's annual report to the Commission. Staff also questions the wisdom of timing (setting initial time periods and overtime periods) for local payphone calls, and submits that such public policy questions are best addressed outside of the context of a tariff filing. Finally, Staff states that other objections by MICPA such as call set up time, collection of taxes, screening codes, and number assignment are either technical issues not relevant to the tariff process, issues best addressed in other federal or state commission proceedings, or are not relevant to this docket at all. Staff thus recommends that the Commission deny MICPA's motion to suspend, and reiterates its recommendation that the Commission deny MCI's motion to suspend as well.

With regard to the proposed tariff revisions themselves, Staff first explains the difference between smart payphones and dumb payphones, then notes that SWBT currently offers lines to which the smart payphones can be attached, referred to as CCCOT or smart payphone lines. In addition, the tariff revisions will make available SmartCoin or dumb payphone lines, which can be used in conjunction with dumb payphones. The SmartCoin service will provide payphone service providers with OLS, coin supervision and administration, answer supervision, access to 911 and operator services, sent paid quotes, automatic rate table and automatic NPA-NXX update. SWBT proposes to offer fraud protection in the form of selective class of call screening, answer supervision, bill number screening, and installation of basic services on an unbundled basis. SmartCoin customers have the ability to set and change the rates in their dumb phones for local sent paid calls which do not require the assistance

of an operator. In addition, Staff states that SWBT will provide SmartCoin service customers the ability to establish and change rates for operator handled, intraLATA long distance and directory assistance call completion, and sent paid calls, although this is not required by either the FCC or the Commission.

Staff also states that SWBT will provide its SmartCoin service at a monthly rate of \$12 in addition to the existing charge of \$30.70 for its COCOT line rate. SWBT has submitted cost study information in support of its existing and proposed payphone services, and Staff has examined the incremental cost data and submits that SWBT's method of determining costs is in compliance with the FCC's orders. Based upon the cost data, Staff believes that SWBT's proposed rates for its payphone services are reasonable. In addition, Staff indicates that it believes SWBT has complied with the FCC's directive regarding demarcation point standards. Further, Staff notes that SWBT will apply the multiline business SLC to all payphone lines, rather than the residential SLC which it currently applies to the lines of customers who utilize SWBT's semi-public telephone service. Finally, Staff maintains that approval of the proposed tariff sheets will not contradict the Commission's appeal of the FCC's payphone order. Staff concludes that SWBT's proposed tariff filing complies with the FCC's orders, and recommends that the Commission approve the tariff sheets as amended.

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. 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. Therefore, the applications to intervene and motions to suspend filed by MCI and MICPA should be denied. Since the tariff revisions will not be suspended, MCI's motion for protective order is unnecessary, and will be denied. In addition, MCI's discovery requests are denied as moot. The Commission further finds that no intrastate rate reductions are necessary in conjunction with SWBT's subsidy calculation, and finds that the rates proposed by SWBT for its payphone services are just and reasonable.

The Commission finds that approval of the tariff revision will allow SWBT to comply with the FCC's condition precedent to obtaining dial-around compensation from IXCs, at a rate of \$45.85 per payphone per month. Additionally, independent payphone providers will benefit from approval of this tariff filing since they will now be able to use dumb payphones in conjunction with SWBT's SmartCoin service. Moreover, consumers could potentially see the benefits of additional payphone competition. Further, the Commission's decision in this case should not be construed as an indication of whether or not SWBT remains under rate base/rate of return regulation. Finally, in reaching its finding that intrastate rate reductions are unnecessary, the Commission has not relied on SWBT's argument that prior revenue reductions such as the Optional Payment Plan and Educational Discounts should be considered in lieu of ordering a rate reduction in this case.

IT IS THEREFORE ORDERED:

1. That the application to intervene, motion to suspend, and motion for protective order filed by MCI Telecommunications Corporation on February 24, 1997, are hereby denied.
2. That the discovery requests filed by MCI Telecommunications Corporation on February 24, 1997 are hereby denied as moot.

3. That the application to intervene and motion to suspend filed by Midwest Independent Coin Payphone Association on March 24, 1997 are hereby denied.

4. That the following revisions to Southwestern Bell Telephone Company's General Exchange Tariff P.S.C. Mo. No. 35, filed on January 15, 1997, as amended on February 19, 1997, and March 24, 1997, are hereby approved to become effective April 15, 1997:

Section 18

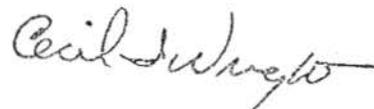
5th Revised Sheet 1 replacing 4th Revised Sheet 1,
6th Revised Sheet 2,
2nd Revised Sheet 3,
4th Revised Sheet 4,
Original Sheets 5, 6 and 7.

Section 34

5th Revised Sheet 1 replacing 4th Revised Sheet 1
6th Revised Sheet 2 replacing 5th Revised Sheet 2
Original Sheet 2.01
Original Sheet 2.02
6th Revised Sheet 3 replacing 5th Revised Sheet 3
1st Revised Sheet 3.01 replacing Original Sheet 3.01
5th Revised Sheet 4 replacing 4th Revised Sheet 4
9th Revised Sheet 5 replacing 8th Revised Sheet 5
Original Sheet 6

5. That this Order shall become effective on April 15, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton, and
Drainer, CC., Concur.
McClure, C., Absent.

