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November 13, 2006

The Honorable Colleen M. Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FILED³

NOV 13 2006

Missouri Public
Service Commission

Re: Tracking No. JL-2007-0260

Dear Judge Dale:

Please find enclosed for filing in the referenced matter the original and five copies of Missouri One Call System, Inc.'s Motion to Suspend Tariffs and Application to Intervene.


Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel's Office
Paul G. Lane

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the matter of Southwestern Bell
Telephone, L.P. d/b/a AT&T Missouri's
Revision to its General Exchange Tariff,
PSC Mo.-No. 35 Regarding Provision of
811 Service

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Tariff Tracking No.
JI-2007-0260

FILED³

NOV 13 2006

Missouri Public
Service Commission

MISSOURI ONE CALL SYSTEM, INC.'S
MOTION TO SUSPEND TARIFFS AND APPLICATION TO INTERVENE

Comes now Missouri One Call System, Inc. (MOCS) and for its Motion to Suspend and Application to Intervene submits the following to the Commission:

1. MOCS is a not-for-profit corporation organized under the laws of the State of Missouri with offices located at 728 Heisinger Road, Jefferson City, Missouri. A copy of MOCS' certificate of good standing with the Missouri Secretary of State's office is attached hereto as Exhibit 1.

2. MOCS is a statewide organization operating twenty four hours a day, three hundred sixty five days a year on a not-for-profit basis. It is supported by its member participants who are the owners or operators of underground facilities. Those underground facilities include, but are not limited to, petroleum pipelines, pressurized gas mains or lines, and electric, water, telephone/fiber optic, cable television or sewer lines. Southwestern Bell Telephone L.P. d/b/a AT&T Missouri is a member of MOCS.

3. The principal purpose of MOCS is the statewide receipt and dissemination to participant owners and operators of underground facilities of information concerning intended excavation activities in the area where such owners and operators have underground facilities.

MOCS qualifies as a "notification center" as defined in Section 319.015(4), RSMo 2000 and is the only such notification center in Missouri.

4. By making a single toll free telephone call (1-800-DIG-RITE) to MOCS at its call center in Jefferson City, Missouri, contractors, utilities, municipalities or any other persons intending to excavate in an area where underground facilities are located may notify all MOCS participants without making calls to each. After being notified by MOCS of an intended excavation in areas where there are underground facilities, each participant dispatches a person or crew to mark the location of its underground facilities at the site before excavation commences.

5. MOCS is a public safety organization. MOCS' chief objectives are prevention of injury to persons or property that might be caused by failure to locate, or the improper location, of underground facilities, and prevention of interruptions in public utility services that are caused by damage to underground facilities.

6. On or about October 19, 2006, Southwestern Bell Telephone L.P. d/b/a AT&T Missouri (AT&T) filed a tariff or tariffs (the "tariffs") seeking to revise its General Exchange tariffs respecting the provision of 811 Service in Missouri which is service using an abbreviated dialing code. This abbreviated dialing code was reserved by the Federal Communications Commission (FCC) to assist excavators in notifying underground facility operators of proximate excavation activities. The tariffs carry an issue date of October 19, 2006 and unless suspended are to be effective on November 18, 2006.

7. As the only one call notification center operating in Missouri at this time, MOCS has a direct interest in the outcome of approval or disapproval of the tariffs, and that interest is different from that of the general public. MOCS is opposed to approval of the tariffs.

8. As filed, AT&T's tariffs respecting the use and availability of 811 in Missouri are unjust and unreasonable, are inconsistent with the FCC Sixth Report and Order in CC Docket NO. 92-105, the order in which this code was reserved, and should be suspended and subjected to a hearing before the Commission on the reasonableness thereof.

9. Correspondence or communications pertaining to this Application should be addressed to the following persons:

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John Lansford, Executive Director
Missouri One Call System, Inc.
728 Heisinger Road
Jefferson City, Missouri.
Telephone: 573-556-8111
Fax: 573-635-8402
johnl@occinc.com

WHEREFORE, on the basis of the foregoing, and for reasons set forth in the following Supporting Suggestions, MOCS respectfully requests that the Commission reject the tariffs, suspend the same and hold a hearing on the reasonableness thereof, granting MOCS intervention therein and the right to fully participate at hearing.

SUPPPORTING SUGGESTIONS

MOCS BACKGROUND

MOCS was created as part of the implementation of the Underground Facility Safety and Damage Prevention Act which is set out in Chapter 319, RSMo 2000.¹ It is the only notification center created under Section 319.022 RSMo and has continuously served in that capacity since 1985. MOCS receives no funding from the Missouri legislature or any other government grants. The sole funding of MOCS is from charges to underground facility operators for providing notification services to those underground facility operators. During the course of calendar year 2006, MOCS will receive about 660,000 requests from excavators related to proposed underground excavation in the State of Missouri. MOCS will send out approximately 3,500,000 notices to these underground facility operators in response to those requests. MOCS wages an extensive public relations campaign. Since its creation in 1985, MOCS has extensively promoted its toll free number 800-344-7483 (800-DIG-RITE). Missourians need not travel far to find a billboard that advertises the number and why calling it is important to public safety. MOCS also places great reliance on radio and television spots.

OBJECTIONS TO THE TARIFFS

AT&T proposes to charge customers of 811 a nonrecurring initial set up charge of \$235.12 per host or stand alone switch. MOCS has calculated that under the AT&T tariff, the

¹ Sections 310.010 to 319.050.

convenience of an 811 dialing code in AT&T exchanges would easily cost the "customer" ---of which there is only one in Missouri --- \$50,000.²

1. The Pipeline Safety Act and the FCC's Sixth Report and Order

The Pipeline Safety Improvement Act of 2002 ("Pipeline Safety Act") set forth the intent of Congress that a three-digit number should be made available by the telecommunications industry to support callers trying to contact a state one call center. The Pipeline Safety Act ordered the FCC to: (i) determine the appropriate three-digit dialing number; and (ii) implement the intent of Congress. The Pipeline Safety Act did not authorize or make available any funds to support this project. Further, the Pipeline Safety Act did not mandate or place any monetary obligation on any state one call center.

The FCC issued Order 05-59 ("Order") in response to the Pipeline Safety Act. The Order made several requirements of the telecommunications industry including:

- mandating 811 as the three-digit dialing number to be allocated for access to one call centers;
- requiring telecommunications providers to vacate 811 for other purposes;
- mandating that telecommunications providers implement the appropriate system changes to transmit communications from 811 to the appropriate one call center.

The Order asked one call centers to do only **one thing** – that they **provide a telephone number** to the telecommunications providers, so that the provider may forward calls received on 811 to the one call center. There are no provisions in the Order obligating the one call centers to pay for the forwarding of such calls. There is no obligation in the Order mandating that one call

² MOCS does not know the number of host switches AT&T operates in Missouri. AT&T has approximately 193 exchanges in Missouri. Presuming there is at least one switch in each exchange, and there are undoubtedly many more than one switch in some exchanges, the minimum customer cost of the service under the tariff is \$45,378.16 exclusive of applicable taxes and surcharges.

centers accept 811 service from a carrier. MOCS believes there are several reasons why the FCC took this approach.

First, the FCC has no jurisdiction over MOCS or any of the nation's other one call centers. Since MOCS is a private non-profit organization that is not governed by the FCC, the FCC has neither the rulemaking authority nor the jurisdiction to compel cost recovery from MOCS and the 60+ other one call centers that do business in the United States.

Second, the FCC did not anticipate that the telecommunications providers would request reimbursement from the one call centers. In fact, nowhere in the record of either the Pipeline Safety Act or the Order is there any reference by any telecommunications provider on an intention to bill a one call center for that telecommunication provider's implementation or ongoing participation in its 811 obligation.

Last, it is MOCS' assertion that the FCC intended this obligation to fall on the party intended – namely the telecommunications provider. This obligation is no different from others imposed each year by government on regulated utilities. The FCC gave the telecommunications industry, including AT&T, two years to implement the Order. It is MOCS's belief that this two-year window was provided to the telecommunications industry so that providers could make any necessary programming changes as part of scheduled system upgrades in order to minimize costs. The 811 initiative was never intended to be a revenue source to the telecommunication providers. AT&T is attempting to take a federally mandated public safety initiative and convert it into a revenue stream.

2. 811 is not intended to have "customers."

In section 59.1.1 of the proposed tariffs, AT&T claims that 811 Service "is used by the One Call Notification system to provide advance notice of excavation activities" MOCS

disagrees. Per the Order, implementation of 811 is a safety device employed by the telecommunications industry to assist excavators in providing advance notice to utilities of excavation activities in areas where facilities are located underground. This is not a service used by the one call centers. As mentioned above, MOCS already promotes a toll free number in extensive advertising that it has used, and continues to use, for compliance with the Underground Facility Safety and Damage Prevention Act.

MOCS must also negate the implication that MOCS has requested 811 service, and that AT&T may be responding as an accommodation to that request. It is true that if the tariff is approved, the "customer" for AT&T's 811 service in its Missouri exchanges will be MOCS and only MOCS. Yet, MOCS has **never** requested 811 service from AT&T or from any other telecommunications provider. MOCS made no request either to Congress in connection with the Pipeline Safety Act, or to the FCC in connection with the Order. It is up to AT&T, not MOCS or other one call centers, to determine how AT&T intends to fulfill its obligations under the Order. MOCS has not interfered with AT&T's efforts to comply with the Order. As the FCC requested, MOCS has notified AT&T and other Missouri telecommunications companies of the appropriate toll free forwarding number. Performing that task cannot be equated with a request for service.

MOCS submits that there is no basis, contractual or otherwise, for MOCS to be regarded as a potential "customer" for this service. Neither Congress nor the Order suggested that subscribers to 811 would exist, or that any one call center should be required to pay anything to a telecommunication provider in order to implement 811. There is nothing in the Order suggesting that MOCS or other one call centers were mandated to accept 811 as a customer service.

MOCS does not cause new costs for AT&T. The costs AT&T incurs, if any, to implement 811 are costs it must unavoidably incur as a consequence of obedience to the FCC's

Order and not new burdens imposed by MOCS. MOCS has established the forwarding toll free number but it is the FCC which has directed AT&T to link that number through 811. Implementation of 811 is not MOCS' **financial** responsibility.

3. **To approve AT&T's 811 tariffs would be against public policy.**

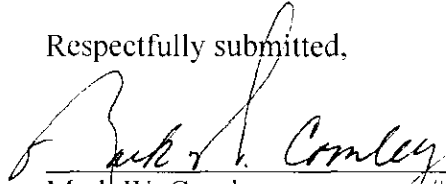
The Pipeline Safety Act indicated Congress' desire for the telecommunications industry to provide a three-digit dialing mechanism into the 60+ one call centers located throughout the United States. This was done not at the request of the one call centers, but instead based on broader public policy and safety issues before Congress. By the FCC choosing to allocate 811 as the link between callers and those 60+ one call centers it too recognized the significance of this issue from a broad safety perspective. AT&T should not be allowed to undermine those broader public safety initiatives by attempting to take its obligation and make it into a revenue opportunity. Congress placed the burden on the telecommunications industry to implement an 811 alternative and that is where the financial burden should remain and not on one call centers. AT&T has the time to do an orderly conversion and minimize the financial impact. MOCS has not required AT&T to expedite this implementation, nor has MOCS set any design specifications or requested any service from AT&T.

MOCS is under no obligation to obtain or subscribe to a carrier's proposed 811 service. At this time, MOCS has no intention of paying AT&T for a safety device that the FCC has ordered AT&T to implement in its service territories. If the tariff is approved, excavators in the AT&T exchanges will not have access to 811. Congress and the FCC intended to make the convenience of a three digit dialing code available to excavators nation wide. Neither intended that there would be geographical gaps in the availability of 811.

CONCLUSION

It is on the basis of the foregoing that MOCS respectfully requests that the Commission reject the tariffs, suspend the same and hold a hearing on the reasonableness thereof, granting MOCS intervention in the matter and the right to fully participate at hearing.

Respectfully submitted,


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Attorneys for Missouri One Call System, Inc.

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 13th day of November, 2006, to General Counsel's Office at gencounsel@psc.mo.gov; Office of Public Counsel at opcservice@ded.mo.gov; Larry Dority at lwdority@sprintmail.com; and Paul G. Lane at pl6594@att.com, attorney for AT&T Missouri.



ATTORNEY VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Mark W. Comley, being first duly sworn, do hereby certify, depose and state that I am the attorney for the Missouri One Call System, Inc., applicant for intervention in this proceeding; that I have read the above and foregoing Application to Intervene and the allegations therein contained are true and correct to the best of my knowledge, information and belief; and I further state that I am authorized to verify the foregoing application by the above said applicant.

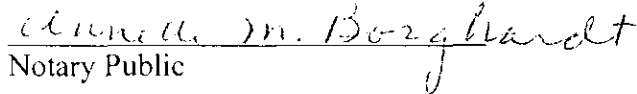


Mark W. Comley

Subscribed and sworn to before me, a Notary Public, this 13th day of November, 2006.

My Commission expires:

3-11-2010



Notary Public



STATE OF MISSOURI



Robin Carnahan
Secretary of State

**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

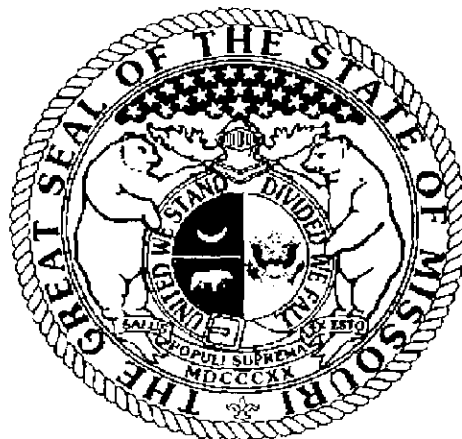
**MISSOURI ONE CALL SYSTEM, INC.
N00033902**

was created under the laws of this State on the 4th day of November, 1985, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 13th day of November, 2006

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State



Certification Number: 9193520-1 Reference:
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>