

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of an Investigation into the Quality
Of Wireline Telecommunications Services in the
State of Missouri

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Case No. TO-2011-0047

CONCURRENCE OF COMMISSIONER JEFF DAVIS

I concur with my colleagues' decision to investigate the rising number of complaints and inquiries about the quality of wireline telephone service in Missouri. The Commission has an obligation to investigate such matters on behalf of consumers and to report its findings to the Missouri General Assembly. It is perfectly within the Commission's right to do so. However, we should take much greater care in examining our staff's assertions. The Commission should also exercise some discretion in establishing the scope of who and what we're investigating. This investigation will require the participation of every telecommunications company in the state, even those having no complaints, or a small fraction of complaints relative to the number of lines they have in service.

On August 24, 2010, the Missouri PSC filed a Motion to Open an Investigatory Docket to "gather information about the quality of wireline telecommunications service in Missouri." Staff's motion included the affidavit of Carol Gay Fred, the PSC Consumer Services Department Manager. Mrs. Fred's affidavit is only three paragraphs long. The two most important paragraphs state:

In my recent observations there appears to be an increase in telecommunication consumer complaints and traceable inquiries regarding service quality issues as also mentioned in more detailed by

Myron E. Couch affidavit, Utility Operations Technical Specialist II. In fact, it appears that there has been a 30.19% increase in telecommunication utility complaints and inquiries regarding service quality issues from August 31, 2007 to August 31, 2008 versus August 31, 2009 to August 1, 2010, which coincides with the change in law which eliminated the Commission's oversight of service quality issues, as a part of the 2008 House Bill 1779.

In addition to the increase in recent informal complaint cases, it's important to point out that the overall increase in consumer inquiries has increased significantly due to service quality issues. The Consumer Services Department has dealt with inquiries that have dealt with delays for installation of service, delays in repairing service, which has caused consumers to be without service for as long as 1-4 weeks. Utilities have generally referred to the long delays as manpower shortages. In fact, when reviewing the data from August 31, 2006 to September 1, 2007, when we received 250 inquiries, to a more current period August 31, 2009 to August 1, 2010, where we have received 1449 inquiries, it equates to 579.6 percent increase in inquiries. While the numbers are significant it is only fair to mention that the increase has been steady, 2007-250 inquiries, 2008-466 inquiries, 2009-976 inquiries and 2010-1449 inquiries.

In preparation for today's agenda, I asked Mrs. Fred to provide answers to four questions:

1. Please provide the Commission with an itemized breakdown of how many of those complaints were against ILECs versus CLECs.
2. How many complaints are against VOIP or wireless providers over whom the Commission would have no jurisdiction?
3. Please provide a carrier-by-carrier breakdown of who the complaints/inquiries have been made against.
4. Please provide a list of the wireline providers of which there have been 10 or fewer inquiries against in the last two years.

Mrs. Fred responded that the numbers she referenced in her affidavit (Appendix B of Staff's motion) did not contain any complaints against VOIP or wireless providers over whom the Commission had no jurisdiction. More importantly, Mrs. Fred distributed two documents at agenda that the Commission did not have time to thoroughly review before making this decision.

Yes, I could have asked for more time to study this issue and, in retrospect, I should have – because after taking a more thorough look at the numbers, I am very disturbed by what appears to be a lack of evidence meriting even a formal investigatory docket at this point.

Attachment A is a two-page document summarizing the number of “Telephone Complaints and Inquiries.” Since that document contains aggregated data, I am fairly confident it can be released to the public. Hence, it is attached.

Page #1 of the document indicates that for the 2009-2010 year (August 31, 2009 – August 1, 2010) there were 303 “Service Quality Complaints” and 29 “Service Quality Inquiries”. The numbers do reflect a 30% increase in the number of service quality complaints over the 2008-2009 timeframe (August 31, 2008 – August 31, 2009). However, when compared to the number of “Service Quality Complaints” and “Service Quality Inquiries” for the 2007-2008 period (August 31, 2007 – August 31, 2008), the numbers are virtually identical and actually represent a 22% decrease from 2006-2007 cycle (August 31, 2006 – August 31, 2007). Thus, all we actually have here is evidence of a year-over-year increase for the two most recent years – the first one since at least 2006-2007 and numbers that are virtually identical to the 2007-2008 timeframe.

Page #2 of Attachment A reflects the total number of complaints and inquiries filed over the same respective time periods referenced in the previous paragraphs. Yes, there is a consistent and marked increase in the number of “Inquiries” over the four year period and the actual number of telecommunications “Complaints” filed in 2009-2010 is 43.5% higher than it was in the 2008-2009 period. However, the number of actual “Complaints” is 15% less than the 2007-2008 period and 42.5% less than the

number filed in the 2006-2007 period. Once again, the bottom line is that approximately 423 fewer "Complaints" were filed in the 2009-2010 period than three years earlier.

Of equal interest is the second "Highly Confidential" document labeled "MPSC Telephone Complaint/Inquiry Summary." I cannot discuss an individual company's numbers per se, but I believe that conclusions can be drawn from the data and there is at least one conclusion that merits being shared publicly.

AT&T is by far the largest provider of telecommunications services in Missouri and I think it's logical to assume the collective AT&T companies represent a good cross-section of Missouri. How many wirelines they had three years ago or have now was not part of my request and consequently not part of the report that was prepared for today's agenda meeting. What my brief inquiry did yield is that the number of "Inquiries" and "Complaints" filed against AT&T has remained virtually unchanged from the 2006-2007 period to the 2009-2010 period. There were some changes over the period on an annual basis, but the percentage of actual change for the entire three years in the number of complaints against the 4 companies is 0.44%.

CONCLUSION:

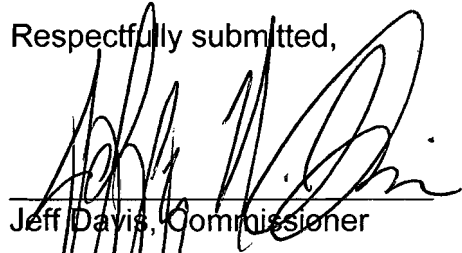
This Commission has a right and a duty to investigate the quality of service being provided by wireline telecommunications providers in this state. Approximately 1,500 inquiries is a lot of inquiries and they need to be analyzed. However, having briefly examined the data on which staff based its recommendation, I've come to the conclusion that a formal investigation in the form of a working docket appears to be premature.

Treating "Inquiries" and "Complaints" as if they are synonymous is not correct. It's a function of the PSC's Consumer Services Division to answer questions about telephone service. Answering questions about telephone service is a lot different from a "Complaint" – either formal or informal. I question whether the use of these inquiries is appropriate to justify the full-blown investigation of an entire industry without a lot more substantive analysis.

The data provided by staff today certainly doesn't suggest that every phone company in the state ought to be required to respond to the PSC Staff's requests for information. There are companies out there that haven't had any complaints that are apparently going to be asked to respond to requests for information. More importantly, I am concerned that forging ahead with this docket in this manner - without first talking to the companies and having some kind of forum like a "roundtable discussion" - will actually have a chilling effect on the willingness of some or possibly even many of the telecommunications companies that we have little or no regulatory authority over to cooperate with the PSC Staff when they are attempting to assist consumers in the future.

For the reasons I have set out above, I respectfully concur with the decision of my colleagues to open a docket but express strong reservations about the numbers forming the basis for the recommendation and proceeding in this manner without first discussing this matter with the industry in an open, public forum. In the future, I would encourage the PSC Staff to provide more detailed, impartial analysis before filing to open such dockets in the future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeff Davis", is written over a horizontal line.

Jeff Davis, Commissioner

Dated at Jefferson City, Missouri

On this 1st day of September, 2010.