

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day
of April, 2006.

| | | |
|----------------------|---|-------------------------------------|
| Larry Hawkins, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. TC-2005-0139</u> |
| |) | |
| Missouri Comm South, |) | |
| |) | |
| Respondent. |) | |

ORDER DISMISSING COMPLAINT AND CLOSING CASE

Issue Date: April 20, 2006

Effective Date: April 30, 2006

On November 22, 2004, Larry Hawkins filed a complaint against Missouri Comm South, alleging issues regarding the way in which his telephone service is provided and requesting relief by compensation. The Respondent requested mediation, but on May 2, 2005, Complainant filed a statement indicating that mediation had not taken place. Respondent filed its answer to the complaint on May 4, 2005, and filed a further response on June 1, 2005.

On May 4, 2005, the Commission directed its Staff to investigate the complaint. Staff filed its report on June 13, 2005. Staff stated its belief that Complainant's issues have been resolved, in that Missouri Comm South provided Mr. Hawkins a free number change to a nonpublished number, was not charging for the nonpublished number, and had also given credit for call traces initiated by Mr. Hawkins. Staff stated further that it appeared

Missouri Comm South had not violated its tariff, Commission statutes, or orders. Regarding Mr. Hawkins' request for compensation, Staff noted that the Commission does not have the authority to provide this relief.¹ Neither Mr. Hawkins nor Missouri Comm South responded to Staff's report.

On January 17, 2006, Staff filed a motion to dismiss the case, reiterating the statements in its June 13, 2006 report. Staff stated further that it appeared Missouri Comm South is no longer providing service in Missouri. No responses to Staff's motion were filed.

On March 27, 2006, the Commission issued an order directing Mr. Hawkins to file a response no later than April 11, 2006, advising whether his complaint has been satisfied and may be dismissed, or showing cause why his complaint should not be dismissed. The Commission took official notice of its case files showing that Missouri Comm South is no longer in business in the state and its certificate has been canceled.² The Commission further stated that if no response was received, the case would be dismissed. Mr. Hawkins did not respond.

Commission rule 4 CSR 240-2.116(3) provides that the Commission may dismiss a case for failure to prosecute if no action has occurred within 90 days. Because no action has occurred in 90 days and it appears that the complaint has been satisfied, the Commission will dismiss this complaint without prejudice.

¹ *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 and Light Co. v. Buzard*, 168 S.W.2d, 1044 (Mo. 1943).

² *In the Matter of the Cancellation of Service Authority and Accompanying Tariffs of Missouri Comm South Companies, Inc., d/b/a Missouri Comm South, Inc.*, Case No. TD-2006-0302, Order Canceling Certificates and Accompanying Tariffs (Jan. 31, 2006).

IT IS ORDERED THAT:

1. That the complaint filed on November 22, 2004, by Larry Hawkins against Missouri Comm South is dismissed without prejudice.
2. This order shall become effective on April 30, 2006.
3. This case may be closed on May 1, 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, Gaw, Clayton,
and Appling, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge