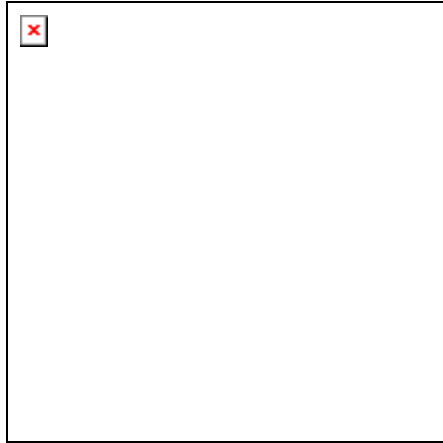


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of Southwestern Bell Telephone  
Company's Tariff Filing to Introduce a Payphone  
Use Charge

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**Case No. TT-2001-582**  
Tariff No. 200100997

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**REPORT AND ORDER**

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**Issue Date: August 30, 2001**

**Effective Date: September 9, 2001**



**REGULATORY LAW JUDGE: Morris L. Woodruff**

## **REPORT AND ORDER**

### **SUMMARY**

Southwestern Bell Telephone Company has submitted a tariff that would institute a payphone use charge of \$0.24 per call. The payphone use charge would apply to alternately billed calls carried by Southwestern Bell that are made from payphones. In other words, the charge would apply to calls for which the user does not deposit coins into the payphone. The Staff of the Commission and the Office of the Public Counsel oppose the imposition of the payphone use charge because they contend that it would violate the price cap under which the rates of Southwestern Bell are regulated. The Commission agrees. Southwestern Bell's tariff is rejected.

### **FINDINGS OF FACT**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

On March 29, 2001, Southwestern Bell Telephone Company filed a tariff that would introduce a payphone use charge of \$0.24 per call. Southwestern Bell's tariff carried an effective date of April 28, 2001. In response, on April 19, the Staff of the Commission filed a Motion to Suspend and Reject Tariff. On April 23, Southwestern Bell filed a pleading opposing Staff's motion to suspend or reject its tariff, and Staff filed its response to Southwestern Bell's pleading on April 24. On April 26, the Commission issued an order suspending Southwestern Bell's tariff for a period of 120 days beyond April 28 to August 26, 2001.

In its order suspending Southwestern Bell's tariff, the Commission also directed that any party wishing to intervene in this case should file an application to intervene no later than May 16, 2001. Timely applications to intervene were received from the Kansas Payphone Association;<sup>[1]</sup> Sprint Missouri, Inc. and Sprint Communications Company L.P.; and the Midwest Independent Coin Payphone Association.<sup>[2]</sup> On May 31, 2001, over the objections of Southwestern Bell, the Commission granted each of the requests for intervention.

A hearing was held on August 2, 2001. All parties appeared for the hearing except Sprint. Prior to the hearing Sprint submitted a Statement of Position indicating that it was taking no position and requesting that it be excused from participating in the hearing. Sprint's request was granted at the hearing and Sprint was excused from further participation. At the hearing, counsel for the Kansas Payphone Association appeared and asked to be excused from further participation in the hearing. That request was granted. On August 16, the Commission issued an order that suspended Southwestern Bell's tariff for an additional 20 days to September 15, 2001. The parties submitted briefs on August 16, 2001.

At the request of the Public Counsel, Southwestern Bell, on August 6, 2001, filed late-filed exhibit 8. On August 6, the Commission issued a notice indicating that any party wishing to make an objection to late-filed exhibit 8 must do so no later than August 10. The notice also indicated that if no objections were filed, late-filed exhibit 8 would be admitted into evidence. No objections were filed and late-filed exhibit 8 will be admitted into evidence.

Southwestern Bell has proposed a revision to its tariff that would add a \$0.24, per completed call, payphone use charge to its intrastate tariffs. Southwestern Bell has not previously included a payphone use charge in its rates. This payphone use charge would apply to any phone call placed from a payphone for which the customer does not deposit coins in to the payphone's box. For example, a customer using a payphone might use a calling card, use a credit card, bill the call to a third number, or make a collect call, rather than put coins in the payphone. Such a call is referred to as a non-sent paid call.

When a customer makes a call from a payphone without putting coins in the box, the entity that owns the payphone equipment, referred to as a payphone service provider, is not directly compensated for the use of its equipment. For that reason, federal law mandates that telecommunications carriers, such as Southwestern Bell, pay compensation to payphone

service providers for non-sent paid calls that the carrier handles. Southwestern Bell has negotiated commission rates with some payphone service providers that determine the amount of compensation that will be paid to that particular provider for such calls. If no such commission rate has been negotiated, Southwestern Bell pays the payphone service provider an established default rate of \$0.24 per call. Southwestern Bell began paying per-call compensation to payphone service providers on October 7, 1997. Southwestern Bell's tariff revisions will not change the amount of compensation that it pays to payphone service providers. Rather it will permit Southwestern Bell to bill its customers to collect \$0.24 per call to reimburse Southwestern Bell for the compensation that it pays to the payphone service providers.

### **CONCLUSIONS OF LAW**

The Missouri Public Service Commission has reached the following conclusions of law.

Southwestern Bell is a "Telecommunications Company" as that term is defined in Section 386.020(51), RSMo 2000, and is subject to the jurisdiction of the Commission pursuant to Section 386.250(2), RSMo 2000.

Section 392.230.3, RSMo 2000, grants the Commission the authority to determine, after hearing, the propriety of any rate filed with the Commission by any telecommunications company.

Section 392.230.6, RSMo 2000, provides that "at any hearing involving a rate increased or a rate sought to be increased after the passage of this law, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the telecommunications company . . . ."

47 U.S.C. §153(4) indicates that for purposes of the Telecommunications Act of 1996, Southwestern Bell is defined as a Bell operating company. 47 U.S.C. §276(a) provides that:

- 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.

47 U.S.C. §276(b)(1)(A) directed the Federal Communications Commission to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, . . . .” In 47 C.F.R. Section 64.1300, the Federal Communications Commission implemented rules requiring every carrier to whom a completed call from a payphone is routed to compensate the payphone service provider for the call either at a rate agreed upon by the parties by contract, or a minimum default per-call compensation rate. The regulation sets the minimum-default-per-call rate at \$0.24 per call.

The Federal Communications Commission has held that carriers that pay compensation to payphone service providers are permitted, but not required, to pass all or part of those costs on to their customers.<sup>[3]</sup> Therefore, Southwestern Bell’s proposed tariff is consistent with the FCC’s regulation.

However, the FCC does not have jurisdiction over the rates charged by Southwestern Bell for intrastate service. Jurisdiction over rates for intrastate service is generally reserved to state regulators.<sup>[4]</sup> No party disputes that the Commission has

jurisdiction over the rates charged by Southwestern Bell for its local services, including its payphone charges.

Section 392.245, RSMo 2000, permits the Commission to exercise its authority over the rates charged by Southwestern Bell through operation of a price cap. Section 392.245.3, RSMo 2000, caps Southwestern Bell's rates for telecommunications services at those it charged on December 31 of the year preceding the year in which the company was first subject to price cap regulation. Southwestern Bell became subject to price cap regulation on September 16, 1997, when the Commission approved Southwestern Bell's petition seeking to be regulated by price cap.<sup>[5]</sup> Therefore, Southwestern Bell's rates are capped at those it charged on December 31, 1996.

Southwestern Bell seeks to add a charge of \$0.24 per call to its rates when it completes a call made by one of its customers from a payphone. In doing so it is providing a telecommunications service for which its rates are capped. Therefore, the proposed payphone use charge exceeds the amount Southwestern Bell is permitted to charge under the price cap and must be rejected.

### **Decision**

After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decisions regarding the issues identified by the parties.

#### **1a) Does the Missouri price cap statute preclude Southwestern Bell from introducing a payphone use charge?**

Regulation under the price cap statute generally prevents Southwestern Bell from increasing its charges for the telecommunications services that it provides above its rates as they existed on December 31, 1996. Southwestern Bell did not impose a payphone use charge on December 31, 1996, but seeks to avoid the price cap restriction by arguing that the payphone use charge is not a charge for a service that it provides. According to Southwestern Bell, the payphone use charge is merely a pass-through charge that is really going to compensate the owner of the payphone equipment for the service of providing the payphone.

Southwestern Bell's argument misses the point. While it is not providing payphone service, it is providing the service of completing a call for its customers when that call is made from a payphone. It is for that service that its customers receive a bill, and it is to that bill that

Southwestern Bell would add the proposed payphone service charge. The service that Southwestern Bell is providing, and for which it is billing its customers, has not changed since it became subject to price cap regulation in 1996.

Southwestern Bell's cost for completing calls from payphones went up when the Federal Communications Commission ordered it to pay \$0.24 per call as compensation to payphone service providers. Under traditional rate-of-return regulation, Southwestern Bell might be entitled to increase its rates to recover its increased cost of providing services, assuming that it was not over earning from other sources. However, the traditional rules do not apply to price cap regulation. Southwestern Bell is no longer entitled to pass on to its customers its increased costs of providing services.

