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July 9, 1999

TO 99200016

FILED

JUL 9 1999

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Chief Administrative Law Judge  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, MO 65102

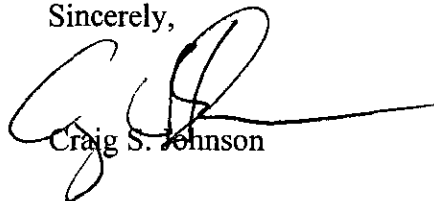
Re: Motion To Establish Docket

Dear Mr. Roberts:

Enclosed please find an original and 15 copies of the Mid-Missouri Group's Motion to Establish a Docket Investigating the IntraLATA Toll Service Provisioning Practices of IXC's, and their public utility/common carrier obligations, a motion for AT&T to Show Cause why AT&T is not in direct violation of the Commission Order, a request for emergency hearing in this regard, and alternative petition for suspension and modification.

Because the cause for this motion is a direct outgrowth of the proceedings in TO-99-254, I have this day faxed a copy of this motion on all attorneys of record in that docket. Thank you for seeing this filed.

Sincerely,

  
Craig S. Johnson

CSJ:skl

Enclosure

cc: See attached list  
Mid-MO Group

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BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED

JUL 9 1999

Missouri Public  
Service Commission

In the Matter of the Motion to )  
Establish a Docket Investigating the )  
intraLATAToll Service Provisioning )  
Practices of Missouri Interechange )  
Carriers, Public Utility or Common )  
Carrier Duties of Interexchange )  
Carriers, Motion to Show Cause, )  
Request for Emergency Hearing, )  
and alternative Petition For )  
Suspension and Modification. )

Case No. TO-2000-16

**MOTION TO INVESTIGATE IXC INTRALATA**  
**TOLL SERVICE PROVISIONING PRACTICES,**  
**TO ESTABLISH PUBLIC UTILITY/Common CARRIER DUTIES OF IXCS,**  
**MOTION FOR AT&T TO SHOW CAUSE,**  
**and ALTERNATIVE PETITION FOR**  
**SUSPENSION AND MODIFICATION**

Comes now the Mid-Missouri Group of local exchange companies, Alma Telephone Co., Chariton Valley Telephone Corp., Choctaw Telephone Co., Mid-Missouri Telephone Co., Modern Telecommunications Co., MoKan Dial, Inc., Northeast Missouri Rural Telephone Co., and Peace Valley Telephone Co., known collectively as the "Mid-Missouri Group", for their motion or application to the Commission to establish a docket to investigate the intraLATA toll service provisioning practices of Missouri interexchange telecommunications companies (IXCs), to establish common carrier duties of IXCs with respect to service obligations in both the intrastate intraLATA and the intrastate interLATA market, for an Order directing AT&T to show cause, an

alternative Petition for suspension and modification of the termination of the PTC Plan, and request for an emergency hearing, and state the following:

1. For purposes of this Motion, the Mid-Mo Group consists of eight small rural incumbent local exchange companies acting as Secondary Carriers pursuant to the terms of the Primary Toll Carrier Plan. There are approximately 30 other small rural incumbent local exchange companies, known collectively as the "Small Telephone Company Group", which are or may be similarly situated to the Mid-Mo Group for purposes of considering this Application.

2. On or about June 10, 1999 in Docket TO-99-254, the Commission entered a Report and Order which, among other things, provided for the elimination of the PTC Plan on or before October 20, 1999. In this Report and Order, as clarified by Order dated June 24, 1999, the Commission directed that, pursuant to federal legislation and rulemaking directing the implementation of intraLATA toll dialing parity, in SC exchanges the PTC Plan for provisioning intraLATA 1+ toll services would be replaced either by services provided by the LEC or its affiliate, or by the entry of IXC's into LEC markets. In the latter circumstance, the Commission approved initial assignment of customers' intraLATA toll carrier to their presubscribed interLATA carrier. AT&T, MCI-Worldcom, and Sprint are the major IXC's presently serving the vast majority of SC customers as their presubscribed 1+ interLATA carrier. The Commission's assumption or Order that the IXC's will provide intraLATA 1+ service in rural exchanges was fundamental to that part of the Order allowing PTC's to exit SC exchanges after October 20, 1999. In that docket the three major IXC's, AT&T, MCI-Worldcom, and Sprint all indicated that they would accept 1+ intraLATA requests for service from SC customers.

3. The Commission Orders in TO-99-254, and in related ILP dockets of individual LECs, directed that a list of IXC's willing to enter SC markets be made available to customers, and that IXC's serving as presubscribed interLATA carriers of these customers would be assigned to customers not making a carrier selection prior to October 20, if that IXC was on the customer's "available IXC" list. For IXC's such as AT&T who chose not to be on such a list, the Commission directed that the customers be informed that AT&T would provide service if the customer requested it. This direction was Ordered by the Commission in reliance upon the representations of AT&T, MCI-Worldcom, and Sprint that they would accept customer requests for intraLATA 1+ service from them. This direction ordered by the Commission was also premised upon the IXC's status as public utilities or common carriers, with commensurate obligation to make intraLATA toll service ubiquitously available.

4. The MMG believes the Commission's Order allowing IXC's to choose not to be on a list, but requiring the IXC to serve a customer requesting its service, was a recognition that, as common carriers, the IXC's are required to provide service under their filed tariffs and promotional practice tariffs.

5. In compliance with the Commission Orders, members of the Mid-Mo Group have sent the Commission-ordered customer notice. Pursuant to this notice, MMG customers have been informed AT&T will provide them service if they requested this directly of AT&T. Customers have in fact contacted AT&T, Sprint, and MCI-W, as well as other IXC's, pursuant to the Commission Ordered notice. Some customers contacting AT&T have been informed that AT&T will provide their 1+ intraLATA service. However, other customers contacting AT&T were told AT&T refused to provide

the service. This has or will result in unlawful and unreasonable discrimination between customers in the same exchange, served at the same cost, with AT&T refusing service for some but providing it for others. This has or will also result in unlawful and unreasonable discrimination between some MMG customers being refused service on the basis of high cost, when customers of Sprint and GTE, with higher costs, being provided service by AT&T.

6. Customers contacting IXC's pursuant to this notice have relayed information to the Mid-Mo Group creating concerns as to the business practices of the IXC's in agreeing to provide intraLATA toll services to customer. In a larger context, these responses have created concerns as to what services, either offered through permanent tariff or through approved promotional practices, that the IXC's are or should be required to offer customers. Also these responses have heightened concerns as to precisely what service obligations as common carriers these IXC's have in Missouri. It is ultimately the concern of the Mid-Mo Group that, unless these issues are resolved prior to October 20, 1999, or unless the Commission suspends, modifies, continues or extends its October 20, 1999 date for termination of the PTC Plan while these issues are being addressed, that customers in SC exchanges will not have available the desirable plans and service rate of the three largest IXC, but instead will have only "casual calling" services available at rates in the range of \$ 1.50 to \$ 3.00 per minute of use. If these concerns are not addressed, it is likely that customers in rural areas served by SC's will not receive parity or services or rates.

7. Specifically, some customers of Mid-Mo Group LEC's have been told by AT&T service representatives that 1+ service and desirable calling plans will be made

available to them, but different customers of the same LEC have been told by different service representatives of AT&T that services will not be available. Apparently a variety of reasons are being given by AT&T to justify refusal of service, but only for those customers for whom service is refused. Customers are being falsely told that service is being refused because:

The LEC is not a multiple carrier office;

AT&T is not a "PICable" carrier;

The LEC is not participating;

The LEC is blocking calls;

Service is not available in the LEC area;

Facilities are not available in the LEC area;

Billing services are not available in the LEC area;

The LEC access rates are excessively high.

AT&T representatives have called MMG companies and told them to quit telling customers AT&T is an available carrier, despite the specific terms of the customer notice Ordered by the Commission--that AT&T will serve if requested. On or about July 6, 1999, this culminated with receipt of a letter from AT&T by SCs, a copy of which letter is attached.

8. In this July 1, 1999 letter, AT&T has taken the following positions:
  - a. SCs are not to open AT&T access codes 0288 and 0732 for 1+ intraLATA service, even though these codes have been opened and in use for years for non 1+ or "casual" dialed calls, and have been opened and in use for years for 1+ interLATA calls;
  - b. AT&T has decided not to participate in SC intraLATA toll markets at this time, even though AT&T has already agreed to provide 1+ intraLATA toll service to hundreds of SC customers before July 6, 1999, and even though

AT&T has participated in the intraLATA toll 1+ markets of GTE and Sprint-United, which markets have access costs which are as high or higher than the markets of the SCs;

- c. AT&T will not pay originating access to SCs for 1+ 0288 or 0732 intraLATA toll traffic, even though AT&T cannot distinguish between a 1+ and a casual dialed call, and even though AT&T has specifically signed up SC customers as their presubscribed 1+ intraLATA carrier;
- d. AT&T has indicated it will no longer be an available 1+ carrier for interLATA toll service for future customers, even though AT&T is the carrier of last resort for interLATA toll service in Missouri;
- e. AT&T has indicated it will serve SC exchanges when it can do so in an economical manner, even though it provides service in the areas of GTE and Sprint-United, where the costs are as high or higher;
- f. AT&T's willingness to serve after October 20, 1999 is contingent upon approval of revised toll tariffs, which AT&T has indicated will seek to charge higher rates in SC exchanges than are charged in urban exchanges.

9. It is the Mid-Mo Group's belief and experience that AT&T desires to terminate its provisioning of tariffed and approved promotional practice intraLATA tolls services in small company exchanges. It is the MMG belief that AT&T does not want to offer customers in MMG markets the same service plans and rates it offers in urban exchanges. It is the MMG belief that AT&T wants to terminate its provision of service in rural SC exchanges to better compete in the urban areas of Missouri served by Southwestern Bell Telephone Company. These actions of AT&T may place LECs in violation of FCC Orders directing that customer PIC selections be honored in the absence of a PIC freeze, and may also violate slamming rules.

10. It is the belief and experience of the Mid-Mo Group that MCI-Worldcom and Sprint in the past have followed the market strategy of AT&T, and will do so in the future. If the major IXC's such as AT&T, MCI-Worldcom, and Sprint successfully exit

SC exchanges at the same time as the PTC exits these same exchanges, customers residing in those exchanges will have fewer carrier choices, will not have available the economies of scale and rate averaging power of large carriers, will have higher rates not in parity with those in urban areas, and will have higher rates not in parity with those in other rural areas served by SWB.

11. The intent and purpose of state and federal law, in providing for the implementation of intraLATA toll dialing parity, was to improve the carrier choices, toll rates, and service plans available to rural customers served by the Missouri SCs. Without further action on the Commission's part in response to this Application, the result of implementing dialing parity could be the opposite. The result could be fewer carrier choices, fewer service plans available, and higher rates. Such a result would be contrary to the state and federal policies promoting parity in services and rates between rural and urban areas, state and federal policies prohibiting the deaveraging of toll rates, and state and federal policies prohibiting the charging of different rates for the same service, based upon geographic location.

#### **IXC Service Provisioning Practices/Public Utility-Common Carrier Obligations**

12. On the basis of the foregoing, the MMG requests that a docket be opened in which the Commission can examine the business office practices of the IXC's, compare those practices to the IXC tariffs in effect, and decide to what extent an IXC can refuse service to any customer, or to what extent an IXC can exit a market or geographic area, what services the IXC's can refuse to provide to customers or geographic areas, and correspondingly to what extent an IXC's Missouri public utility or common carrier obligations limit their ability to refuse service to any customers or geographic areas. In

particular the MMG requests that the Commission determine that the "false" excuses being given by AT&T for not offering service, as set forth in paragraph 7 be declared unlawful and to be discontinued.

### **Motion to Show Cause**

13. The Commission Order in TO-99-254 specifically stated that if a customer requested AT&T service, AT&T will provide that service. The July 1, 1999 letter of AT&T contradicts and refuses to accept an Order in a docket before this Commission in which AT&T was a party in a contested case proceeding. AT&T is just as bound by the terms of the Commission's Orders as every LEC in the state of Missouri.

14. The position announced by AT&T is creating, and will continue to create, havoc for customers, the Commission, the Office of the Public Counsel, and for LECs in the state of Missouri. Such havoc was and is completely unnecessary, and was solely created by the actions of AT&T which are in direct contradiction to a binding Order of the Missouri Public Service Commission, which has general supervision of common carriers and public utilities operating in the state of Missouri.

15. Under the terms of §§ 386.570, 386.580, 386.590, and 386.600 RSMo, AT&T's violation and knowing refusal to comply with the Commission's Order makes AT&T liable for a penalty up to \$ 2000 per offense for each SC customer for each day AT&T refuses to provide 1+ intraLATA service. Each officer, agent, or employee of AT&T who assists or causes AT&T to be in violation or non-compliance may be personally liable for 1 years' imprisonment and a fine of \$ 1000, or both.

Wherefore, the MMG requests that the Commission issue an Order directing AT&T to show cause why it and its employees, agents, or officers should not be liable for such fines, penalties, and imprisonment as provided by law.

#### **Alternative Petition for Suspension and Modification**

16. In the event that IXC's are not required to provide 1+ intraLATA toll service in SC exchanges, and the current PTC obligation to serve SC exchanges is terminated after October 20, 1999, the result would cause undue and significant adverse economic impact on rural users of telecommunications services, and would not be in the public interest. Such a result would justify the entry of an Order of this Commission suspending, modifying, or delaying the termination of the PTC Plan from the currently scheduled October 20, 1999 date until a later date sufficient to assure that rural customers are not unwittingly left without an adequate selection of large toll carriers assuring the availability of reasonably priced toll services in reasonable parity with those available in urban or other rural areas.

17. The Commission is specifically requested to consider suspending PTC Plan termination until after the Missouri Universal Service Fund is operational and the SCs have reduced access rates commensurate with MoUSF receipts. By suspensions until this time, AT&T's claimed basis for not wanting to serve SC exchanges—high access rates—will be reduced. The MMG does not agree with AT&T's assumption SC access rates are higher than necessary to recover the costs of provisioning service in rural areas. There will always be a differential between the access rates of SWB and the SCs, unless a Missouri toll high cost fund is established.

**Motion for emergency or expedited hearing and decision**

18. The MMG respectfully requests that an emergency hearing and decision be held and entered prior to October 20, 1999, or alternatively that suspension of the PTC exit date of October 20, 1999 be ordered pending a later hearing.

WHEREFORE, the Mid-Mo Group respectfully requests that the Commission initiate a docket to investigate the common carrier obligations of AT&T, MCI-Worldcom, and Sprint, as well as other IXCs operating in Missouri, to provide intraLATA toll services to all SC customers similarly situated; to investigate and regulate the business practices of these IXCs in informing customers of whether service will be made available upon request, what IXC services should be made available, and if the result of that investigation justifies it, that AT&T be directed to show cause as to why they are not in violation of statutes requiring adherence to lawful orders of the Commission; that a Suspension and Modification Order suspending and modifying the October 20, 1999 PTC Plan termination date contained in the June 10, 1999 Order in TO-99-254, et al., to the extent necessary to protect rural SC customers from the loss or potential loss of both major IXCs and the PTCs serving SC exchanges; together with such other and further relief as is necessary or convenient to protecting the public interest in these regards.

ANDERECK, EVANS, MILNE  
PEACE & BAUMHOER


By: 

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Third Floor  
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Telephone: 573/634-3422  
Facsimile: 573/634-7822

ATTORNEYS FOR MID MO GROUP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent by facsimile this 9<sup>th</sup> day of July, 1999, to all attorneys of record in MoPSC Docket No. TO-99-254.

  
\_\_\_\_\_  
Craig S. Johnson



July 1, 1999

P.O. Box 6742  
290 Davidson Ave.  
Somerset, NJ 08873

Mid-Missouri Telephone Company  
David L. Jones, Executive Vice President  
215 Roc Street  
Pilot Grove, Missouri 65276-0038

Dear Mr. Jones:

This is to notify you of AT&T's intentions concerning participation in the upcoming intraLATA equal access conversion for your company in the State of Missouri. Since AT&T does not normally issue an Access Service Request (ASR) for intraLATA-only equal access conversions, this letter will serve as an official notification to your company.

Please do not open the AT&T access codes of 0288 and 0732 for intraLATA 1+ toll service in your company's Missouri exchanges. Because AT&T has decided not to participate in your company's intraLATA 1+ toll market at this time, AT&T will not pay any originating access charges to your company for 0288 and 0732 intraLATA 1+ toll traffic. AT&T will continue to pay terminating access charges to your company for applicable interLATA and intraLATA traffic, as well as originating access charges for interLATA traffic.

AT&T requests that representatives of your company refrain from taking any intraLATA 1+ orders for AT&T from your local customers. Further, AT&T declines to be included on any ballot, notice or list as a carrier available for selection as an intraLATA and/or interLATA 1+ service provider in your company's exchanges. If AT&T is currently included as an interLATA carrier available to new customers on your company's business office list, please remove it as soon as possible.

AT&T requests that your company continue the provisioning of AT&T carrier identification codes required for the origination of dial-around (101XXXX) intrastate interLATA and intraLATA calls, as you do today. AT&T will continue to pay your company originating access charges for intraLATA and interLATA dial-around traffic.

In essence, AT&T is requesting that your company retain the status quo in regard to how AT&T toll traffic is being handled currently; whereas interLATA 1+ and interLATA and intraLATA dial-around toll traffic is permitted, and intraLATA 1+ toll traffic is not. AT&T is eager to serve your company's intraLATA 1+ toll market when it can do so in an economical manner. To that end, AT&T will seek to be available to serve that market by October 20, 1999, contingent upon regulatory approval of revised toll tariffs.

