

B ✓  
CK  
R.O  
T.W

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 31st day of March, 1998.

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. TC-98-119</u>
	)	
Local Fone Service, Inc.,	)	
	)	
Respondent.	)	
	)	

**ORDER APPROVING STIPULATION**

The Staff of the Commission (Staff) filed a complaint against Local Fone Service, Inc. (Local Fone) on September 15, 1997 stating that local Fone had been providing basic local telecommunications services without an approved tariff. Staff asked the Commission to find that Local Fone had acted in violation of the Commission's Order in Case No. TA-97-411<sup>1</sup> and of Section 392.410.1, RSMo Supp. 1997, and to impose penalties.

Local Fone filed an answer on October 20 stating that it had not intentionally acted to violate the Commission's Order or the statute, that it had voluntarily discontinued service, and that penalties would be inappropriate. Local Fone also asserted defenses to the complaint.

---

<sup>1</sup> Case No. TA-97-411 granted Local Fone certificates of service authority to provide basic local and local exchange telecommunications services. However, the certificates do not become effective until Local Fone's tariff has been approved, a condition not yet satisfied.

The Commission determined that a hearing would be necessary and scheduled an early prehearing conference and a date for the filing of a procedural schedule.

Staff filed a Motion to Establish Procedural Schedule on January 5, 1998, proposing dates for the filing of testimony and a hearing. The Commission adopted Staff's schedule by Order issued January 12. The parties met in prehearing conference and, in lieu of a procedural schedule, submitted a Stipulation (Attachment A to this Order) on March 6 purporting to resolve the issues in the case. Staff, Local Fone, and the Office of the Public Counsel filed the Stipulation jointly and asked the Commission to approve it.

The terms of the Stipulation call for Local Fone to refund the payment of every customer who was erroneously switched to Local Fone for basic local service, including taxes and surcharges. If Local Fone is unable to locate the customer, it will forward the refund to the public school fund as specifically set out in the Stipulation. Local Fone agreed to give the Commission a full accounting of the names, addresses, and amount refunded to each customer, once the Commission issues a Protective Order. Local Fone also agreed to pay any customer's charges for reestablishment of service with Southwestern Bell Telephone Company (SWBT) if that customer had been switched from SWBT to Local Fone, and to pay \$100 per customer for 43 customers (\$4,300 total) into the public school fund of the state of Missouri pursuant to Section 386.570.1, RSMo 1994.

The parties also agreed that, should the Commission accept the terms of the Stipulation, they would waive their rights to present testimony, cross-examine witnesses, present argument or written briefs, to have the transcript read by the Commission, and their rights for rehearing

and judicial review. Staff filed a Motion for Protective Order on March 6 which was granted on March 11. On the same date, Staff filed Suggestions in Support of the Stipulation explaining its rationale for reaching agreement with the other parties.

The Commission has reviewed the Stipulation submitted by the parties, Staff's Suggestions in Support, and the official case file, and finds that the Stipulation should be approved. The Commission finds that the customer refunds, and Local Fone's payment of charges necessary for reestablishment of service with SWBT, are adequate to compensate any customers for the inconvenience they may have experienced as a result of Local Fone's conduct. The Commission finds that the penalty of \$4,300 to be paid into the public school fund of the state of Missouri is adequate under the circumstances and that the Stipulation in general is an appropriate resolution of the issues of this case.

**IT IS THEREFORE ORDERED:**

1. That the Stipulation of the parties filed on March 6, 1998 and attached to this Order is approved in resolution of all issues.
2. That Local Fone Service, Inc. shall comply with the provisions of the Stipulation approved in Ordered Paragraph 1.
3. That Local Fone Service, Inc. shall file with the Commission a full accounting of the names, addresses, and amounts refunded to every customer under the protection of the Protective Order issued in this case on March 11, 1998. This accounting shall be filed with the Commission no later than 30 days after the effective date of this Order.
4. That the procedural schedule previously established is suspended.

5. That this Order shall become effective on April 10, 1998.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Drainer and  
Murray, CC., concur.  
Crumpton, C., absent.

Wickliffe, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

MAR 06 1998

MISSOURI  
PUBLIC SERVICE COMMISSION

The Staff of the Missouri Public Service )  
Commission, )  
)  
Complainant, )  
)  
vs. )  
)  
Local Fone Service, Inc., )  
)  
Respondent. )

Case No. TC-98-119

STIPULATION

In lieu of the current procedural schedule approved in this matter, the parties have reached a Stipulation and Agreement to resolve the Staff's Complaint against Local Fone. The parties stipulate and agree to the following conditions:

A. Local Fone will refund the payment of every customer erroneously switched to Local Fone for basic local service, including taxes and surcharges. If Local Fone is unable to locate the customer due a refund, it will forward that customer's refund to the school fund as provided in subparagraph C of this Stipulation. Local Fone will also give the Commission a full accounting of the names, addresses and dollars refunded to every customer upon the Commission's issuance of a protective order in this matter;

B. Local Fone will pay any customer's charges for reestablishment of service with Southwestern Bell Telephone Company if that customer was switched from Southwestern Bell to Local Fone; and

C. Local Fone agrees to pay \$100 per customer for 43 customers (\$4,300.00 total) into the public school fund of the State of Missouri pursuant to §386.570.1 RSMo (1994).

This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereto are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of its provisions. This Stipulation is specific to the resolution of this proceeding and is made without prejudice to the rights of the signatories to take other positions in other proceedings.

In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein, their respective rights pursuant to §536.080.1, RSMo to present testimony, cross-examine witnesses, and present oral argument or written briefs; their rights to the reading of the transcript by the Commission pursuant to §536.080.2, RSMo; their rights to seek rehearing pursuant to §386.500, RSMo; and their rights to seek judicial review pursuant to §386.510, RSMo.

The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the Applicant's application made herein.

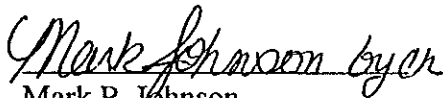
The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant in this matter shall be served with a copy of any such memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting

such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement whether or not the Commission approves and adopts this Stipulation and Agreement.

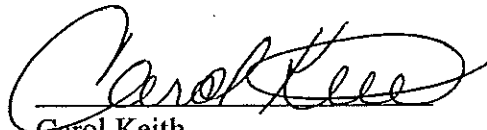
The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

**WHEREFORE**, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and suspending the procedural schedule.

Respectfully submitted,



Mark P. Johnson  
Attorney At Law  
Missouri Bar No. 30740  
Sonnenschein, Nath &  
Rosenthal  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
(816) 932-4400  
(816) 531-7545 (Fax)



Carol Keith  
Assistant General Counsel  
Missouri Bar No. 45065  
Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8706  
(573) 751-9285 (Fax)

*Michael Dandino* by *ch*

Michael Dandino  
Missouri Bar No. 24590  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102  
(573) 751-5559  
(573) 751-5562 (Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 6th day of March, 1998.

*Carol Lee*

**RECEIVED**

MAR 31 1998

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION