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August 22, 2002

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED<sup>3</sup>**

AUG 22 2002

Missouri Public  
Service Commission

Re: Tariff No. JL2003-003

Dear Judge Roberts:

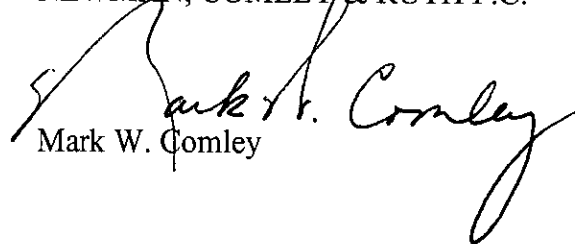
Please find enclosed for filing in the referenced matter the original and eight copies of Midwest Independent Coin Payphone Association's Motion to Suspend and Application to Intervene.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley

MWC:ab

Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Sondra B. Morgan  
Lin Harvey

AUG 22 2002

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

Missouri Public  
Service Commission

In the matter of CenturyTel of Missouri, LLC's )  
Local Network Access Services Tariff, PSC Mo.-No. 1, ) Tariff No. JL2003-003  
Section 8, Regarding Pay Telephone Service )

**MIDWEST INDEPENDENT COIN PAYPHONE ASSOCIATION'S**  
**MOTION TO SUSPEND AND**  
**APPLICATION TO INTERVENE**

COMES NOW Midwest Independent Coin Payphone Association (MICPA) and pursuant to Section 392.230, RSMo 2000, moves the Commission to suspend CenturyTel of Missouri, LLC's (CenturyTel) proposed tariffs regarding pay telephone service. In support thereof, MICPA states the following to the Commission:

1. MICPA is an organization composed of independent pay telephone providers operating within the State of Missouri, the members of which are set out on Appendix A. The Association has appeared and participated in a variety of Commission cases involving the telephone industry and its relationship to competitive payphone providers.<sup>1</sup>

2. On or about July 15, 2002 CenturyTel, a telephone company regulated by the Missouri Public Service Commission, filed with the Commission a series of tariffs designed to set forth its rates and services in exchanges it intends to acquire from GTE Midwest Incorporated, d/b/a Verizon Midwest. In Section 8 of the proposed tariff, on Original Sheet 4 and Original Sheet 4.4, CenturyTel sets out proposed rates and charges for the network services available to payphone providers.

3. MICPA contends that CenturyTel's proposed rates and charges for the local exchange

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<sup>1</sup>MICPA has appeared and participated in the following dockets: Case Nos. TO-96-1; TO-96-135; TA-96-355; TO-96-328; TO-94-184; TO-96-349; TO-95-396; and TO-96-350.

and other network telecommunications services it will offer to payphone service providers fail to comply with Federal Communications Commission's (FCC) directives outlined in Case No. FCC-96-388, Case No. FCC-96-439 (Reconsideration Order), and FCC 02-25. MICPA is unable to discern from the documentation accompanying the tariff filing whether compliance with the FCC directives has occurred. Specifically, there is no showing by CenturyTel that the rates have been set in accord with the New Services Test required by the FCC. The tariff filing is hence unlawful and unreasonable and should be suspended and subjected to a hearing before this body.

4. Copies of orders, notices and correspondences related to this filing should be mailed to the following:

Ms. Lin Harvey  
President  
Midwest Independent Coin Payphone Association  
25 Meadow Ridge Dr.  
St. Peters Missouri 63371  
Telephone: 636/441-9908  
Facsimile: 636/939-1023

Mark W. Comley  
NEWMAN, COMLEY & RUTH, P.C.  
601 Monroe Street, Suite 301  
P. O. Box 537  
Jefferson City, Missouri 65102-0537  
Telephone: 573/634-2266  
Facsimile: 573/636-3306  
*comleym@ncrpc.com*

WHEREFORE, on the basis of the foregoing, and for reasons set forth in the following Supporting Suggestions which are incorporated by reference herein, MICPA respectfully requests that the Commission reject the CenturyTel tariffs regarding payphone service, suspend the same and hold a hearing on the reasonableness thereof, granting MICPA intervention therein and the right to

fully participate at hearing.

## **SUPPORTING SUGGESTIONS**

### **THE FCA AND THE PAYPHONE ORDERS**

In February, 1996 the Federal Communications Act ("FCA") was amended with, *inter alia*, the adoption of section 276, 47 U.S.C. §276. Section 276 of the FCA states in relevant part:

(a) **NONDISCRIMINATION SAFEGUARDS.**--After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service--

- (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and
- (2) shall not prefer or discriminate in favor of its payphone service.

(b) **REGULATIONS.**--

(1) **CONTENTS OF REGULATIONS.**--In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

\* \* \*

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues . . . .;

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding. . . .

