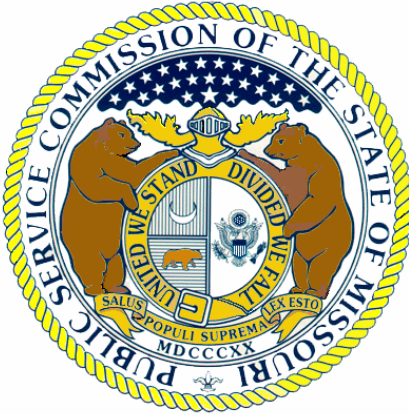


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of Southwestern Bell Telephone, L.P. d/b/a ) **Case No. IT-2007-0187**  
AT&T Missouri's Revision to its General Exchange Tariff, ) Tariff No. JI-2007-0260  
PSC Mo. No. 35, Regarding Provision of 811 Service )

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**REPORT AND ORDER**

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**Issue Date: February 1, 2007**

**Effective Date: February 16, 2007**

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

In the Matter of Southwestern Bell Telephone, L.P. d/b/a ) **Case No. IT-2007-0187**  
AT&T Missouri's Revision to its General Exchange Tariff, ) Tariff No. JI-2007-0260  
PSC Mo. No. 35, Regarding Provision of 811 Service )

**Appearances**

**Robert J. Gryzmala**, Attorney for Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri,  
One SBC Center, Suite 3520, St. Louis, Missouri 63101.

**Mark. W. Comley**, Attorney for Missouri One Call System, Inc., Newman, Comley & Ruth  
P.C., 600 Monroe Street, Suite 301, P.O. Box 537, Jefferson City, Missouri 65102.

**David Meyer**, Senior Counsel, General Counsel, P.O. Box 360, Jefferson City, Missouri  
65102, for the Staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE:**    **Harold Stearley, Judge**

# **REPORT AND ORDER**

## **Procedural History**

On October 19, 2006,<sup>1</sup> Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T”) filed a proposal to revise its General Exchange Tariff by adding a new section; Section 59. The new section described AT&T’s intent to offer 811 Service pursuant to the Federal Communications Commission’s (“FCC”) March 14, 2005 Sixth Report and Order in the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, 20 FCC Rcd 5539 (2005) (“Order”). The provision of 811 Service utilizes the abbreviated dialing code of 811, as reserved by the FCC, to assist excavators with notifying underground facility operators of upcoming excavation activities. AT&T’s tariff delineated, *inter alia*, the rates AT&T intends to charge for the 811 Service and bore an effective date of November 18.

On November 16, the Commission granted Missouri One Call System, Inc.’s (“MOCS”) request to intervene and suspended AT&T’s tariff until January 17, 2007. In its request to intervene, MOCS contended that AT&T’s tariff was unjust, unreasonable and inconsistent with the FCC’s Order. MOCS claimed that the FCC’s Order requires call centers to provide a telephone number to the telecommunications providers so that the provider may forward calls received on 811 to the call center, not that the call centers have to pay for the forwarding of such calls.

Because AT&T’s tariff was originally filed as a non-case tariff, MOCS’s intervention request required the Commission to establish a case and issue notice. Notice was issued on November 16 with an intervention deadline set for November 30. No other requests for

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<sup>1</sup> All dates throughout this order refer to the year 2006 unless otherwise noted.

intervention were filed. On December 19, after initially participating in this matter, the Office of the Public Counsel filed a notice of withdrawal stating, “the issue in the case does not have any direct effect on telecommunications customers of AT&T Missouri and the outcome of the case does not appear to have broad application to consumers.”

An evidentiary hearing was held on December 21, and on December 28, by the parties’ agreement, the Commission suspended AT&T’s tariff for an additional 30 days, or until February 16, 2007, to give the parties adequate time for post-hearing briefing and adequate time for the Commission to decide the merits of the case.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

1. On March 14, 2005, in response to the Pipeline Improvement Safety Act’s mandate to provide for the establishment of a 3-digit nationwide toll-free telephone number to be used by state one-call notification systems, the FCC released its Sixth Report and Order in the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements (“Order”).<sup>2</sup>
2. The FCC’s Order was published in the Federal Register on April 13, 2005.<sup>3</sup>

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<sup>2</sup> Pipeline Safety Improvement Act, Pub. L. No. 107-355, 116 Stat. 2985 (2002), Section 17; Federal Communications Commission, CC Docket No. 92-105, 20 FCC Rcd 5539 (2005); Hearing Exhibit 2; Hearing Exhibit 3; Transcripts p. 55, lines 21-25, and p. 56, lines 1-5.