Should you have any questions, please don't hesitate to call me on 732-805-1095.

A handwritten signature in cursive script that reads "Fran Gramiccioni".

Fran Gramiccioni  
AT&T Equal Access Coordinator

07/06/99

13:50

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ANDERHECK LAW FIRM; Page 1

MOKAN DIAL INC.

CRAIG JOHNSON

001



July 1, 1999

P.O. Box 6742  
290 Davidson Ave.  
Somerset, NJ 08873

MoKan Dial, Inc.  
Don Stowell, General Manager  
112 South Broadway  
Louisburg, KS 66053-0429

Dear Mr. Stowell:

This is to notify you of AT&T's intentions concerning participation in the upcoming intraLATA equal access conversion for your company in the State of Missouri. Since AT&T does not normally issue an Access Service Request (ASR) for intraLATA-only equal access conversions, this letter will serve as an official notification to your company.

Please do not open the AT&T access codes of 0288 and 0732 for intraLATA 1+ toll service in your company's Missouri exchanges. Because AT&T has decided not to participate in your company's intraLATA 1+ toll market at this time, AT&T will not pay any originating access charges to your company for 0288 and 0732 intraLATA 1+ toll traffic. AT&T will continue to pay terminating access charges to your company for applicable interLATA and intraLATA traffic, as well as originating access charges for interLATA traffic.

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AT&T requests that your company continue the provisioning of AT&T carrier identification codes required for the origination of dial-around (101XXXX) intrastate interLATA and intraLATA calls, as you do today. AT&T will continue to pay your company originating access charges for intraLATA and interLATA dial-around traffic.

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Should you have any questions, please don't hesitate to call me on 732-805-1095.

Fran Gramiccioni  
AT&T Equal Access Coordinator



Recycled Paper

Jul. 6. 1999 3:32PM

NEMO RURAL TEL CO

No. 9361 P. 2/3



July 1, 1999

P.O. Box 6742  
290 Davidson Ave.  
Somerset, NJ 08873

Northeast Missouri Rural Telephone  
Gary Godfrey, Equal Access Coordinator  
718 South West Street  
Green City, MO 63545

Dear Mr. Godfrey:

This is to notify you of AT&T's intentions concerning participation in the upcoming intraLATA equal access conversion for your company in the State of Missouri. Since AT&T does not normally issue an Access Service Request (ASR) for intraLATA-only equal access conversions, this letter will serve as an official notification to your company.

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Should you have any questions, please don't hesitate to call me on 732-805-1095.

A handwritten signature in cursive script that reads "Fran Gramiccioni".

Fran Gramiccioni  
AT&T Equal Access Coordinator

Jul. 6. 1999 3:32PM

MEMO RURAL TEL CO

No. 9361 P. 3/3



July 1, 1999

P.O. Box 6742  
290 Davidson Ave.  
Somerset, NJ 08873

Modern Telecommunications Company  
Gary Godfrey, Equal Access Coordinator  
718 South West Street  
Green City, MO 63545

Dear Mr. Godfrey:

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AT&T requests that representatives of your company refrain from taking any intraLATA 1+ orders for AT&T from your local customers. Further, AT&T declines to be included on any ballot, notice or list as a carrier available for selection as an intraLATA and/or interLATA 1+ service provider in your company's exchanges. If AT&T is currently included as an interLATA carrier available to new customers on your company's business office list, please remove it as soon as possible.

AT&T requests that your company continue the provisioning of AT&T carrier identification codes required for the origination of dial-around (101XXXX) intrastate interLATA and intraLATA calls, as you do today. AT&T will continue to pay your company originating access charges for intraLATA and interLATA dial-around traffic.

In essence, AT&T is requesting that your company retain the status quo in regard to how AT&T toll traffic is being handled currently; whereas interLATA 1+ and interLATA and intraLATA dial-around toll traffic is permitted, and intraLATA 1+ toll traffic is not. AT&T is eager to serve your company's intraLATA 1+ toll market when it can do so in an economical manner. To that end, AT&T will seek to be available to serve that market by October 20, 1999, contingent upon regulatory approval of revised toll tariffs.

Should you have any questions, please don't hesitate to call me on 732-805-1095.

A handwritten signature in cursive script that reads "Fran Gramiccioni".

Fran Gramiccioni  
AT&T Equal Access Coordinator