Southwestern Bell gave up the right to pass on its increased cost of service when it gained price cap regulation. In return, it gained the benefit of having the ability to improve its efficiency and decrease its cost of service without having the Commission reduce its rates for over earning. The Commission has no way of knowing whether Southwestern Bell has reduced its cost of completing calls made from payphones by more or less than \$0.24 since price cap regulation went into effect. However, it is clear that Southwestern Bell must be held to the price cap bargain. Southwestern Bell's proposed tariff is in violation of the price cap and must be rejected.

**1b) Is Southwestern Bell's payphone use charge discriminatory toward payphone service providers?**

This issue was raised by the Midwest Independent Coin Payphone Association, an association of payphone service providers whose members receive compensation from Southwestern Bell for the use of their payphone equipment by persons completing calls through Southwestern Bell. No evidence was produced that would indicate that Southwestern Bell's payphone use charge would be discriminatory. The Association's witness, the president of the Association, testified that the Association's concerns were alleviated during the hearing. Given the fact that the Commission is rejecting Southwestern Bell's tariff for other reasons, there is no need to further address this issue.

Based on the evidence, the arguments of the parties, the Commission's Findings of Fact and its Conclusions of Law, the Commission determines that Southwestern Bell's tariff to add a payphone use charge is in violation of Southwestern Bell's price cap.

**IT IS THEREFORE ORDERED:**

1. That late-filed exhibit 8 is admitted into evidence.

2. That the proposed tariff sheets submitted on March 29, 2001, by Southwestern Bell Telephone Company, and assigned Tariff No. 200100997, are rejected. The tariff sheets rejected are:

**P.S.C. Mo. – No. 24**

5<sup>th</sup> Revised Sheet 5.12, Replacing 4<sup>th</sup> Revised Sheet 5.12

**P.S.C. Mo. – No. 26**

20<sup>th</sup> Revised Sheet 21, Replacing 19<sup>th</sup> Revised Sheet 21

3. This Report and Order shall become effective on September 9, 2001.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Simmons, Ch., Lumpe and Gaw, CC., concur;  
Murray, C., dissents, dissenting opinion attached;  
certify compliance with the provisions of  
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 30th day of August, 2001.

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the matter of Southwestern Bell	)	
Telephone Company's Tariff Filing	)	Case No. TT-2001-582
To Introduce a Payphone Use	)	Tariff File No. 200100997
Charge.	)	

**DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY**

I dissent from today's Report and Order because I respectfully disagree with the majority that the payphone use charge in Southwestern Bell Telephone Company's proposed tariff is for a service that falls under the Missouri price cap statute. The proposed charge is, rather, a new charge that allows minimal cost recovery of federally-mandated compensation to payphone service providers. It is not an increased charge for a service that the price cap company offers. Therefore, the proposed payphone use charge does not meet the definition of "rates for its services" to which section 392.245.4(5) applies.

**Respectfully submitted,**

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**Connie Murray, Commissioner**

Dated at Jefferson City, Missouri,  
on this 30th day of August, 2001.

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[1] The application indicates that the members of the Kansas Payphone Association include: Advanced Communications; Cherokee Payphone; ComTech Systems; Coyote Call, Inc.; ETS Payphones, Inc.; Five Star Investments; John Jay Communications; K.C. Telecom Services; Lindeman Communications; Metcalf South Amoco, Inc.; Mo-Kan Public Communications; Pay Com, Inc.; Pay Phone Concepts, Inc.; Precision Communication; Riley's Full Service; Star Communications, Inc.; Tele-Connect, Inc.; Tel-Star Communications; Touch Tone Communications; Trintel Communications, Inc.; Brooks Fiber Communications of Kansas; GTE Corporation; Intl. Connector & Cable, Inc.; Opticom; and Single Source Telemanagement.

[2] The application indicates that the members of the Midwest Independent Coin Payphone Association include: Afford-A-Call; ANJ Communications; Community Payphones, Inc.; Illinois Payphone Systems, Inc.; Jerry

Myers Phone Co.; John Ryan, and 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.; and Vision Comm, Inc.

[3] See In the Matter of Implementation of the Pay Telephone Reclassification and Competition Provisions of the Telecommunications Act of 1996, et al., CC Docket No. 96-128, Report and Order, Released September 20, 1996, paragraphs 83 & 341

[4] See 47 U.S.C. §152(b). See also Louisiana Public Service Comm'n v. F.C.C., 476 U.S. 355 (1986)

[5] In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245, RSMo Supp. 1996. 6 Mo. P.S.C. 3d 493 (1997)