

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition of Budget)	
Phone, Inc., for Designation as an)	<u>Case No . CO-2006-0085</u>
Eligible Telecommunications Carrier.)	

ORDER GRANTING MOTION TO DISMISS
AND CLOSING CASE

Issue Date: October 27, 2005

Effective Date: October 27, 2005

Procedural History and Positions of the Parties:

On August 22, 2005, Budget Phone, Inc., of Shreveport, Louisiana, submitted a Petition for Designation as an Eligible Telecommunications Carrier in the State of Missouri. On September 23, Budget Phone submitted a Motion for Protective Order. On October 21, the Office of the Public Counsel filed its Motion to Dismiss, pointing out that neither of Budget Phone's two submissions was filed by an attorney licensed to practice in Missouri. Public Counsel also urged dismissal on the grounds that Budget Phone does not qualify for Universal Service Fund support and prayed that the Commission would address both grounds raised for dismissal. In the alternative, Public Counsel requested an evidentiary hearing.

Thereafter, on October 25, Budget Phone submitted a letter stating its desire to withdraw its petition without prejudice.

On October 27, the Commission's Staff filed its response to Public Counsel's motion, stating its opposition to Public Counsel's request that the Commission deny Budget

Phone's application on the merits. Staff also points out that none of Budget Phone's submissions were made by an attorney.

Discussion:

A review of Budget Phone's Petition shows that it was not signed by anyone. It includes a signature block for one Faith M. Golding, described as "Assistant to the Director, Regulatory and Revenue Assurance." Nothing in the signature block suggests that Ms. Golding is a licensed attorney, either in Missouri or elsewhere. Accompanying the Petition are several exhibits, one of which – Exhibit D – is an Affidavit signed by one Art Magee. Nothing in the Affidavit suggests that Mr. Magee is a licensed attorney, either in Missouri or elsewhere.

As stated above, Budget Phone submitted a Motion for Protective Order on September 23. That pleading is signed by Faith M. Golding and was accompanied by a cover letter, also signed by Ms. Golding. Again, nothing in the pleading or cover letter suggests that Ms. Golding is a licensed attorney, either in Missouri or elsewhere.

Ms. Golding also signed the letter submitted on Budget Phone's behalf on October 25, seeking to withdraw the previously-submitted Petition without prejudice. The letter does not hold Ms. Golding out as an attorney, in Missouri or elsewhere. The letter also does not include any certificate of service.

This Commission granted a certificate to Budget Phone authorizing it to provide intrastate, interexchange telecommunications services in Missouri on September 12, 2002, in Case No. XA-2003-0023. Six days later, in Case No. CA-2003-0024, the Commission issued a second certificate to Budget Phone, authorizing it to provide resold and facilities-based basic local telecommunications services in parts of Missouri. The Commission noted

in issuing these certificates that Budget Phone is a Louisiana corporation. It is well-established in Missouri that a corporation may not represent itself but must act solely through licensed attorneys.¹ Such exceptions as exist to this principle do not extend to the drafting of a nine-page petition accompanied by multiple exhibits.² Purported legal filings submitted on behalf of a corporation by its unlicensed agent are "untimely filed and null and void."³

Because the petition purportedly filed by Budget Phone is a legal nullity, the Commission lacks subject matter jurisdiction; in other words, the petition was so defective that it failed to engage the Commission's statutory authority.⁴ In the absence of jurisdiction, the Commission can only dismiss this proceeding.⁵ Consequently, the Commission is unable to reach the merits of Budget Phone's application, as urged by Public Counsel, and consider whether or not Budget Phone is qualified for the relief sought in its petition.

Likewise, Budget Phone's Motion for Protective Order and subsequent letter purporting to dismiss the petition without prejudice are also legal nullities and are not properly before the Commission.

¹ *Reed v. Labor and Industrial Relations Commission*, 789 S.W.2d 19, 21 (Mo. banc 1990); *Strong v. Gilster Mary Lee Corp.*, 23 S.W.3d 234, 239 (Mo. App., E.D. 2000); see also generally, Jay M. Zitter, *Annotation: Propriety And Effect Of Corporation's Appearance Pro Se Through Agent Who Is Not Attorney*, 8 A.L.R.5th 653 (1992).

² See *St. ex rel. Labor & Industrial Relations Comm'n v. McGuire*, 838 S.W.2d 164, 168 (Mo. App., S.D. 1992) (filing of protest by manager of corporation not the unlicensed practice of law and thus effective).

³ *Reed*, *supra*, 789 S.W.2d at 23.

⁴ See *St. ex rel. Mo. Dept. Social Services v. Admin. Hearing Comm'n*, 814 S.W.2d 700 (Mo. App., W.D. 1991) ("[P]etitions . . . signed and filed . . . by non-lawyer employees . . . were null and void and did not vest jurisdiction in the Administrative Hearing Commission[.]")

⁵ *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002) ("[T]he court must dismiss the case because it does not have jurisdiction of the substantive issues presented.")

Because the petition submitted by a non-lawyer corporate employee is a legal nullity, the Commission is without jurisdiction and must grant the Motion to Dismiss. Dismissals by administrative tribunals are without prejudice unless otherwise specified.

IT IS THEREFORE ORDERED:

1. That the Motion to Dismiss filed by the Office of the Public Counsel on October 21, 2005, is granted in part as discussed above.
2. That this Order shall become effective on October 27, 2005.
3. That this case may be closed on October 28, 2005.

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)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to Section 386.240,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 27th day of October, 2005.