

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

Larry Hawkins,)	
Complainant,)	
)	
v.)	Case TC-2005-0139
)	
Comm South,)	
Respondent.)	

STAFF INVESTIGATION AND REPORT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its *Investigation and Report* states as follows:

Background

1. On November 22, 2004, Complainant filed a *Complaint* with the Missouri Public Service Commission (“Commission”). In said complaint, Complainant alleges issues regarding the way his telephone service is being handled and requested relief by compensation.

2. On January 14, 2005, Comm South (MCS) filed a letter in response to said complaint.

3. On January 20, 2005, MCS, filed a letter asking for mediation, stating that “MCS is currently in Chapter 11 bankruptcy and does not have the resources to hire an attorney to answer this complaint.” On January 31, 2005, the Commission filed an *Order Acknowledging Agreement to Mediate, Staying Proceedings and Directing Filing*.

4. On May 2, 2005, Complainant filed a statement indicating that mediation had not taken place. On May 4, 2005, Staff was ordered to investigate the contested issues and file a verified report. The Commission also ordered that “Staff should include its recommendation as to whether the Commission has any jurisdiction to grant relief to the Complainant.” A copy of

said report (Appendix A) is attached hereto and made a part hereof. As called for by the Commission's rule at 4 CSR 240-2.070(10), it is being filed confidentially. However, Staff does not believe any information contained within its report falls within the scope of confidential information, and that no harm would result if the Commission made the report publicly available.

Staff Investigation and Results

5. Staff investigated this complaint by speaking with the Complainant, MCS representatives, Mr. Levin, Mediator with the University of Missouri-Columbia School of Law, and by reviewing billing statements, MCS work papers, the MCS tariff, and other documents entered into the record.

6. Staff believes that the Complainant's issues have been resolved, in that MCS has provided Mr. Hawkins a free number change to a non-published number, is not charging for the non-published number and has also given credit for call traces initiated by Mr. Hawkins. It also appears that MCS has not violated its tariff, Commission statutes or orders in this matter.

7. Regarding the matter of jurisdiction, in Mr. Hawkin's complaint, he stated in part, "The relief I'm looking for is for the companies (sic) Comm South to get with the program [and] some compensation for being unprofessional in dealing with my needs to have a peaceful day [and] night." Section 386.390 RSMo. (2000) authorizes the Commission to hear complaints that set forth "any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility" Thus, the Commission may consider whether the utilities involved have violated any statutes, rules, orders or tariffs. However, "[t]he Commission has no jurisdiction to promulgate an order requiring a pecuniary reparation or refund." *DeMaranville, et al. v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674, 676 (Mo.App. 1978). *See also* State ex rel.

and to Use of Kansas City Power & Light Co. v. Buzard 168 S.W. 2d, 1044 (Mo. 1943). So it appears, in this case that the Commission does not have the authority to provide for the relief requested by the Complainant.

WHEREFORE, Staff submits its investigation for the Commission's consideration.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Mary E. Weston

Mary E. Weston
Assistant General Counsel
Missouri Bar No. 54669

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Telephone)
(573) 751-9285 (Fax)
mary.weston@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties and counsel of record this 13th day of June 2005.

/s/ Mary E. Weston