

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

In the Matter of the Investigation of the	)	
State of Competition in the Exchanges of	)	Case No. TO-2001-467
Southwestern Bell Telephone Company.	)	

**AT&T MISSOURI'S MOTION TO DISMISS AND  
REPLY TO RESPONSE TO ORDER SETTING  
PROCEDURAL CONFERENCE**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a/ AT&T Missouri ("AT&T Missouri")<sup>1</sup> and for its Motion to Dismiss and Reply to Response to Order Setting Procedural Conference states as follows:

1. In its December 27, 2001 Report and Order, which became effective on January 2, 2002, the Missouri Public Service Commission ("Commission") determined that (a) sufficient competition existed for SBC Missouri's core business services and related services to be classified as competitive in the Kansas City and St. Louis exchanges, (b) sufficient competition existed for SBC Missouri's core residential services and related services to be classified as competitive in the Harvester and St. Charles exchanges and (c) certain SBC Missouri services which had previously been declared transitionally competitive became classified as competitive services by operation of law pursuant Section 392.370 RSMo 2000. The services previously classified as transitionally competitive were intraLATA private line/dedicated services, intraLATA toll services, wide area telecommunications services ("WATS"), 800 services, special access services and operator services other than busy line verification and busy line interrupt (including station-to-station, person-to-person, and calling card services).

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<sup>1</sup> Southwestern Bell Telephone, L.P., was formerly known as SBC Missouri.

2. Pursuant to a writ of review initiated by the Office of Public Counsel, the Missouri Court of Appeals ultimately affirmed the Commission's decision with regard to competitive classification of the core business and residential services in the designated exchanges, but reversed and remanded the Commission's decision with regard to its determination that certain services were deemed competitive by operation of law under Section 392.370. The Court of Appeals requested the Commission to review the evidence already accumulated with regard to the services subject to the remand under the provisions of Section 392.245.5.<sup>2</sup> The Court of Appeals issued its mandate on March 3, 2005, and the Cole County Circuit Court issued its mandate on March 18, 2005.

3. The mandate of the Court of Appeals specifically provided:

Now on this date the judgment of the Commission is affirmed as to Point I [i.e., the determination concerning the designated exchanges] and reversed and remanded to the Circuit Court of Cole County as to Point II [i.e., the decision concerning the services previously classified as transitionally competitive] for further proceedings all in accordance with the opinion of this court.

4. Since the Court of Appeals issued its mandate, the Missouri Legislature passed Senate Bill 237, which was subsequently signed by the Governor and became effective on August 28, 2005. The provisions of SB 237 substantially revised the standards by which the Commission is to assess competitive classification. After SB 237 became effective, AT&T Missouri applied for competitive classification pursuant to various provisions of SB 237. In Case No. TO-2006-0093, the Commission determined that competitive classification should be granted for business services in 45 exchanges and residential services in 26 exchanges. In Case No. TO-2006-0102, the Commission determined that competitive classification should be granted for business services in an additional 30 exchanges and for residential services in an additional 51 exchanges. As a result of these decisions, the vast majority of AT&T Missouri's

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<sup>2</sup> WD 63075, September 28, 2004, pp. 22-23.

lines have now been classified as competitive for all services. Accordingly, the services which are at issue in the remand (intraLATA private line/dedicated services, intraLATA toll services, WATS and 800 services, special access services and certain operator services) have been determined to be competitive for the vast majority of lines served by AT&T Missouri.

5. Because of the passage of SB 237 and the issuance of the decisions by the Commission approving competitive classification for business and residential services for the vast majority of AT&T Missouri's access lines, AT&T Missouri moves to dismiss this case. Under the mandate in this case,<sup>3</sup> the Commission would be required to apply the new provisions of SB 237. Since the Commission has substantially addressed those matters in the two prior cases, SBC Missouri accordingly moves to dismiss this case.

### **RESPONSE TO THE NUVOX MOTION**

6. On December 5, 2005, NuVox Communications of Missouri, XO Communications Services, MCImetro Access Transmission Services and MCI Communications Services filed a Response to Order Setting Procedural Schedule ("the NuVox Motion"). The NuVox Motion proposes that the Commission take no further action on the remand. If AT&T Missouri's Motion to Dismiss is granted, this part of the NuVox Motion is essentially moot.

7. The NuVox Motion, however, also asserts that AT&T Missouri should be directed to file revised tariffs to:

revise its prices to the extent necessary to comply with the maximum prices that existed as of the January 6, 2002, effective date of the Commission's report and order herein, subject to any intervening adjustments to such maximum prices under the price cap statute in its respective versions applicable during such time period.<sup>4</sup>

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<sup>3</sup> In Case No. IT-2004-0015, the Commission is to comply with the mandate issued by the Court of Appeals that specifically directs the Commission to approve tariffs which the Commission had previously rejected. As described in its Response to Notice of Remand and Motion to Close Case, the Commission is required to comply with the specific directive issued by the Court of Appeals in that case (i.e., the tariffs must be approved).

<sup>4</sup> NuVox Motion, para. 6.

The NuVox Motion, however, provides no legal basis for this extraordinary action. The mandate does not direct the Commission to take any action with regard to AT&T Missouri's tariffs. Nor would such a mandate have been appropriate, since the Commission's Report and Order in this case did not revise any prices for any of the services which the Commission found to be deemed competitive by operation of law. Further, no party sought or obtained a stay of the Commission's Report and Order in this case. Accordingly, there is no basis for the relief proposed by the NuVox Motion.

8. AT&T Missouri notes that it has filed various tariffs in the ensuing years since the Report and Order issued on December 27 2001, in this case with regard to the services which the Commission determined to be classified as competitive by operation of law. None of the parties to the NuVox Motion sought to suspend any of the tariff changes or to stay the implementation of such tariff changes. Those prices remain lawful. The NuVox Motion provides no legal basis by which to order a change in those rates.

9. Even if the NuVox Motion were well taken, it would be moot as to the business and residential services offered in the exchanges which were declared to be competitive in either Case No. TO-2006-0093 or TO-2006-010. The Commission's decision in those cases classified all business and/or residential services as competitive, including those that are subject to the remand order. As noted previously, the vast majority of AT&T Missouri business and residential access lines have been declared competitive. Under Section 392.245.5, the prices for all services declared to be competitive are set at the discretion of the incumbent local exchange telecommunications company, and the Commission has no authority to order any changes to these prices.

10. With regard to those exchanges where business and/or residential services have not yet been declared to be competitive, the current tariff prices remain lawful and any future proposed rate changes must comply with applicable law at the time AT&T Missouri proposes any such price change. In those exchanges where the relevant business or residential services have not been declared competitive, any future price changes for services, including those subject to the remand, must comply with the price cap statute.

11. Even if the NuVox Motion were well taken with regard to the services subject to the remand in exchanges not yet declared competitive under the provisions of SB 237, very few tariff price changes would be required. For all but a few services, the current tariff prices do not exceed the maximum allowable prices under the price cap statute.

A. The tariff prices for all intraLATA private line/dedicated services, WATS and 800 services, special access services and operator services do not exceed the maximum allowable prices derived by application of the provisions of Section 392.245.11 to the prices which existed as of the effective date of the Report and Order on January 6, 2002. The current tariff prices for all these services do not exceed the prices that would result from an 8%<sup>5</sup> annual increase as permitted for non-basic services under the price cap statute.

B. The rate structure for all intraLATA Message Telecommunication Services (MTS) was substantially revised effective April 2, 2002. Prior to that date, intraLATA MTS toll was subject to a per minute of use charge that varied according to the time of day, day of week, and distance the call was carried.

Within each of these classifications, each call was subject to a charge for the

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<sup>5</sup> Effective August 28, 2005, the annual increase for non-basic services subject to the price cap statute was reduced to 5%.

initial minute and a different charge for each additional minute. In response to consumer preference and market factors, AT&T Missouri substantially revised its MTS toll offerings in April, 2002, moving to a simplified plan under which each call was billed on a per minute basis, varying only by whether it was made during the day, the night or on the weekend. The restructured MTS prices for residential customers did not, on a weighted average basis, exceed the prices which would result from application of the permitted 8% increase to the old prices. The restructured business MTS prices did, on a weighted average basis, exceed the rates which would result from application of the permitted 8% increase to the old rate structure. But, no modification to business MTS prices would be necessary as the restructure would constitute a new service under the price cap statute with the revised prices subject to the price cap statute on a prospective basis.

Since the time the restructured residential MTS prices went into effect on April 2, 2002, AT&T Missouri has revised the prices. Except for the evening prices, the current prices do not exceed the levels derived by application of the annual price cap increases under Section 392.245.11 to the prices as they existed on April 2, 2002. The evening price of 22 cents/minute is 1 cent/minute higher than the price which would result from application of the general price cap increases to the April 2, 2002 evening price. With regard to business MTS prices, the current prices do not exceed the level which would result from applying the permitted annual increase for non-basic services<sup>6</sup> to the restructured prices as they existed on April 2, 2002.

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<sup>6</sup> The permissible increase was reduced from 8%/year to 5%/year effective August 28, 2005.

C. Revisions to the prices for certain Residence and Business 1+ Saver rates would be necessary if, contrary to AT&T Missouri's view, the NuVox Motion were well taken. First, the current price for Residence 1+ Saver, which provides a 15% discount off of MTS prices, is \$2.50, compared to a price of \$2.04 which would result from the application of annual price increases for non-basic services under Section 392.245.11 to the rates in effect on January 6, 2002. Second, the current price for Residence 1+ Saver, which provides a 20% discount off of MTS prices, is \$3.50, compared to a price of \$3.40 which would result from application of annual price cap increases for non-basic services to the price which existed as of January 6, 2002. Third, the price of an additional number under the Business 1+ Saver tariff is \$15.00, compared to a price of \$13.60 which would result from application of an annual increase for non-basic services to the price which existed as of January 6, 2002. Fourth, AT&T Missouri instituted 300 minute cap on Business 1+ Saver initial and additional numbers, with an 8 cent/minute charge applying to minutes above the cap as well as a 500 minute cap on Residence 1+ Saver initial and additional numbers with a 9 cent/minute charge applying to minutes above the cap.


As noted previously, the rates for these services would be subject to reduction only in the exchanges representing a small minority of AT&T Missouri's residential and business access lines and only if the NuVox Motion permitted the relief sought which, as explained above, it does not.

### **CONCLUSION**

WHEREFORE, for all the foregoing reasons, AT&T Missouri respectfully requests the Commission to issue an order closing this case pursuant to AT&T Missouri's Motion to Dismiss.

Respectfully submitted,

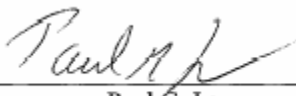
SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A  
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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties by electronic mail on December 14, 2005.

  
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