

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

NOTICE OF COMPLAINT

Issue Date: March 4, 2008

The Corporation Company
Registered Agent for AT&T Corporation
120 South Central Avenue
Clayton, Missouri 63105

CERTIFIED MAIL

On March 3, 2008, Northeast Missouri Rural Telephone Company filed a complaint with the Missouri Public Service Commission against AT&T, a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, AT&T has 30 days from the date of this notice to file an answer or to file notice that the complaint has been satisfied. Since this notice is being issued on March 4, AT&T's answer is due April 3.

In the alternative, AT&T may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, AT&T will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainant.

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)

Dated at Jefferson City, Missouri,
on this 4th day of March, 2008.

Woodruff, Deputy Chief Regulatory Law Judge

Copy to: Craig S. Johnson
1648-A East Elm St.
Jefferson City, Missouri 65101

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

Northeast Missouri Rural Telephone Company)	
)	
Complainant,)	
)	
v.)	Case No. _____
)	
AT&T Corp.)	
)	
Respondent.)	

Complaint

Come now Northeast Missouri Rural Telephone Company, (hereinafter “Northeast”), for its Complaint against Respondent AT&T Corp. (hereinafter “AT&T”), made pursuant to § 386.390 RSMo and 4 CSR 240-2.070, and states as follows:

Summary of Complaint

AT&T provided “enhanced prepaid calling card” services (hereinafter “EPPC”). AT&T claimed EPPC was an information service, not a telecommunications service. AT&T did not disclose to the world that it had unilaterally, without regulatory sanction, ended the existing sanctioned regulatory practice of reporting and paying both universal service contributions and intrastate access charges for EPPC calls.

On May 15, 2003, AT&T filed a petition for declaratory ruling with the FCC seeking the FCC’s determination AT&T was not responsible to pay USF contributions or intrastate access charges on EPPC calls. By Order of February 23, 2005, supplemented by a later FCC decision, and further supplemented by a later Court decision, the FCC denied AT&T’s petition. The FCC

adjudicated that intrastate access charges *did* apply to EPPC calls that originate and terminate within the same state, and adjudicated that AT&T was liable to local exchange carriers for intrastate traffic misreported by AT&T as being interstate in jurisdiction.

In SEC filings, AT&T estimated that through the third quarter of 2004 it had failed to pay \$340,000,000.00 in originating and terminating intrastate access charges (to Northeast and other carriers) and had failed to pay \$160,000,000.00 in universal service contributions.

This Complaint is brought to enforce the FCC's adjudication that AT&T is responsible to pay Northeast for intrastate calls misreported as interstate, to ascertain the volume of unpaid intrastate access traffic AT&T has not paid to Northeast, to ascertain the dollar amounts of unpaid intrastate access traffic owed by AT&T to Northeast, together with interest on those sums, and attorneys fees pursuant to tariff.

Allegations

Parties, Counsel, Notice, and Service of Process Information

1. Complainant Northeast is an incumbent local exchange company properly certificated and doing business in Missouri. The name of its principal contact for this case, and its address and contact information is as follows:

Gary Godfrey
General Manager
Northeast Missouri Rural Telephone Company
P.O. Box 98, 718 South West Street
Green City, Missouri 63545

2. Copies of all pleadings, orders, and other filings in this docket should be served upon the following counsel for Northeast:

Craig S. Johnson, Atty.
Mo Bar # 28179
1648-A East Elm St.
Jefferson City, MO 65101
(573) 632-1900
(573) 634-6018 (fax)
craig@csjohnsonlaw.com

3. Respondent AT&T is a New York Corporation authorized to do business in Missouri. Its registered agent for service of process is:

The Corporation Company
120 South Central Avenue
Clayton, Missouri 63105

Service of process can be made upon AT&T by serving a copy of this complaint upon this registered agent by certified mail, postage prepaid, in accordance with 4 CSR 240.2.070.

Underlying Facts

4. At some date, the precise date which is unknown to Northeast, AT&T began offering EPPC. EPPC was sold in the form of prepaid calling cards by AT&T, and by major consumer retailers such as Wal Mart Stores, Inc.

5. EPPC calls were made by the customer dialing a number to reach a centralized switching platform, which requested a personal identification number associated with the customer's card. When prompted by the platform, the customer dialed the destination number of the called party, and the call was completed.

6. AT&T configured its EPPC service so that all EPPC calls made appeared as two separate calls: one from the calling to the EPPC "platform"; and the second from the "platform" to the called party.

7. AT&T improperly, without justification, manipulated traffic reports, call records, and intercarrier compensation billing records so that all EPPC calls were made to appear as if each EPPC call originated and terminated in different states, even though in many instances the EPPC calling party and called party were both located within the state of Missouri.

8. This manipulation resulted in the under-billing of both originating and terminating intrastate Missouri exchange access charges by Northeast to AT&T.

9. AT&T did not disclose to Northeast that it was under-reporting EPPC intrastate minutes of originating and terminating exchange access use.

10. Northeast was not aware of AT&T's misclassification, under-reporting, and under-payment for intrastate exchange access service until it learned of the existence of AT&T's Petition for Declaratory Ruling, and the FCC's Order with respect to that petition.

11. On May 15, 2003, AT&T filed with the Federal Communications Commission ("FCC") a petition requesting a declaratory ruling from the FCC that, among other things, its EPPC was information service and not telecommunications service, and that if it was determined to be telecommunications service that all calls made pursuant to the prepaid calling service was interstate, not intrastate, in jurisdiction.

12. AT&T improperly and unethically misclassified, under-reported, and under-paid Northeast, and other carriers, intrastate access charges while it prepared, filed, and awaited a decision from the FCC.

13. The FCC docketed AT&T's petition as WC Docket No. 03-133, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*.

14. On February 23, 2005 in WC Docket No. 03-133, the FCC entered an Order which denied AT&T's requests, and which directed AT&T to rectify its unethical and improper activities. Specifically, the FCC ruled as follows:

- a. EPPC was telecommunications service. (§ 14)
- b. the provision of advertising messages with EPPC did not make EPPC an information service. (§ 15)
- c. the provision of advertising messages with EPPC did not make EPPC an enhanced service. (§ 16)
- d. EPPC's making information available did not make EPPC an information service. (§ 20)
- e. EPPC's communication of an advertising message did not create a call endpoint to the EPPC switching platform. (§§ 23, 24, 25, 26)
- f. AT&T's arguments that all EPPC calls were jurisdictionally interstate due to the construct of the service was rejected. (§ 27)
- g. AT&T conceded to the FCC that EPPC calls originated and terminated over a platform all within the same state were intrastate calls in jurisdiction. (§ 7, footnote 10)
- h. EPPC calls are jurisdictionally mixed, and EPPC calls that originate and terminate within the same state are jurisdictionally intrastate under the FCC's "end-to-end" analysis. (§§ 22-29)
- i. EPPC calls originating and terminating in different local calling areas of the same state are subject to intrastate access charges. (§ 28).
- j. AT&T was directed to retroactively make payments to the federal

universal service fund for EPPC calls going back to the beginning of 1999.

15. AT&T appealed the FCC's direction for AT&T to make retroactive contributions to the Universal Service Fund. AT&T did not appeal the FCC's determination that intrastate EPPC calls were subject to intrastate access charges. The February 23, 2005 Order was appealed by AT&T to the United States Court of Appeals for the District Court of Columbia. By decision of July 14, 2006, the United States Court of Appeals affirmed the FCC.

16. By further Order of August 2, 2006, 71 Federal Register 148, pages 43667-43673, Declaratory Ruling, Report and Order, and accompanying rulemaking in WC Docket No. 05-68, the FCC extended its February 16, 2005 Order to two newer service variants to the original EPPC offered by AT&T.

17. In addition, the FCC ruled that its February 16, 2005 Order was an adjudicatory decision, and applied on a retroactive basis to EPPC traffic. The FCC did not give retroactive adjudicative effect to the "menu-driven" variant of the EPPC service.

18. On appeal by decision dated December 4, 2007, the United States Court of Appeals for the D.C. Circuit reversed and vacated the FCC in this regard, and did impose retroactive adjudicative effect even to the menu driven variant.

19. These decisions of the FCC and courts are binding upon AT&T and the Commission by virtue of the doctrines of preemption, res adjudicata, collateral estoppel, and issue preclusion

20. At all times pertinent hereto Northeast has had in effect intrastate exchange access service tariffs which, by virtue and as a result of the foregoing, applied to intrastate EPPC calls.

21. Northeast has directly contacted and made demand upon AT&T about the substance of the dispute set forth in this complaint, and engaged in extended efforts to settle the dispute without complaint, but was unable to obtain satisfaction.

22. Northeast respectfully suggests that voluntary arbitration or mediation will not be of assistance in resolving this dispute.

Jurisdiction of Commission

23. Northeast provides intrastate exchange access service to interexchange carriers such as AT&T pursuant to tariff. Such exchange access service tariff and rates are approved by the Missouri Public Service Commission, and are applicable to intrastate EPPC calls misreported by AT&T as being interstate calls, the traffic in question.

24. This Commission has jurisdiction over this complaint by virtue of the statutory authority vested in it by §386.390 RSMo and by §386.400 RSMo.

Relief Requested

25. Northeast requests that the Commission grant or sustain this Complaint in its favor and against AT&T, and determine, order, and award to Northeast the following relief:

- a. to determine that AT&T is responsible under Northeast's Missouri Missouri or intrastate exchange access tariffs to pay for intrastate EPPC calls reported as interstate by AT&T;
- b. to determine the quantity of originating and terminating intrastate EPPC minutes of use reported as interstate by AT&T;
- c. to determine the amount of money owed by AT&T to Northeast for such EPPC traffic;

- d. to determine the liability for, and amount of, interest owed by AT&T to Northeast for under-reported and unpaid access service charges as provided by law, or by Northeast's tariffs, as late payment charges. The interest rate is believed to be 10% per annum pursuant to tariff;
- e. to determine AT&T's responsibility to pay Northeast attorneys' fees, pursuant to tariff, for having to prepare and pursue this action;
- f. any other relief that is necessary or appropriate to the above.

Respectfully Submitted;

_____/s/_____
Craig S. Johnson, Atty.
Mo Bar # 28179
1648-A East Elm St.
Jefferson City, MO 65101
(573) 632-1900
(573) 634-6018 (fax)
craig@csjohnsonlaw.com
Attorney for Northeast

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

Northeast Missouri Rural Telephone Company)	
)	
Complainant,)	
)	
v.)	Case No. _____
)	
AT&T Corp.)	
)	
Respondent.)	

Northeast Discovery Requests to AT&T Corp.

Come now Northeast Missouri Rural Telephone Company, (hereinafter “Northeast”), for its Initial Discovery Requests (Data Requests, Interrogatories, Requests for Production of Documents, or Requests for Admission) and propounds the following requests to Respondent AT&T Corp. (hereinafter “AT&T”). These discovery requests are continuing in nature and the responses must be updated as needed to remain accurate. Each response will be subject to the following conditions:

A. The terms “AT&T”, “you” and “your” refers to Respondent AT&T Corp., its employees, and any person acting on behalf of the responding company.

B. K. The terms “Enhanced Prepaid Calling Card Service” refers to the prepaid calling card service for which you filed a May 15, 2003 Petition for Declaratory Ruling with the Federal Communications Commission (FCC), as referenced in the FCC’s February 23, 2005 Order and Notice of Proposed Rulemaking, FCC 05-41, WC Docket No. 03-133 and WC Docket No. 05-68.

C. In answering these requests, all information is to be divulged which is possessed by or available to you. If in your response you state you relied upon or in any manner used, in whole or in part, Northeast supplied data or information, please set forth the specific data/information relied upon and the source of that information, including but not limited to: the name of the individual supplying the information and the date supplied, the number of the data request from which the data/information was obtained, and the response document relied upon together with the page, section and line number within the document.

D. “Documents” or “documentation” include writings, drawings, memoranda, correspondence including e-mails, graphs, charts, photographs and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. This request includes the original or principal copy in your possession, custody or control, and any non-identical copy (which is different from the original because of notations on such copy or otherwise), and any drafts, copies or other preliminary material different in any way from the final document.

E. For each document produced, identify the numbered data request to which it responds.

F. “Person” shall mean the plural as well as the singular and shall include any natural person and any firm, association, partnership, joint venture, corporation, governmental or public entity, department, agency, office or any other form of legal entity.

G. To “identify” a person shall mean to state with respect thereto: (1) his, her, or its name and last known address and, in addition, if a natural person, his or her last known non-business address; and (2) if a natural person, the name and last known business address of his or

her employer, the employment position held by such employee with each employer and the date when such employment began or ceased.

H. To “identify” a document means to state its type or otherwise describe it, and in addition to supply the following information where applicable: (1) the name of the person who prepared it; (2) the name of the person who signed it or in whose name it was issued; (3) the name of each person to whom it was addressed or distributed; (4) the nature and substance of the writing, with sufficient particularity to enable it to be identified; and (5) its date, or if it bears no date, its approximate date.

I. When asked for a rationale or explanation for a position this request shall mean to relate as completely as possible each and every act, omission, incident, event, condition, circumstance, or thing directly or indirectly concerning the subject matter of the description, listing all pertinent dates, documents, communications, persons and locations applicable to the event or occurrence that is the subject of the data request.

J. These requests are intended to be of a continuing nature, requiring you to serve timely supplemental answers setting forth any information subsequently discovered which would add to or alter the accuracy or completeness of the information originally provided. Objections will be made at the time of the hearing to any attempt to try to introduce evidence which is directly sought by this data request and to which no disclosure has been made.

K. For each response provided, identify the name of the individual responding and the date supplied. The person signing or identified as responsible for the response certifies that the information provided to Northeast in response to the information requested is accurate and complete and contains no material misrepresentations or omissions based upon present facts known to the person(s) who signs as responsible for the answers.

DISCOVERY REQUESTS

Document Request 1. Please produce a copy of your May 15, 2003 Petition for Declaratory Ruling filed with the Federal Communications Commission (FCC), as referenced in the FCC's February 23, 2005 Order and Notice of Proposed Rulemaking, FCC 05-41, WC Docket No. 03-133 and WC Docket No. 05-68, including all attachments thereto.

Interrogatory 1. Please state the date you began classifying Enhanced Prepaid Calling Card Service calls that originated and terminated in the same state, when the calling and called parties are both in the same state, as being subject to interstate exchange access charges.

Document Request 2. Please produce copies of all documents of AT&T confirming the date which is the subject of Interrogatory 1.

Interrogatory 2. Please state the date you stopped classifying Enhanced Prepaid Calling Card Service calls that originated and terminated in the same state, when the calling and called parties are both in the same state, as being subject to interstate exchange access charges.

Document Request 3. Please produce copies of all documents of AT&T confirming the date which is the subject of Interrogatory 2.

Interrogatory 3. Please identify all persons who participated in the decision to classify Enhanced Prepaid Calling Card Service calls that originated and terminated in the same state as being subject to interstate exchange access charges.

Interrogatory 4. Please describe with specificity the role that each person identified in your answer to the preceding interrogatory had with respect to this decision.

Interrogatory 5. Please identify all documents prepared by, or considered by, the persons identified in your answer to Interrogatory 3 in making the decision to classify Enhanced Prepaid Calling Card Service calls that originated and terminated in the same \$340 million in access savings

Document Request 4. Produce copies of all documents identified in your response to Interrogatory 5.

Interrogatory 6. In your 3rd Quarter 2004 SEC 10-Q report, you stated your current classification of prepaid card calls as interstate, when the persons communicating are both in the same state and the enhanced platform is in a different state, has generated \$340 million in access savings since the third quarter of 2002, and approximately \$160 million in universal service fund contribution savings since the beginning of 1999.

- a. please state why the access savings was computed back to the third quarter of 2002.
- b. please state why the USF contribution savings was calculated since the beginning of 1999.
- c. please state how much of the \$340 million exchange access savings reported was for intrastate originating exchange access.
- d. please state how much of the \$340 million exchange access savings reported was for intrastate terminating exchange access.
- e. please state how much of the \$340 million exchange access savings reported was attributable to traffic originating from Northeast.
- f. please state how much of the \$340 million access savings reported was attributable to traffic terminating to Northeast.

Interrogatory 7. Describe with specificity how you calculated the amounts described in your answers to Interrogatory 6 above.

Document Request 5. Please produce copies of all documents containing assumptions, work papers, summaries, schedules, reports, spreadsheets, or calculations underlying or resulting in the \$340 million access savings referenced in Interrogatory 6.

Document Request 6. Please produce copies of all documents containing assumptions, work papers, summaries, schedules, reports, spreadsheets, or calculations underlying or resulting in the access savings resulting from traffic originating from or terminating to Northeast identified in your answers to subparts (e) and (f) of Interrogatory 6.

Document Request 7. Please produce a copy of your 2004 SEC 10-K report.

Document Request 8. Please produce a copy of your 2005 SEC 10-K report.

Document Request 9. Please produce a copy of your 2006 SEC 10-K report.

Document Request 10. Please produce a copy of your 2007 SEC 10-K report.

Interrogatory 8. For Enhanced Prepaid Calling Card Service calls which were dialed 1 + 8YY, that originated and terminated in the same state, when the calling and called parties are both in the same state, during the period you classified such calls as being subject to interstate exchange access, please state:

- a. whether you passed the Calling Party's Number with the call.
- b. whether you passed the Called Party's Number with the call.
- b. what number or charge number you assigned to the platform that requested the caller's PIN and routed the call.
- c. how you determined what platform would be assigned to each call.

Admission Request 1. Please admit that your answer to Interrogatory 8 applied to such calls originated from a Northeast exchange, and for such calls terminated to a Northeast exchange.

Interrogatory 9. Please identify each platform you assigned to handle Enhanced Prepaid Calling Service calls to or from Northeast exchanges from 1999 to the present, please state:

- a. the location of each such platform.
- b. the NPA-NXX-XXXX telephone number assigned to each such platform.
- c. the inclusive dates each such platform was in use.
- d. the inclusive dates each such assigned telephone number was in use.
- e. whether each such number was a working number.
- f. why each platform was assigned to handle calls to or from Northeast.

Interrogatory 10. Describe with specificity the method or methods by which calls using Enhanced Prepaid Calling Card Service were routed from your originating Point of Presence to the Enhanced Prepaid Calling Card Service platform and from the Enhanced Prepaid Calling Card Service platform to your terminating Point of Presence, including in your response a description of the network equipment involved, the platforms used, call flows, and call records produced (EMI, SS7, AMA , proprietary formats, etc.).

Interrogatory 11. Identify all persons who participated in designing the network architecture or determining call paths set forth in your response to Interrogatory 10.

Interrogatory 12. Identify all documents reflecting the methods, routing, or descriptions set forth in your response to Interrogatory 10.

Document Request 11. Please produce the documents identified in your response to Interrogatory 11 for inspection and duplication.

Interrogatory 13. For Enhanced Prepaid Calling Card Service calls originated in a Northeast exchange and terminated to a called party also in Missouri, did you retain records or documents from which the volume of such calls between 1999 and the present can be ascertained?

Interrogatory 14. If your answer to Interrogatory 13 is in the affirmative, please identify such records or documents.

Document Request 12. Please produce the records or documents identified in your response to Interrogatory 14 for inspection and duplication.

Interrogatory 15. For Enhanced Prepaid Calling Card Service calls originated in Missouri and terminated to a called party in a Northeast exchange (also in Missouri), did you retain records or documents from which the volume of such calls between 1999 and the present can be ascertained?

Interrogatory 15. If your answer to Interrogatory 15 is in the affirmative, please identify such records or documents.

Document Request 13. Please produce the records or documents identified in your response to Interrogatory 15 for inspection and duplication.

Interrogatory 16. Have you prepared or used, for any purpose including settlement of claims similar to that of Northeast's in this proceeding, a method or model for estimating the amount of originating Enhanced Prepaid Calling Card Service traffic that you reported as being subject to interstate exchange access charges, when such traffic originated in an incumbent local exchange carrier's exchanges and terminated in the same state?

Interrogatory 17. If your answer to Interrogatory 16 is in the affirmative, please identify each such method or model.

Document Request 14. Please produce the methods and models identified in your response to Interrogatory 17 for inspection and duplication.

Interrogatory 18. Have you prepared or used, for any purpose including settlement of claims similar to that of Northeast's in this proceeding, a method or model for estimating the amount of terminating Enhanced Prepaid Calling Card Service traffic that you reported as being subject to interstate exchange access charges, when such traffic originated in an incumbent local exchange carrier's exchanges and terminated in the same state?

Interrogatory 19. If your answer to Interrogatory 18 is in the affirmative, please identify each such method or model.

Document Request 15. Please produce the methods and models identified in your response to Interrogatory 19 for inspection and duplication.

Interrogatory 20. Have you ever applied or run a method or model identified in your responses to Interrogatories 17 and 19 to Northeast to ascertain or estimate the volume of traffic to or from Northeast that was classified or reported as being interstate instead of intrastate access traffic for any period of time?

Interrogatory 21. If your response to Interrogatory 20 is in the affirmative, please identify each such application, run, ascertainment, or estimate.

Document Request 16. Please produce the applications, runs, ascertainment, or estimates identified in your response to Interrogatory 21 for inspection and duplication.

Interrogatory 22. For each resolution or settlement of a claim brought against you by a local exchange carrier arising out of your decision to classify Enhanced Prepaid Calling Card Service calls that originated and terminated in the same state as being subject to interstate exchange access charges, please state the following:

- a. the manner of resolution;
- b. the amount of the settlement;
- c. the number of minutes of originating intrastate exchange access usage the local exchange carrier provided for such calls;
- d. the number of minutes of terminating intrastate exchange access usage the local exchange carrier provided for such calls;
- e. a comparison of the settlement amount to the amount of that carrier's proportion of the \$340 million in access savings set forth in your 3rd Quarter 2004 SEC 10-Q report.

_____/s/_____
Craig S. Johnson, Atty.
Mo Bar # 28179
1648-A East Elm St.
Jefferson City, MO 65101
(573) 632-1900
(573) 634-6018 (fax)
craig@csjohnsonlaw.com
Attorney for Northeast



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

TERRY JARRETT

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

Colleen M. Dale
Secretary