<sup>3</sup> 70 Fed. Reg. 19321-19330 (2005) (to be codified at 47 C.F.R. Part 52); Transcript p. 109, lines 20-25, and p. 110, lines 1-3.

3. The FCC's Order states that: "811 is assigned as the national abbreviated dialing code to be used exclusively for access to Once [sic] Call Centers, effective thirty days after publication of this Order in the Federal Register."<sup>4</sup>

4. The FCC's Order states that: "... two years from publication of this Order in the Federal Register is a reasonable period for implementing an N11 code, specifically 811, for access to One Call Centers."<sup>5</sup>

5. The FCC's Order states that: "Thus, such requirement [the implementation of 811 for access to One Call Centers] applies to all carriers on a nationwide basis and is not dependent upon whether there has been a request for such service."<sup>6</sup>

6. The FCC's order states that: "To ensure that calls to One Call Centers are toll-free, we conclude that One Call Centers shall provide to carriers its toll-free number, which can be an 8YY number or any number that is not an IntraLATA toll call, from the area to be served for use in implementing 811. Thus, when a caller dials 811, the carriers will translate 811 into the appropriate number to reach the One Call Center."<sup>7</sup>

7. The FCC's Order states that: "We direct carriers to use either the NPA-NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed."<sup>8</sup>

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<sup>4</sup> Hearing Exhibit 3; Federal Communications Commission's Sixth Report and Order in the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, Paragraph 41 of Section V, Ordering Clauses; CC Docket No. 92-105, 20 FCC Rcd 5539 (2005); Transcript p. 140, lines 2-11.

<sup>5</sup> *Id.*; FCC's Order, Paragraph 32 of Section II, Discussion; Transcripts p. 25, lines 15-21.

<sup>6</sup> *Id.*; FCC's Order, Footnote 120, referencing Paragraph 32 of Section III, Discussion.

<sup>7</sup> *Id.*; FCC's Order, Section III, Discussion, Paragraph 26; Transcript p. 44, lines 8-13, p. 97, Lines 1-13, p. 100, lines 7-25, and p. 101, lines 1-3.

<sup>8</sup> *Id.*; FCC's Order, Section III, Discussion, Paragraph 29.

8. The FCC's Order states that: "We therefore delegate authority to the state commissions, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of 811."<sup>9</sup>

9. The FCC's Final Regulatory Flexibility Analysis, in Appendix B to its Order, states: "While we recognize that there may be some costs associated with implementation of the 811 code, we have not specified parameters for cost recovery in this Order. The Pipeline Safety Act did not provide for federal financial support as part of the mandate for a nationwide abbreviated dialing arrangement for access to One Call Centers. Therefore, we find that the Congressional mandate and benefits of a national N11 code assignment, specifically 811, outweigh any concerns regarding cost recovery on the federal level. These issues are most appropriately addressed by the state and local governments. As indicated above, we believe that state commissions are in the best position to address issues associated with implementing 811 because many of the One Call Centers were developed by, or under the auspices of, the state commissions."<sup>10</sup>

10. The FCC has designated the use of other N11 Codes as abbreviated dialing arrangements including: 211 Service for information and referral services; 311 Service to allow customers to reach non-emergency local government services; 511 Service for the

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<sup>9</sup> *Id.*; FCC's Order, Section III, Discussion, Paragraph 35; The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), 47 U.S.C. Section 251(e)(1); Transcripts p. 181, lines 23-25.

<sup>10</sup> Hearing Exhibit 3; *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Docket No. 92-105, Sixth Report and Order, Appendix B, Final Regulatory Flexibility Analysis, Paragraph 39, 20 FCC Rcd 5539 (2005), Transcript p. 57, lines 22-25, p. 58, lines 1-10, p. 181, lines 6-25, and p. 182, lines 1-8; AT&T's Post-Hearing Brief, p. 3.

