

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

In the Matter of McLeodUSA Telecommunications)	
Services, Inc.'s Tariff Filing to Increase its)	Case No. TT-2006-0474
Missouri Intrastate Access Rates)	

**RESPONSE OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.,
IN OPPOSITION TO AT&T MISSOURI'S MOTION
TO SUSPEND AND INVESTIGATE TARIFF**

COMES NOW McLeodUSA Telecom Services, Inc., (McLeodUSA), and for its response in opposition to the Motion of AT&T Missouri to suspend and investigate McLeodUSA's access rate tariff, states as follows:

1) AT&T Missouri's Motion to Suspend Tariff fails to comply with Commission rules and should be rejected. Commission rule 4 CSR 240-2.065(3) provides:

...Any pleading to suspend a tariff shall attach a copy of the tariff and include a certificate of service to confirm that the party who submitted the tariff has been served with the pleading.

AT&T Missouri failed to attach a copy of the tariff to its pleading to suspend the McLeodUSA tariff. This does not appear to have been an inadvertent clerical omission as there is no mention of an attachment in the pleading. In addition, the Tariff number referenced in the style of AT&T's Motion (JC-2006-0789) is not the tariff file number for the proposed new access services tariff filed by McLeodUSA on April 17, 2006, but is the tariff file number by which McLeodUSA proposes to withdraw its currently effective access services tariff. This defective filing by AT&T Missouri should be rejected by the Commission.

2) If the Commission does not reject AT&T Missouri's Motion to Suspend Tariff, it should be denied. The switched access rates proposed by McLeodUSA in JC-2006-

0788 are lawful and reasonable, are designed to recover legitimate costs of service, (although the Commission has acknowledged that costs are not the sole factor to be considered), and should be allowed to take effect as soon as possible. McLeodUSA's proposed new switched access tariff has been on file since April 17, 2006. McLeodUSA has provided its cost studies to Staff for review during the pendency of this tariff filing, has filed substitute tariff sheets as requested by Staff, and has extended the proposed effective date of the tariff twice in response to Staff's requests, most recently to June 23, 2006.

3) Commission decisions issued in 2000 and 2003 clearly permit CLECs to seek access rates above those charged by ILECs in their service areas. In light of competitive changes which have taken place since 2003, the ability of CLECs to seek increases in access rates becomes even more significant. These competitive changes include AT&T Missouri's (formerly known as SBC Missouri and Southwestern Bell Telephone Company) obtaining Section 271 authority to enter the long distance market and its subsequent acquisitions, including acquisition of AT&T of the Southwest, which prompted the latest corporate name change. McLeodUSA made the difficult decision to seek an increase in its access rates in Missouri as part of its review of network and access products "with an eye toward simplifying those products, as well as developing rates and rate elements more consistent with its underlying network and operations." (Cover letter dated April 17, 2006, Tariff Tracking No. JC-2006-0788). While it may have been reasonable and appropriate in 1998 for McLeodUSA to agree to follow the ILEC access rate structure and rates when it relied so heavily on the ILEC network to provide access services, it is now appropriate for McLeodUSA to adopt access rates

that reflect its own cost structure, and equally important, its own network infrastructure and design. It simply makes no sense to force McLeodUSA to continue reliance on the ILEC access rate and rate structure that bears little relation to the McLeodUSA network infrastructure and its associated costs.

4) The June 1, 2000, *Report and Order* in Case No. TO-99-596 (In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri) stated:

The parties also raised questions concerning the possibility that a CLEC might propose access rates higher than those of the directly competing ILEC. While all of the parties agreed that a CLEC may petition the Commission for authority to set rates in excess of the cap, they did not agree on the standard by which such petitions should be determined. Some of the parties argued that such rates must be cost-justified, while others suggested a more flexible, case-by-case analysis. The Commission concludes that Chapter 392, RSMo, requires that any such petitions be determined on a case-by-case basis. While costs are one important factor to be considered, that chapter mandates the consideration of other factors as well. See Section 392.185, RSMo Supp. 1999.

Those “other factors” cited to in Section 392.185 RSMo include:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection

of ratepayers and otherwise consistent with the public interest; ...

5) Additional support for authority to seek higher access rates is found in the August 26, 2003, *Report and Order* in Case No. TR-2001-65 (In the Matter of the Investigation of Actual Costs Incurred in Providing Exchange Access Service and the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies):

The Commission will adopt the suggestion that a CLEC may petition the Commission for access rates above the cap upon a showing that the same are cost-justified. The Commission will not adopt any of the other exceptions proposed in this case.

and

Ordered 5: That those parties authorized to provide competitive exchange access services in the state of Missouri may submit proposed exchange access tariff amendments in conformance with this decision. Any such proposed tariff must be submitted on a minimum of 30-days notice pursuant to Section 392.220.2, RSMo Supp. 1999.

6) McLeodUSA'S proposed access rates and rate structure are an appropriate response by a competitive telecommunications carrier to the use of its own network infrastructure with significantly less reliance on the ILEC to provide access services. The tariff does not violate any statute or regulation, and should be permitted to take effect.

7) Customers received notice of the proposed access rate changes more than 30 days in advance of the tariff effective date, and a sample copy of the customer notification letter was submitted with the tariff filing.

WHEREFORE, McLeodUSA Telecommunications Services, Inc. respectfully submits this Response in Opposition to AT&T Missouri's Motion to Suspend and Investigate Tariff, and requests the Commission reject this defective Motion, or in the alternative, deny the Motion and allow the tariff to take effect on its currently proposed effective date of June 23, 2006.

Respectfully submitted,

/s/Mary Ann Young

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served electronically on the General Counsel's Office, the Office of the Public Counsel, and counsel for AT&T Missouri this 20th day of June 2006.

/s/ Mary Ann Young

Mary Ann (Garr) Young