

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

In the Matter of the Cancellation of the)
Certificates of Service Authority of:)
) Case No. PD-2006-
Kansas City Orange Communications, Inc.)
Phonely Corporation)

**MOTION TO OPEN CASE AND CANCEL CERTIFICATES OF SERVICE
AUTHORITY**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and moves that the Commission cancel the payphone certificates of service authority of the above-captioned companies. In support of its *Motion*, Staff respectfully states:

1. The above captioned companies (Companies) have been granted certificates of service authority by the Missouri Public Service Commission (Commission) to provide private pay telephone services, pursuant to the Commission's authority under Section 386.250, RSMo 2000. A list containing information for each of the Providers was prepared and verified by affiant Staff employee Sherri L. Kohly of the Utility Operations Division of the Commission. A copy of said list attached as "Appendix A."

2. Each of the Companies shares the following facts that support Staff's motion to open a mass docket case for the cancellation of the Companies' certificates:

- a) Staff is unable to contact the Companies through a valid mailing address or telephone number.
- b) The Companies' statement of revenue form for the FY2006 assessment, mailed by the Budget and Fiscal Services Department of the Commission's Administration Division on June 24, 2005, was returned by the post office as undeliverable.

c) The Companies were “dissolved” according to the Office of the Missouri Secretary of State. Both companies were Missouri corporations. Section 351.476(1) states “A dissolved corporation continues its corporate existence but *may not carry on any business except that appropriate to wind up and liquidate its business and affairs...*”

3. Staff believes that the Companies have violated the terms of their certificates of service authority by 1) their failure to keep the Commission informed of a current address and telephone number, and 2) by the failure of the providers to file a statement of revenue for the FY2006 assessment. See Affidavit of Sherri Kohly, marked “Appendix B,” attached hereto and made a part hereof. Section 392.210(2), RSMo 2000 states, among other things, “The Commission shall at all times have access to all accounts, records and memoranda kept by telecommunications companies...” Because the Companies have failed to keep the Commission informed of a current address or telephone number, the Commission is unable to contact the Companies. Therefore, the Companies have denied the Commission the access that is required of the Commission under Section 392.210(2), RSMo 2000. Certainly, the Companies have denied the Commission its ability to supervise telecommunications operations and services as statutorily mandated under Section 386.250.

4. Staff has made an investigation and no other matters are pending in front of the Commission.

5. The Commission has the authority to cancel a certificate to provide payphone services pursuant to Section 392.410.5 RSMo 2000, which provides:

Any certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected.

However, the Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo.App. 1989).

6. Because the Companies have provided no current contact information and because the statement of revenue form for the FY2006 assessment was returned to the Commission by the United States Postal Service as undeliverable, Staff is unable to provide service of this pleading to the Companies directly. Therefore, Staff is serving this pleading on the registered agent for each company listed on the website of the Secretary of State. Section 352.380(1) RSMo 2000 provides:

The registered agent so appointed by a corporation upon whom any process, notice or demand required or permitted by law to be served upon a corporation may be served.

Commission Rule 4 CSR 240-2.080(17)(C)(1) states “Service by mail is complete upon mailing.”

WHEREFORE, the Staff recommends the Commission cancel the certificates of service authority of the Companies to provide private pay telephone service.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ David A. Meyer

David A. Meyer
Senior Counsel
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following, this 2nd day of September 2005.

/s/ David A. Meyer

David A. Meyer

Office of the Public Counsel
Governor Office Building, Suite 650
200 Madison Street
P. O. Box 7800
Jefferson City, MO 65102

Albert A. Taber
Registered Agent for
Kansas City Orange Communications
Rte 3, Box 272AA
Warsaw, MO 65355
(Via Certified Mail)

Lonna Potter
Registered Agent for Phonely Corporation
8205 E 57th Street
Kansas City, MO 64129
(Via Certified Mail)

<u>Certificated Companies</u>	<u>Case No. Date of Certification</u>	<u>Sec. of State Date of Dissolution</u>	<u>Sec. of State Registered Agent</u>
Kansas City Orange Communications, Inc. Box 10020 Alomo, TX 78516	TA-91-227 03/20/1991	04/06/1998	Albert A. Taber Rt. 3, Box 272 AA Warsaw, MO 65355
Phonely Corporation 9532 Roe Avenue Overland Park, KS 66207	TA-93-327 08/10/1993	08/18/1997	Lonna Potter 8205 E. 57 th St. Kansas City, MO 64129

APPENDIX A

VERIFICATION

STATE OF MISSOURI)
)
COUNTY OF COLE)

Comes now Sherri L. Kohly, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that the affiant has read the accompanying pleading and the attached Appendix A, and that the facts therein are true and correct.

Sherri L. Kohly

Sherri L. Kohly
Affiant

Subscribed and affirmed before me this 1st day of September, 2005. I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on June 7, 2008.

Carla K. Schnieders

NOTARY PUBLIC