Department of Transportation; 711 Service for hearing impaired individuals to obtain operator assistance with placing phone calls; and 911 Service for emergency assistance.<sup>11</sup>

11. Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T”), is a Texas corporation authorized by the Commission to provide telecommunications service to the public in the State of Missouri.<sup>12</sup>

12. AT&T’s principal offices and place of business in Missouri are located at One AT&T Center, Room 3520, St. Louis, Missouri 63101.<sup>13</sup>

13. AT&T is a “public utility” and a “telecommunications company” as defined in Section 386.010(42), and (51), RSMo 2000.<sup>14</sup>

14. AT&T admits that it is a price-cap company subject to the provisions of Section 392.245, RSMo Cum. Supp. 2005.<sup>15</sup>

15. On October 19, 2006, AT&T filed a proposal to revise its General Exchange Tariff by adding a new section, Section 59, offering 811 Service for a nonrecurring set-up charge of \$235.12 per host or stand alone switch.<sup>16</sup>

16. AT&T will configure its switches to implement 811 Service regardless if it has subscribers for that service.<sup>17</sup>

17. Missouri One Call System, Inc. (“MOCS”) is a not-for-profit Missouri corporation that serves as a “notification center”, as defined in Section 319.015(4),

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<sup>11</sup> Transcript pp. 64-67, p. 89, lines 13-25, p. 90, lines 1-2, p. 91, lines 2-18, p. 182, lines 16-25, and p. 183, lines 1-25; Staff’s Response to Motion to Suspend, p. 2, para 5, filed November 15, 2006.

<sup>12</sup> See Case No. TO-2006-0093.

<sup>13</sup> Id. See also Hearing Exhibit 1.

<sup>14</sup> All statutory references are to RSMo 2000 unless otherwise noted.

<sup>15</sup> Transcript p. 33, lines 5-12, and p. 36, lines 17-24; AT&T’s Post-Hearing Brief, p. 3.

<sup>16</sup> Hearing Exhibit 1.

<sup>17</sup> Transcript p. 95, lines 7-25, and p. 96, line 1.

providing statewide notification to participant owners and operators of underground facilities of information concerning intended excavation activities.<sup>18</sup>

18. Missouri One Call System, Inc.'s ("MOCS") principal offices are located at 728 Heisinger Road, Jefferson City, Missouri.<sup>19</sup>

19. MOCS is the only notification center of its kind in the State of Missouri.<sup>20</sup>

20. Contractors, utility companies, municipalities or any other person can notify all participant owners and operators of underground facilities of their intent to excavate by making a single toll-free call to MOCS at 1-800-DIG-RITE.<sup>21</sup>

21. MOCS is a One Call Notification System Operator as listed in Section 17 of the Pipeline Safety Improvement Act of 2002.<sup>22</sup>

22. MOCS's member participants are facility operators as listed in Section 17 of the Pipeline Safety Improvement Act of 2002.<sup>23</sup>

23. Once a call is placed to MOCS, it notifies each participant and that entity dispatches a crew to mark the location of its underground facility prior to the excavation.<sup>24</sup>

24. The implementation of AT&T's tariff coupled with requiring MOCS to subscribe to AT&T's 811 Service would cost MOCS approximately \$70,000.<sup>25</sup>

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<sup>18</sup> Missouri One Call System, Inc.'s Motion to Suspend Tariffs and Application to Intervene, paragraph 1; Transcript p. 112, lines 19-25, p. 113, line 1, p. 142, lines 23-25, and p. 160, lines 1-3.

<sup>19</sup> Missouri One Call system, Inc.'s Motion to Suspend Tariffs and Application to Intervene, paragraph 1.

<sup>20</sup> Transcript p.113, lines 5-10.

<sup>21</sup> Transcript p. 114, lines 8-25, p. 115, lines 1-5, p. 116, lines 9-15, p. 117, lines 1-25, and p. 118, lines 1-4.

<sup>22</sup> Hearing Exhibit 2; Transcript p. 130, lines 16-19.

<sup>23</sup> Hearing Exhibit 2; Transcript p. 130, lines 12-15.

<sup>24</sup> Missouri One Call System, Inc.'s Motion to Suspend Tariffs and Application to Intervene, p. 2, para. 4. Transcripts p. 114, lines 3-25, and p. 115, lines 1-5.

<sup>25</sup> Transcript p. 124, lines 11-18.