47 U.S.C. §276.

Pursuant to Section 276(b) of the FCA, the Federal Communications Commission (“FCC”) initiated an investigation to determine what regulations and policies it would need to develop to implement Section 276, and what nonstructural safeguards were required to be imposed to promote competition in the payphone industry. *In the Matter of the Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 96-388 (released September 20, 1996) (“*Payphone Order*”); Order on Reconsideration, FCC 96-439 (released November 8, 1996) (“*Order on Reconsideration*”); Order, FCC 97-678 (Com. Car. Bur. released April 4, 1997) (“*Bureau Waiver Order*”); Order, FCC 97-805 (released April 15, 1997) (“*Clarification Order*”).

The FCC concluded that it would adopt certain nonstructural safeguards developed through its Computer III proceedings, and apply those nonstructural safeguards to Bell Operating Companies:

we conclude that the Computer III and ONA nonstructural safeguards will provide an appropriate regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service.

*Payphone Order*, ¶199

A nonstructural safeguard ordered by the FCC was the requirement that network services made available to payphone providers be provided at rates that comply with the New Services Test pricing formula set forth at 47 C.F.R. §61.49. *Payphone Order*, ¶146. The FCC held:

Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification Proceeding, must be cost-based, consistent with Section 276, nondiscriminatory, and consistent with Computer III tariffing guidelines.

(*Bureau Waiver Order*, at ¶2; *See also, Clarification Order*, at ¶10.)

The FCC also held that several issues relating to the implementation of the nonstructural safeguards under §276 would be the responsibility of state public service commissions. One such issue that was delegated to states was whether network services provided to payphone providers by local exchange carriers (“LECs”) were in compliance with the requirements of Section 276. The FCC held:

We require LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions as discussed below. LECs must file intrastate tariffs for these payphone services and any unbundled features they provide to their own payphone services. The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services. [fn.] . . . We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276. . . . Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of this order, the *Report and Order*, and Section 276, conclude: 1) that existing tariffs are consistent with the requirements of the *Report and Order* as revised herein; and 2) that in such case no further filings are required.

*Order on Reconsideration*, ¶163 (fn. “The new services test required in the Report and Order is described at 47 C.F.R. Section 61.49(g)(2)); *See also Clarification Order* at ¶11.

Under the FCC’s payphone orders, (see, *Order on Reconsideration*, ¶130-131) Southwestern Bell Telephone Company, Sprint and Verizon, CenturyTel’s predecessor, were required to file tariffs with the Missouri Public Service Commission no later than April 15, 1997, and were further required to remove any subsidies flowing from the noncompetitive ratepayers’ basic exchange service revenue to the LECs’ competitive payphone services. (*Payphone Order*, at ¶180-187.) The FCC has held:

[t]he Payphone Reclassification Proceeding required states to ensure that payphone costs from unregulated equipment and subsidies are removed from intrastate local

exchange service and exchange access service rates. (*Bureau Waiver Order*, at ¶2; *See also, Clarification Order*, at ¶10.)

To implement these provisions, the FCC's Orders provided that states may impose additional nonstructural safeguards necessary to insure that there are no subsidies.

#### THE WISCONSIN ORDER AND THE NEW SERVICES TEST

On January 31, 2002, the FCC entered a Memorandum Opinion and Order in *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, FCC 02-25; Bureau/CPD No. 00-01. (*Wisconsin Order*).<sup>2</sup> In that order, the FCC reaffirmed that SWBT's pricing of network services made available to payphone providers must comply with the cost-based pricing requirement of the New Services Test. *Wisconsin Order* ¶ 42.

The FCC further held that, to promote competition and the widespread deployment of payphone services, states should apply the New Services Test pricing requirements to non-Bell Operating Companies. It is MICPA's contention that in order to be just and reasonable under Missouri law, the payphone line rates charged by CenturyTel and other LEC's must comply with the New Services Test.

The New Services Test requires that the rates for network services made available to payphone providers be set at the cost to provide the service, plus a reasonable amount to recover a portion of the firm's common expenses. 47 C.F.R. §61.49. *See also, Wisconsin Order*.

The New Services Test and the mandate that the rates be cost-based requires that the direct

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<sup>2</sup>The case is now before the United States Court of Appeals, D.C. Circuit on review. *New England Public Communications Council, Inc. v. FCC*, Case No. 02-1055 (D.C. Cir). The issue on review concerns whether the FCC lacks the authority to require non-BOC LECs to set their intrastate payphone line rates in compliance with the new services test.

costs for network services made available to payphone providers be identified using forward looking economic cost methodologies. The New Services Test further requires that the LECs recover no more than a reasonable amount for overhead (or indirect) costs. An appropriate measure of whether the overhead allocations are reasonable is the overhead allocation applicable to unbundled network elements. In addition, the rates for the network services made available to payphone providers must be set so as to not provide a subsidy to other services, and must take into account the revenue associated with each access line that is derived from federal common line charges such as end user common line charges (EUCL). *Wisconsin Order*.

