

At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of February, 2006.

Respondent.

Case No. TC-2005-0357

The Commission conducted an on-the-record presentation on January 11, 2006, for the purpose of questioning the parties about the stipulation and agreement. The State of Missouri, acting through the Office of the Attorney General, appeared at the on-the-record

presentation and asked leave to intervene. CassTel objected to the State's proposed intervention, but the State was provisionally allowed to participate in that day's proceedings, subject to further order from the Commission.

Later on January 11, following the conclusion of the on-the-record presentation, the State filed a written application to intervene. In its application, the State alleged that it is a consumer of telephone services and as such has a significant interest in this matter that it argues cannot be protected by any other party. The State indicated that it wished to intervene to express public policy concerns about the proposed stipulation and agreement.

CassTel responded in opposition to the State's application to intervene on January 17. CassTel argues that the request to intervene should be denied because the Attorney General does not represent any agency that is a customer of CassTel; because the Attorney General has no authority to usurp the Public Counsel's role as a public advocate; and because the request to intervene was untimely and would be prejudicial to the existing parties.

The State replied to CassTel's response on January 19. The State argued that several agencies of the State are customers of CassTel and that the State therefore has an interest in the settlement of this complaint. The State also argued that its application to intervene was not untimely because it asked to intervene as soon as it saw the proposed settlement and became aware of what it perceives to be flaws in language of the stipulation and agreement. CassTel filed a further response to Staff's reply on January 27. The State replied to that response on January 30.

On January 27, Staff filed a response opposing the State's application to intervene. Staff contends that allowing the State to intervene at this point in the proceeding would

likely result in the failure of the proposed settlement embodied in the stipulation and agreement, leading to a need to quickly litigate the complaint. That would mean that the agreed upon penalty of \$1 million would not be paid to the State Public School Fund, to the detriment of the public. Staff also contends that the concerns that the State has expressed about the language of the stipulation and agreement are not valid. Finally, Staff argues that the State's Attorney General was aware of the complaint from the time it was filed and that if it had concerns about this case, the State should have applied to intervene months ago.

The Office of the Public Counsel also filed a response on January 27. Public Counsel indicates that it continues to support the stipulation and agreement, but concedes that the State should be allowed to intervene if it wishes to do so.

Commission rule 4 CSR 240-2.075 provides that the Commission may grant an application to intervene if the proposed intervenor has an interest that is different than that of the general public, and which may be adversely affected by a final order arising from the case. In the alternative, the Commission may grant an application to intervene if doing so would serve the public interest. That regulation also provides that the Commission may grant an application to intervene filed after the intervention date if good cause is shown.

The Commission finds that the State does not have an interest that is different than that of the general public. The mere fact that agencies of the state pay phone bills does not give the state any more standing than that enjoyed by any other individual telephone customer. Furthermore, the State has not shown that its interests as a telephone customer would be adversely affected by a final order arising from this case.

Most fundamentally, the State has failed to show good cause for allowing it to intervene in this case at such a late date. The Attorney General was well aware of the

Commission's ongoing investigation into CassTel from its beginning. The Staff filed its complaint against CassTel in April, 2005. If the State saw a need to become involved in that investigation and complaint, it could have done so at the inception of those actions. Instead, it chose to wait until a final settlement, the culmination of extensive negotiations, was presented to the Commission before applying to intervene. The Commission will not allow the disruption that would result from granting the request to intervene at this late stage of the case. Instead, the Commission will deny the State's application to intervene.

The State indicated that it wished to intervene so that it could make the Commission aware of what it believes to be flaws in the language of the stipulation and agreement. The Attorney General certainly has an expertise in such matters and the Commission is interested in hearing more about those concerns. However, the State does not need to be a party for the Commission to benefit from the expertise of the Attorney General. If it wishes to do so, the State may file a brief as an *amicus curiae*.

IT IS ORDERED THAT:

1. The Application to Intervene of the State of Missouri is denied.
2. If the State of Missouri wishes to file a brief as an *amicus curiae*, it may do so no later than March 1, 2006.

3. This order shall become effective on February 9, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray and Appling, CC., concur
Gaw and Clayton, CC., dissent, dissenting opinion to follow

Woodruff, Deputy Chief Regulatory Law Judge