25. MOCS estimates that if AT&T's tariff were applied statewide, as opposed to only AT&T's service area, requiring MOCS to subscribe to 811 Service would cost MOCS approximately \$200,000.<sup>26</sup>

26. Although MOCS asserted that AT&T's tariff for 811 Service was unjust and unreasonable and inconsistent with the FCC's Order in its Motion to Suspend Tariffs and Application to Intervene, at hearing, John Landsford, Executive Director of MOCS, testified that MOCS had no position on the reasonableness of the rates AT&T has placed in its tariff because it has not ordered the 811 service.<sup>27</sup>

27. MOCS provided AT&T the toll-free number of 866-DIG-RITE to comply with the FCC's Order.<sup>28</sup>

28. MOCS does not regard its compliance with the FCC Order requiring it to submit an 800 number to AT&T as an order for the 811 service.<sup>29</sup>

29. MOCS does not intend to subscribe with AT&T for 811 Service.<sup>30</sup>

30. The Commission has previously approved AT&T tariffs to implement 211 Service and 311 Service allowing AT&T to recover reasonable rates for the provision of those services from the entity providing the service that corresponds to the N11 number, not the telecommunications company.<sup>31</sup>

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<sup>26</sup> Transcript p. 165, lines 19-25, and p. 166, lines 1-11.

<sup>27</sup> Transcript p. 38, lines 4-18, and p. 128, lines 13-23.

<sup>28</sup> Transcript p. 118, lines 13-22, p. 121, lines 11-18, and p. 128, lines 8-12.

<sup>29</sup> Transcript p. 128, lines 8-25, p. 129, lines 1-25, and p. 130, line 1.

<sup>30</sup> Transcript p. 118, lines 13-15, p. 124, lines 19-25, p. 125, line 1, and p. 138, lines 7-17.

<sup>31</sup> Hearing Exhibits No. 5 and 6; Transcript p. 103, lines 12-18, Staff's Post-Hearing Brief, p. 4. See also Commission Rule 4 CSR 240-32.200(2)(C) (directing companies to submit a tariff to the commission for the provision of 211 service).

31. The 811 Service is analogous in nature to 211 Service and 311 Service in that they allow a single point of contact to receive calls and act as a clearinghouse to direct callers to the needed service.<sup>32</sup>

32. The Staff of the Missouri Public Service Commission surveyed 21 states implementing 811 Service, and of those states that responded, five allowed the telecommunications companies to recover costs associated with 811 Service, those states being Florida, Minnesota, Nebraska, Tennessee, and Washington.<sup>33</sup>

33. Staff's survey also revealed that in Mississippi the One Call Centers voluntarily accepted the costs, in Texas the costs were not directed to the One Call Center, and in Iowa the costs associated with 811 Service were imposed upon the telecommunications company.<sup>34</sup>

34. The rates for 811 Service provided in AT&T's tariff are comparable to the rates it has charged for the same service in tariffs that have been approved by other state commissions, specifically Kansas, Oklahoma, California, Nevada, and Illinois.<sup>35</sup>

35. No party to this action has claimed that AT&T's proposed charges exceed its costs to implement the FCC's Order.<sup>36</sup>

36. No party to this action asserts that AT&T's 811 Service tariff rates are unjust or unreasonable.<sup>37</sup>

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<sup>32</sup> Transcript p. 104, lines 8-14.

<sup>33</sup> Transcript p. 184, lines 5-24, p. 194, lines 15-25, and p. 195, lines 1-25.

<sup>34</sup> Transcript p. 184, lines 5-24, p. 196, lines 1-25, and p. 197, lines 1-17.

<sup>35</sup> Hearing Exhibits 7, 8 (public) and 9, 10, 11, 17, 19, and 20 (highly confidential); Transcript p. 64, lines 4-25, pp. 65-75, and p. 76, lines 1-2.

<sup>36</sup> Transcripts p. 16, lines 22-25, p. 26, lines 3-7, p. 30, lines 12-15, p. 34, lines 8-14, p. 35, lines 6-14, p. 38, lines 3-18, p. 63, lines 19-25, p. 79, lines 17-21, p. 128, lines 18-23, and p. 182, lines 1-8.

<sup>37</sup> *Id.*

## **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law.

### **Jurisdiction and Authority**

AT&T is a “public utility” and a “telecommunications company” as defined in Section 386.010(42), and (51), is subject to the jurisdiction, control and regulation of the Commission. MOCS is a not-for-profit Missouri corporation that serves as a “notification center”, as defined in Section 319.015(4). MOCS is not a “public utility,” or a “telecommunications company” or any other defined regulated entity pursuant to Section 386.020; nor does it provide “telecommunications services” or own “telecommunications facilities.”<sup>38</sup> Consequently, MOCS is not subject to the jurisdiction, control and regulation of the Commission.

### **Obligations Pursuant to the FCC’s Order**

The FCC’s Order mandates the use of 811 as the national abbreviated dialing code for providing advanced notice of the excavation activities to underground facility operators within two years after publication of its Order in the Federal Register, i.e. by April 13, 2007.<sup>39</sup> In order to implement the 811 dialing code, the FCC requires carriers to use either the Numbering Plan Area (NPA)-NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed.<sup>40</sup> Finally, the FCC delegated authority to the state commissions, pursuant to Section 251(e) of the Telecommunications Act of 1996,

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<sup>38</sup> Sections 386.020(42), (51), (52), and (53) RSMo 2000.

<sup>39</sup> Hearing Exhibit 3; *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Docket No. 92-105, Sixth Report and Order, Paragraphs 2 and 32-34, 20 FCC Rcd 5539 (2005).

<sup>40</sup> *Id.* at Paragraphs 2 and 29; Appendix B, Final Regulatory Flexibility Analysis, Paragraph 39.

to address the technical and operational issues, including cost allocation, associated with the implementation of the 811 code.<sup>41</sup>

The net result of the FCC's Order in the context of this matter is that AT&T must implement its 811 Service no later than April 13, 2007, and the Commission is charged with the authority to determine the propriety of AT&T's tariff for the federally mandated provision of 811 Service. While the FCC's Order states that One Call Centers must notify carriers of the toll-free or local number the Center uses so the carriers may forward the calls, the Order does not require One Call entities to subscribe to 811 Service.<sup>42</sup>

### **Commission's Standards for Approving AT&T's Tariff**

AT&T is a price-cap company subject to the provisions of Section 392.245.<sup>43</sup> Section 392.245.11 provides, in pertinent part: "This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such services."<sup>44</sup> This section further provides that incumbent local exchange telecommunications companies may change the rates for its services, not to exceed the maximum allowable price, subject to the provisions of subsections 2 through 5 of Section 292.200.<sup>45</sup> AT&T, however, is also a

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<sup>41</sup> *Id.* at Paragraphs 2, 35 and Appendix B, Final Regulatory Flexibility Analysis, Paragraph 39; The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. Section 251(e)(1).

<sup>42</sup> Transcript p. 80, lines 2-17, and p. 182, lines 9-12. The FCC's Order states that One Call Centers must notify carriers of the toll-free or local number the One Call Center uses in order to ensure that callers do not incur toll charges. Hearing Exhibit 3; *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Docket No. 92-105, Sixth Report and Order, Paragraphs 2 and 26, 20 FCC Rcd 5539 (2005), *citing to*, Pub. L. No. 107-355, Section 17, 116 Stat. 2985, 3008 (2002) (the "Pipeline Safety Improvement Act") However, it should be noted that even though MOCS provided AT&T with a toll free number, it is disputed whether the FCC has the authority to direct MOCS to provide a phone number to AT&T for the provision of 811 Service. Transcript p. 97, lines 14-21, p. 122, lines 24-25, and p. 123, lines 1-2; MOCS's Post-Hearing Brief, p. 4.

<sup>43</sup> RSMo Cum. Supp. 2005.

<sup>44</sup> *Id.*

<sup>45</sup> Section 392.245.11, RSMo Cum. Supp. 2005.

competitive telecommunications company, having been so classified by the Commission pursuant to 392.245.<sup>46</sup> Approval of its tariffs as a competitive company is also subject to the provisions of Sections 392.200.2 through .5 as directed in Section 392.500.<sup>47</sup>

Section 392.500, as amended in 2005, provides that proposed changes in rates or charges, or any classification or tariff provision affecting rates or changes, for any competitive telecommunications service, are subject to subsections 2 to 5 of Section 392.200. Consequently, AT&T's tariff for 811 Service, a tariff provision affecting rates for a competitive telecommunications service, is subject to approval based upon the standards articulated in Section 392.200, subsections 2 through 5, and these subsections prohibit tariffs that create undue or unreasonable prejudice or disadvantage.<sup>48</sup>

Section 392.200.2 provides in pertinent part:

No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions.<sup>49</sup>

Section 392.200.3 provides:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality,

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<sup>46</sup> RSMo Cum. Supp. 2005. See Case Nos. TO-2006-0093 and TO-2006-0102.

<sup>47</sup> RSMo Cum. Supp. 2005; *In the Matter of AT&T Communication of the Southwest, Inc.'s Proposed Tariff to Establish a Monthly Instate Connection Fee and Surcharge*, Case No. TT-2002-129, 2005 WL 3425546\*5 (Mo. P.S.C.).

<sup>48</sup> *Id.* Section 392.200.1, RSMo Cum. Supp. 2005, which requires that rates be just and reasonable, no longer applies to rate changes made by competitive companies. Instead, the legislature has determined that competition will ensure that the rates charged by competitive companies will be just and reasonable. Case No. TT-2002-129, 2005 WL 3425546 at \*5. It should be noted that regardless of AT&T's status as a price-capped company, or as a competitive company, Section 392.200.2 through 5 would apply to determining the propriety of AT&T's tariff.

<sup>49</sup> RSMo Cum. Supp. 2005.

or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.<sup>50</sup>

Sections 392.200.4 and .5 involve geographic classification or market segregation and charges per minute for interexchange services respectively. Neither of these subsections apply to AT&T's 811 Service Tariff.<sup>51</sup>

## **Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive in reaching this decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

While MOCS is currently the only notification center of its type in Missouri, it was created pursuant to Chapter 319. Chapter 319, however, does not designate any individual entity to be a notification center and places no limit on the number of notification centers that can operate within the state. AT&T's tariff would apply to any and all notification centers ordering 811 Service and does not give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.<sup>52</sup> Nor does AT&T's tariff directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any

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<sup>50</sup> RSMo Cum. Supp. 2005.

<sup>51</sup> *Id.*

<sup>52</sup> Section 392.200.3, RSMo Cum. Supp. 2005.

person or corporation a greater or less compensation for any service than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions.<sup>53</sup> In short, AT&T's tariff for 811 Service does not create undue or unreasonable prejudice or disadvantage and it shall be approved.

Although no party has challenged the reasonableness of AT&T's rates for implementation of 811 Service, and although the "just and reasonable" standard is not applicable in this instance, the Commission notes that rates established by the Commission must not be confiscatory and a utility must be able to recover its proper expenses and also a reasonable return on its prudent investment.<sup>54</sup> Mandating that AT&T provide this service for free is without question potentially confiscatory and the Commission declines MOCS's invitation to do so.<sup>55</sup>

MOCS does not fall under the jurisdiction of the Commission and the Commission lacks authority to require it to subscribe to AT&T's 811 Service. However, whether MOCS subscribes to AT&T's 811 Service is irrelevant to the issue of whether if AT&T can charge for the service.

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<sup>53</sup> Section 392.200.2, RSMo Cum. Supp. 2005.

<sup>54</sup> *State ex rel. Union Elec. Co. v. Public Service Com'n*, 687 S.W.2d 162, 166 (Mo. banc 1985).

<sup>55</sup> *State ex rel. Sprint Spectrum L.P. v. Missouri Public Service Com'n*, 112 S.W.3d 20, 26 (Mo. App. 2003); See also *Smith v. Ill. Bell Tel. Co.*, 270 U.S. 587, 591-92 (1926); *Bluefield Water Works & Improv. Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 690 (1923); *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Begin the Implementation of its Regulatory Plan*, Case No. ER-2006-0314.

**IT IS ORDERED THAT:**

1. 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, assigned tariff number JI-2007-0260, is approved to become effective on February 16, 2007. The tariff sheets approved are:

**P.S.C. Mo. No.35**  
**General Exchange Tariff**  
**Section 59**  
**Original Sheet No. 1 – Original Sheet No. 3**

2. All objections not ruled on are overruled and all motions not granted are denied.
3. This order shall become effective on February 16, 2007.
4. This case may be closed on February 17, 2007.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,  
concur and certify compliance with the provisions  
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 1st day of February, 2007.