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March 2, 2001

FILED³
MAR 02 2001
Missouri Public
Service Commission

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65101

Re: Case No. TX-2001-73

Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies of AT&T Communications of the Southwest, Inc.'s Comments in the above referenced matter.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

LATHROP & GAGE, L.C.

By: 
Paul S. DeFord

Attachment

cc: General Counsel
Office of Public Counsel

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

FILED³
MAR 02 2001

*Missouri Public
Service Commission*

In the Matter of a Proposed Amendment)
to Rule 4 CSR 240-32.130; Rule 4 CSR)
240-32.140; Rule 4 CSR 240-32.150; Rule)
4 CSR 240-32-160 and Rule 4 CSR)
240-32.170 regarding Prepaid Calling Cards)

Case No. TX-2001-73

**COMMENTS OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.
REGARDING PROPOSED PREPAID CALLING CARD RULES**

COMES NOW, AT&T Communications of the Southwest, Inc. ("AT&T") and
submits the following comments regarding proposed amendment to the above listed
rules:

On February 1, 2001, the Missouri Public Service Commission ("Commission")
filed proposed amendments to its current prepaid calling card rules in the Missouri
Register. The Commission proposes to include these amendments in 4 CSR 240-32.130;
4 CSR 240-32.140; 4 CSR 240-32.150; 4 CSR 240-32.160 and 4 CSR 240-32.170.

AT&T has reviewed the proposed amendments and states as follows:

General Comments

AT&T appreciates the opportunity to provide comments to the Commission
regarding this proposed rule. AT&T does provide prepaid cards in Missouri as well as
the rest of the United States through a variety of sales channels. AT&T prepaid cards are
primarily sold through distributors and retailers who, in turn, resell the cards to
consumers. In addition, AT&T provides prepaid cards directly to end-users either through
internal sales channels, as promotional items, or through e-commerce.

When AT&T provides prepaid cards to retailers directly or through distributors, those cards are often purchased in bulk at a national level and distributed by the retailer to its various locations. Because these cards are often provided at the national level, it is extremely difficult for AT&T and the retailers to comply with state-specific requirements. For this reason, AT&T urges the Commission to carefully consider whether the perceived necessity for a particular proposed rule is truly supported by the facts, particularly when the costs of carrier compliance are considered. These costs will only decrease the affordability and availability of prepaid calling cards, particularly in relation to presubscribed services.

One overall theme in the proposed rules that concerns AT&T is that the proposed rules appear to be an attempt to regulate the retail providers of prepaid cards by imposing requirements upon the company providing the underlying telecommunications service. AT&T does not believe this approach is appropriate or warranted. Today, AT&T takes steps to ensure that retail entities distributing or reselling AT&T prepaid cards disclose the necessary pre-purchase information for customers to make informed choices. However, AT&T cannot be expected to be legally responsible for the actions of those retailers, who are selling through outlets numbering well over 100,000. Imposing that burden upon companies will unnecessarily increase their costs and make it more difficult to provide pre-paid calling services in Missouri.

Comments on Specific Rules

4 CSR 240-32.160 – Customer Disclosure Requirements

4 CSR 240-32.160 (1)(B) - AT&T believes that the methodology for determining the per-minute rate is self-evident to the customer. A statement merely instructing the customer

to divide the total number of minutes by the purchase price will have little value to customers. Given the limited amount of space on packaging or store-displays, AT&T believes requiring pre-paid card providers to include statements that are self-evident is inappropriate, inefficient, and not in the public interest.

4 CSR 240-32.160 (1)(C) - AT&T feels the required statement is self-evident and is unnecessary. Given the limited amount of space on store displays or packaging, AT&T believes requiring pre-paid card providers to include statements that are self-evident is not appropriate.

4 CSR 240-32.160 (1)(D) - This section requires the company to disclose "any expiration policy" before the purchase while Section (2)(G) of the same rule requires the company to disclose the "expiration date" on the card itself. AT&T believes that both rules should state "any expiration policy or expiration date" in order to be consistent.

4 CSR 240-32.160 (2)(E) - AT&T believes that the methodology for determining the per-minute rate is self-evident to the customer. A statement merely instructing the customer to divide the total number of minutes by the purchase price will have little value to the customers. Given the limited amount of space on prepaid cards, AT&T believes requiring pre-paid card providers to include statements that are self-evident is inappropriate, inefficient, and not in the public interest.

4 CSR 240-32.160 (2)(F) - AT&T feels the required statement is self-evident and is unnecessary. Given the limited amount of space on prepaid cards, AT&T believes requiring pre-paid card providers to include statements that are self-evident is inappropriate, inefficient, and not in the public interest

4 CSR 240-32.160 (2)(G) - This section requires the company to disclose “any expiration date” before the purchase while 4 CSR 240-32.160(1)(D) of the same rule requires the company to disclose the “expiration date” on the card itself. AT&T believes that both rules should state “any expiration policy or expiration date” in order to be consistent.

4 CSR 240-32.160 (3) - AT&T currently contractually obligates retailers of AT&T prepaid cards to provide proper disclosure information. If that is the sole intent of this rule, then AT&T does not oppose adoption of the proposed rule.

However, if the intent of the proposed rule is to require AT&T to police the actions of retailers and distributors selling AT&T prepaid cards, or to hold AT&T responsible for the actions of retailers and distributors of AT&T prepaid cards, then AT&T is opposed to adoption of the proposed rules. It is physically impossible for AT&T to police each and every retailer and distributor to make sure they are correctly showing the disclosure information at the retail counter, on the store shelf, or on the sales display. Likewise, AT&T believes that it would be completely inappropriate for AT&T to be legally responsible for regulating retailers and distributors of prepaid cards. While there may be anecdotal evidence that some consumers have experienced problems with pre-paid calling cards, there is no legislative mandate for the Commission to pursue such broad and onerous regulation of providers of the underlying telecommunications services. Since the relationship between the service providers and the retailers should now be clear, if there is a problem to be remedied at the retail level then the Commission should try to obtain jurisdiction over such retailers for the purposes of this rule. Alternatively, the perceived “problem” should be recognized for what it is, a “problem” with labeling and marketing that is not unique to the telecommunications services provided, and a

“problem” that is not always within the control of the underlying telecommunications provider. After all, if milk is incorrectly labeled by the dairy processor/bottler/distributor, you don’t go back to the dairy farm and fine the cow. This is a retail consumer protection issue that may be more appropriately left to the jurisdiction of the consumer protection division of the Missouri Attorney General.

4 CSR 240-32.160 (4) and CSR 240-32.160 (4)(A) - This proposed rule adopts customer service standards that are unnecessarily specific to prepaid cards. AT&T believes that adopting such standards for specific services will result in a piecemeal approach that is inefficient and confusing. To the extent the Commission desires to regulate *telecommunications providers’* provisioning of prepaid calling services, the Commission already has rules in Section 4 CSR 240-33.060 Residential Customer Inquiries, and 4 CSR 240-33.080 Disputes by Residential Customers, that govern customer inquiries and disputes. AT&T believes these existing rules are adequate. Therefore, AT&T believes this proposed rule should not be adopted.

4 CSR 240-32.170 Standards for Prepaid Calling Service

4 CSR 240-32.170 (3) - AT&T believes the proposed language is too restrictive and would prohibit companies from issuing cards in denominations beside minutes of use.

AT&T suggests the Commission adopt the following language:

Increments charged to the prepaid calling card shall be expressed in minutes of use, units, or dollars, or fractions, thereof.

AT&T believes this language provides a company with flexibility to design and market cards based upon different denominations and still provides adequate information to consumers.

4 CSR 240-32.170 (4) - AT&T believes the proposed rule is redundant and should be withdrawn. Interexchange carriers are already subject to the quality of service standards set forth in 4 CSR 240-32.080 Service Objectives and Surveillance Levels. Specifically, 4 CSR 240-32.080(5)(H) states;

(H) Interexchange switched call completion –

1. Service Objective – that ninety-eight (98%) of interexchange switched calls shall be completed without encountering a blockage or equipment busy condition;
2. Surveillance level – ninety-five percent (95%); and
3. Monitoring criteria – continuously, if possible, or based on at least twenty-five (25) test calls, by exchange;

This existing rule governs all interexchange calls including calls made by customers using prepaid cards. Therefore, the proposed rule is unnecessary.

In addition, it is simply impossible for AT&T to adhere to quality of service standards specific to interexchange calls made using prepaid cards. Once a call is placed upon AT&T's network, that call is routed and processed in the same manner as any other call regardless of the dialing pattern or other factors. For these reasons, AT&T believes this proposed rule should be deleted.

4 CSR 240-32.170 (8) - AT&T believes this proposed rule unnecessarily restricts a company's ability to provide prepaid cards in denominations other than in minutes and should not be adopted as proposed. This proposed rule would have the effect of prohibiting prepaid cards that are based upon increments other than minutes. For example, some prepaid cards offer service in multiple-minute increments or may have a minimum call length greater than one minute. This rule would prohibit such cards. Rather than prohibit increments or minimum call lengths greater than a minute, the PSC

should ensure proper customer disclosure. For this reason, AT&T recommends the Commission modify the language to state:

Cards with a minimum call length greater than one minute, or where billing is based on increments other than per minute, shall disclose the minimum call length and/or billing increment.

4 CSR 240-32.170 (10) - See AT&T's comments on 4 CSR 240-32.160(3).

4 CSR 240-32.170 (11) - AT&T requests that the Commission modify this proposed rule to grandfather cards printed prior to the effective date of the rule. This rule should apply both to cards sold prior to the effective date of the rule but still being used by customers and to cards that are not yet sold by retailers. The company has no way of knowing who has purchased prepaid cards so a company simply has no way of issuing compliant cards to customers that have purchased cards prior to the effective date of the rules. For cards purchased by retailers but not yet sold to the retailers' customers, there is also no process for re-issuing new cards that comply with the newly adopted rules. From AT&T's perspective, such cards have already been "sold" and the purchase agreement has been concluded - - the proposed rule would effectively amend AT&T's contract with the retailer on a retroactive basis. The "bargain" that AT&T and the retailer entered into, indeed, the bargain agreed to by any purchaser of prepaid cards, did not include the costs or the benefits of this proposed rule. Even if AT&T could somehow reclaim "unused" cards, there would have to be a complete rescission or repudiation of the previous transaction and an entirely new bargain entered into, which some retailers and consumers may reject as a result of the increased costs associated with the new compliant cards. For these reasons, AT&T requests the Commission also include the following rule:

Cards sold in Missouri must comply with 4 CSR 240-32.130 through 4 CSR 24-32.170 six months after the effective date of the rules. Cards printed prior to the effective date of this rule are exempt from 4 CSR 240-32.130 through 4 CSR 24-32.170.

The addition of this rule will provide for an orderly transition to compliance with the proposed rules.

Respectfully submitted,

LATHROP & GAGE, L.C.



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