#### **CENTURYTEL'S PROPOSED RATES**

On Original Sheet 4 of Section 8 of CenturyTel's tariff, it proposes to charge \$26.95 per month for a payphone access line and \$4.75 per month for the network service of Answer Supervision. In submitting these proposed tariffs to the Commission, CenturyTel did not represent that it had applied the New Services Test in its determination of the prices for its payphone services. No documentation has been produced as part of the filing even suggesting that the New Services Test was utilized. Further confirming that the New Services Test has been disregarded by CenturyTel is the fact CenturyTel's proposed payphone access line rates are identical to rates presently charged by Verizon. CenturyTel has simply adopted the rates and charges of its predecessor, which MICPA and others contend failed to use the New Services Test in the first instance in setting its rates,<sup>3</sup> rather than following the FCC requirements. MICPA submits that CenturyTel's failure to use the New Services

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<sup>3</sup>On or about the same date as this motion is filed, a group of independent payphone providers have filed a complaint against Verizon and other LEC's contesting the rates each charges now and have charged in the past for network services used by payphone providers on grounds including failure to apply the New Services Test.

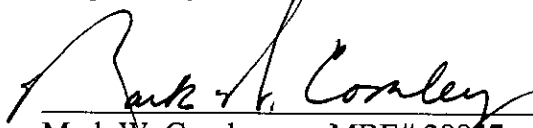


Test in setting its payphone access line rates and other rates for payphone network services is clear. As such the proposed tariffs are unreasonable, unlawful and unjust.

### CONCLUSION

Payphones are still considered an important part of the nation's telecommunications system. The FCC has established the methods by which LEC's should set the rates for network services used by independent payphone providers so that competition among payphone service providers, including the LEC's themselves through their respective payphone divisions, can be promoted. The payphone services rates proposed by CenturyTel have not been set in compliance with the New Services Test, which, MICPA argues, is the lawful method of setting those rates under Missouri law. The Commission should reject CenturyTel's payphone service tariffs, suspend the same, and conduct a hearing on the reasonableness of those tariffs under the standards explained above.

Respectfully submitted,



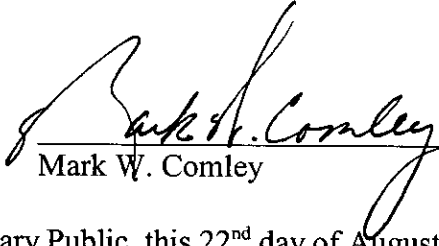
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PAYPHONE ASSOCIATION

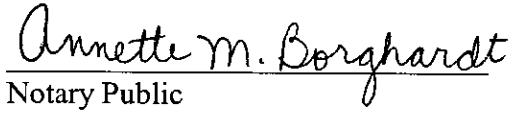
**ATTORNEY VERIFICATION**

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF COLE        )

I, Mark W. Comley, being first duly sworn, do hereby certify, depose and state that I am the attorney for Complainants in this proceeding; that I have read the above and foregoing Motion to Suspend and Application to Intervene and the allegations therein contained are true and correct to the best of my knowledge, information and belief; and I further state that I am authorized to verify the foregoing application.

  
\_\_\_\_\_  
Mark W. Comley

Subscribed and sworn to before me, a Notary Public, this 22<sup>nd</sup> day of August, 2002.

  
\_\_\_\_\_  
Notary Public

My Commission expires:



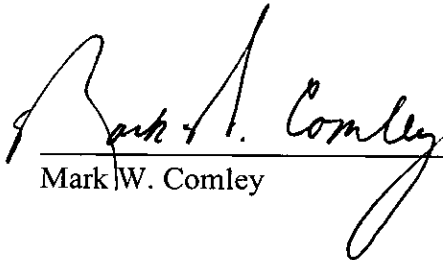
**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of August, 2002, a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, to:

Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102-7800

General Counsel  
P.O. Box 360  
Jefferson City, MO 65102

Sondra B. Morgan  
P.O. Box 456  
Jefferson City, MO 65102

  
\_\_\_\_\_  
Mark W. Comley

APPENDIX A

MEMBERS OF  
MIDWEST INDEPENDENT COIN PAYPHONE ASSOCIATION

ANJ Communications

Community Payphones, Inc.

Illinois Payphone Systems, Inc.

Jerry Myers Phone Co.

John Ryan, an individual

JOLTRAN Communications, Inc.

Midwest Communications Solutions, Inc.

Midwest Telephone

Missouri Telephones & Telegraph

Northwest Communications, Inc.

Payphones of America North

PhoneTel Technologies

Southern Missouri Telecom

Sunset Enterprises

Tel-Pro, Inc.

Vision Comm, Inc.