ALJ: Bensavage

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of October, 1998.

In the matter of an Investigation of Payphone)
Issues Pursuant to the Telecommunications Act) Case No. TW-98-207
of 1996.)

ORDER REGARDING THE INVESTIGATION OF PAYPHONE ISSUES

Procedural History

On November 14, 1997, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Open Docket. Staff indicated that the Federal Communications Commission (FCC) had issued an order regarding pay telephone reclassification and compensation provisions mandating changes in the regulation of payphone operations. Staff indicated the Commission needed to consider the following two issues: (1) whether the Commission's rules and regulations contain barriers which might impact an independent payphone service provider or local exchange company's (LEC's) ability to freely enter or exit the competitive payphone market; and (2) whether the Commission should adopt provisions which provide for payphones in areas not served by the normal operation of a competitive market, commonly referred to as public interest payphones (PIPs). On December 9, the Commission issued an Order Establishing Case, stating it was going to investigate the two specific issues raised by Staff in its motion. The Commission indicated anyone interested in participating in the investigatory case should file a Notice of Participation no later than January 9, 1998.

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The following parties filed a notice of participation: AT&T Communications of the Southwest, Inc. (AT&T), COMPTEL-MO, GTE Midwest Incorporated (GTE), the Kansas Payphone Association (KPA), the Mid-Missouri Group of Local Exchange Telephone Companies¹ (Mid-Missouri Group), the Midwest Independent Coin Payphone Association (MICPA), the Small Telephone Company Group² (STCG), Southwestern Bell Telephone Company (SWBT), and Sprint Communications Company L.P. and Sprint Missouri, Inc. (filing jointly as Sprint). The Office of the Public Counsel (OPC) participated in this investigation representing the ratepayers of Missouri. The following participants filed a notice of participation but did not file any further statements regarding their positions on the issues the Commission was addressing: Brooks Fiber Communications of Missouri, Inc., Coin TelCo Inc., MCI Telecommunications Corporation, Premier Pay Phone, L.L.C., and the State of Missouri, Office of Administration. All of the above participants were granted participation via Order Granting Participation and Giving Notice of Appearances *Pro Hac Vice* issued February 2, 1998.

¹ Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

² Bourbeuse Telephone Company, BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Iamo Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Ozark Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

A prehearing conference was held January 27 during which the parties met to discuss the issues to be addressed and to establish a procedural schedule. On March 11, Staff filed a proposed procedural schedule. On March 31, Staff submitted a Motion to Submit Straw Proposal. Staff's Straw Proposal stated that Staff believed the docket should address only the issues mandated in the FCC's payphone orders, specifically, whether or not the Commission's rules and regulations contain entry or exit barriers to the payphone market and whether or not there was a need for PIPs in Missouri.

Staff's Motion to Submit Straw Proposal was granted on April 15 and its proposed procedural schedule was adopted. In its Order Granting Motion to Submit Straw Proposal and Adopting Procedural Schedule, the Commission stated the issues to be addressed would be limited to whether any entry or exit barriers to the payphone market existed and if there was a need for a PIP program in Missouri. The Commission declined KPA's request to expand the issues to be addressed.

The Mid-Missouri Group filed its comments regarding Staff's Straw Proposal on April 16. On April 22, STCG filed its comments to Staff's Straw Proposal. On April 28, COMTEL-MO, Sprint, AT&T, SWBT, GTE, and OPC all filed comments on Staff's Straw Proposal.

MICPA filed its comments to Staff's Straw Proposal on April 28. MICPA indicated it had a difference of opinion with Staff on what the scope of the docket should be. MICPA stated that the following issues should be investigated by the Commission: (1) have the LECs filed tariffs that reflect sufficiently unbundled payphone-specific features or functions as required by the 1996 Telecommunications Act and the FCC's payphone orders; (2) are the rates charged for those services cost-based

and in compliance with the "new services" test; (3) have the LECs removed all payphone cost elements from their exchange and exchange access services; and (4) are the LECs treating their own payphone divisions the same as they treat independent payphone providers. MICPA also stated the Commission should address the appropriateness of SWBT's "evergreen contracts." MICPA stated that Staff's Straw Proposal should be more ambitious and that although the issues it set out to be addressed were important, further investigation into the additional issues MICPA raised was necessary.

KPA filed its comments regarding Staff's Straw Proposal on April 28. KPA indicated it had several additional issues that required Commission investigation. KPA stated the Commission needed to investigate whether the monthly service fee charged by LECs in Missouri met the new service test and whether the demarcation point being established for a LEC payphone was the same as the one used for incumbent payphone providers. KPA also listed various other issues it thought needed to be addressed including local call usage charges, billing cycle practices, competitive fairness in treatment by LECs, and municipal regulations relating to taxation, permits and franchising.

On May 18, OPC filed reply comments to Staff's Straw Proposal. OPC indicated MICPA and KPA had raised various additional issues and that some of these issues were outside the range of Staff's Straw Proposal. OPC indicated that to the extent the issues raised qualified as entry or exit barriers, they should be addressed.

Sprint, STCG, SWBT, and GTE all filed additional comments on May 19. Sprint indicated MICPA and KPA were attempting to raise issues in the present proceeding that had previously been addressed in various