

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of )  
 ) CC Docket No. WC-13-139  
The Midwest Independent Coin Payphone Association's )  
Petition for Relief under the Commission's Payphone )  
Orders and for Declaratory Ruling )

**REPLY COMMENTS OF THE  
MIDWEST INDEPENDENT COIN PAYPHONE ASSOCIATION**

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February 20, 2014

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**REPLY COMMENTS**

The Midwest Independent Coin Payphone Association ("MICPA"), on behalf of itself and its members, hereby submits these reply comments in connection with the above captioned proceeding.

On December 26, 2013, MICPA filed its Petition seeking a Federal Communication Commission ("Commission") order 1) 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; (2) a determination and/or declaratory ruling that the Missouri Payphone Tariffs are not cost based, nondiscriminatory, and not consistent with both section 276 and the Commission's Computer III tariffing guidelines and (3) an order directing AT&T Missouri to issue refunds of over charges for its payphone service offerings.

Not surprisingly, on February 7, 2014, AT&T Services, on behalf of its affiliate, Southwestern Bell Telephone Company d/b/a AT&T Missouri (AT&T), filed comments which urge the Commission to deny MICPA's Petition. AT&T argues that the Missouri Payphone Tariffs have been adequately reviewed and approved by the Missouri Public Service

Commission (MoPSC) in 1997<sup>1</sup> and comply with the Commission's requirements. AT&T further argues that because of various regulatory principles and Commission decisions, MICPA members have no right to refunds of charges in excess of new services test ("NST") compliant rates for payphone lines.

In these Reply Comments, MICPA will focus briefly on the proper interpretation of the MoPSC Payphone Order of 1997 which is an elemental point where the positions of the parties collide. The other arguments asserted by AT&T in its comments concern the appropriateness of and a payphone service provider's entitlement to refunds of Bell Operating Company overcharges for payphone services charged pursuant to non-NST compliant rates. These other arguments are now under consideration in *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 Review Proceeding*). The *IPTA Review Proceeding* is highlighted in MICPA's *Motion to Hold Petition in Abeyance* to which AT&T justifiably lodges no objection.

A. THE MISSOURI PUBLIC SERVICE COMMISSION HAS NOT DECIDED THAT THE MISSOURI PAYPHONE TARIFFS COMPLY WITH THE COMMISSION'S NEW SERVICES TEST

On pages 5 and 6 of its comments AT&T essentially contends that the MoPSC ruled in 1997 that the Missouri Payphone Tariffs complied with Section 276 of the Act. Its argument is based on this declaration from the *MoPSC Payphone Order*:

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.

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<sup>1</sup> *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)*. (April 11, 1997). Attachment 2 to the Petition.

Therefore, the applications to intervene and motions to suspend filed by MCI and MICPA should be denied.

In order for the MoPSC to have truly determined that the Missouri Payphone Tariffs complied with Section 276 of the Act, it was required to establish that they met the standards of the NST. As this Commission has ruled many times non NST compliant payphone charges violate Section 276. Nowhere in the *MoPSC Payphone Order* is there a reference to the NST or a finding that the Missouri Payphone Tariffs comply with the NST. This should not be cause for wonder. Whether and to what extent the NST applied to payphone rates and charges had not yet been explicitly addressed by this Commission in 1997. As MICPA observed in its Petition, it was not clear in 1997 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,<sup>2</sup> "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.

To contend that the MoPSC made a determination in 1997 that the Missouri Payphone Tariffs complied with the NST would assume that the MoPSC unquestionably knew then what this Commission would not fully clarify and announce until year 2000. Because the *MoPSC*

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<sup>2</sup> *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*).

*Payphone Order* predates the Commission's *Wisconsin Bureau Order* it has questionable relevance, if it has any at all.

To repeat, the MoPSC did not find that the Missouri Payphone Tariffs met the standards of the NST. Nor did the MoPSC state that its 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.”<sup>3</sup>

AT&T also seems to suggest that MICPA's petition should be rejected because it did not file for judicial review or seek appeal of the *Missouri Payphone Order*. There was no record in the *Missouri Payphone Order*, and as mentioned in the foregoing, there were no findings in the same pertinent to the questions now before this Commission. Appeals would have been fruitless in the long run, and in all likelihood would not have affected the eventual filing of MICPA's Petition in this Commission.

#### B. THE COMMISSION SHOULD HOLD THE PETITION IN ABEYANCE

AT&T has represented that it has no objection to MICPA's concurrent *Motion to Hold Petition in Abeyance* and it should be granted by the Commission. Reaching the merits of the Petition should be delayed until the federal courts enter final orders in the *IPTA Review Proceeding*. At the conclusion of the *IPTA Review Proceeding*, the Commission will undoubtedly request and accept another cycle of comments on the Petition in view of the federal

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<sup>3</sup> *MoPSC Payphone Order* at p. 8-9, Attachment 2. Indeed the only way for this Commission to test whether the MoPSC in fact found the rates to be NST-compliant is for the Commission to make its own determination on whether the rates are NST-compliant.

decisions. Any actions taken now by the Commission on MICPA's Petition could be rendered moot by the federal opinions.

C. CONCLUSION

The *MoPSC Payphone Order* does not block the Commission from granting the relief requested in MICPA's Petition. Because the *IPTA Review Proceeding* is still underway, extensive debate on the merits of MICPA's Petition can be postponed in complete fairness and without detriment to the parties. Given AT&T's lack of objection, and to avoid the risk of needless expenditure of time and resources, there is good cause for granting MICPA's *Motion to Hold Petition in Abeyance*.

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 20th day of February, 2014, to William L. Roughton, Jr. at [broughton@att.com](mailto:broughton@att.com), attorney for AT&T Services; Lera Shemwell at [Lera.shemwell@psc.mo.gov](mailto:Lera.shemwell@psc.mo.gov); Leo Bub at [lb7809@att.com](mailto:lb7809@att.com); and MoPSC General Counsel's Office at [staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov).

*/s/ Mark W. Comley*

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