

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
October, 2008.

Northeast Missouri Rural)	
Telephone Company,)	
)	
Complainant,)	
)	
v.)	<u>Case No. IC-2008-0285</u>
)	
AT&T Corporation)	
)	
Respondent.)	

**ORDER GRANTING PARTIAL SUMMARY DETERMINATION
REGARDING AFFIRMATIVE DEFENSE OF ACCORD AND
SATISFACTION**

Issue Date: October 7, 2008

Effective Date: October 7, 2008

Northeast Missouri Rural Telephone Company (NE Rural) filed a complaint against AT&T Corporation on March 3, 2008. The complaint alleged that AT&T represented certain enhanced prepaid calling card services as an information service, rather than a telecommunications service. On that basis, AT&T sought a declaratory ruling from the FCC holding that AT&T did not have to pay intrastate access charges on those enhanced prepaid calling card services. The FCC disagreed and found that AT&T was required to pay intrastate access charges for those enhanced prepaid calling card calls.¹

¹ See, *Order and Notice of Proposed Rulemaking*, In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, WC Docket No. 03-133, 20 FCCR 4826, (Feb. 26, 2005). See also, *Declaratory Ruling and Report and Order*, In the Matter of Regulation of Prepaid Calling Card Services, WC Docket No. 05-68, 21 FCCR 7290, (June 1, 2006).

The complaint alleges that during the time AT&T misclassified the enhanced prepaid calling card services, NE Rural, along with other similarly situated local telephone companies, under billed AT&T for intrastate access for those services. NE Rural asks the Commission to determine that AT&T is responsible under NE Rural's tariffs to pay for the intrastate enhanced prepaid calling card calls that it improperly reported as interstate calls. NE Rural also asks the Commission to determine the quantity of such misreported calls and the amount of money AT&T should pay NE Rural for those calls. Finally, NE Rural asks the Commission to determine the amounts AT&T should pay for interest or late-charges, as well as attorney fees under NE Rural's tariffs.

In its answer to NE Rural's complaint, filed on April 2, AT&T admitted that its classification and reporting of enhanced prepaid calling card traffic as interstate resulted in NE Rural under billing it for that traffic. AT&T also admitted that the FCC determined that its classification and reporting of that traffic was incorrect. AT&T's answer raised several affirmative defenses against the complaint, including an assertion of accord and satisfaction in that the parties allegedly reached a settlement of the claims underlying the complaint.

On August 27, NE Rural filed a motion for partial summary disposition, asking the Commission to summarily deny AT&T's asserted defense of accord and satisfaction. According to NE Rural, the undisputed facts demonstrate that the companies have not reached a settlement of their dispute. AT&T filed a timely response to NE Rural's motion for partial summary determination on September 26. Both NE Rural's motion and AT&T's response are supported by affidavits from persons knowledgeable about the negotiations between the parties.

NE Rural's motion and AT&T's response were filed as highly confidential in their entirety in order to protect the confidentiality of settlement negotiations between the parties. Since the facts set forth in the motion and response are highly confidential, the Commission's findings of fact and its decision discussing those facts will also be designated as highly confidential.

FINDINGS OF FACT

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CONCLUSIONS OF LAW

1. Section 386.390, RSMo 2000 gives the Commission jurisdiction to hear complaints between telecommunications companies.
2. Commission Rule 4 CSR 240-2.117, which is entitled “Summary Disposition,” authorizes the Commission to decide all or any part of “a contested case by disposition in the nature of summary judgment or judgment on the pleadings.”
3. Commission Rule 4 CSR 240-2.117(1)(E), provides:

The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.
4. AT&T’s answer to NE Rural’s complaint asserts an affirmative defense of accord and satisfaction.
5. An accord and satisfaction defense would apply if the parties have reached an agreement for settlement of some previously existing claim by substituted performance, and then actually perform that agreement.²
6. For accord and satisfaction to exist, two necessary elements must be shown. As the Missouri Court of Appeal has indicated, “[a]n accord and satisfaction requires both the accord and satisfaction. In other words, it requires both an agreement (the accord) and execution of the performance of the agreement (the satisfaction)”.³

¹⁰ *Gibson v. Harl*, 857 S.W.2d 260, 270 (Mo. App. W.D. 1993).

¹¹ *Ingram v. Rinehart*, 108 S.W.3d 783, 789-90 (Mo App. W.D. 2003). (internal citations omitted).

7. An accord executory is a variation of an accord and satisfaction that consists of an agreement for the future discharge of an existing claim by a substituted performance.⁴

8. An example of an accord executory would be an agreement to compromise a dispute about a lease by acceptance of a lower monthly payment during the remaining term of the lease. So long as the leasee makes the lower payments and thus does not breach the accord, the lessor is precluded from maintaining an action on the original claim.⁵

9. The Commission rule regarding summary determination requires the Commission to determine that a grant of summary determination is in the public interest before granting such a motion. In general, the public interest is served by the granting of a motion for summary determination when doing so reduces the Commission's expenditure of time and resources to hear an issue that can be appropriately resolved in a summary fashion.

DECISION

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¹² *Bestor v. American Nat. Stores, Inc.*, 691 S.W.2d 384 (Mo. App. E.D. 1985).

¹³ *Bestor* at 389.

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THE COMMISSION ORDERS THAT:

1. Northeast Missouri Rural Telephone Company's Motion for Summary Disposition with Respect to Respondent AT&T Corp.'s Defense of Accord and Satisfaction is granted.
2. This order shall become effective immediately upon issuance.

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, Clayton, Jarrett,
and Gunn, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge