

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
JULY 16, 1999**

**CASE NO: TC-2000-15**

**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

**Paul S. DeFord**  
Lathrop & Gage L.C.  
2345 Grand Boulevard  
Kansas City, MO 64108

**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Kevin K. Zarling**  
AT&T Communications of the Southwest,  
Inc  
919 Congress, Suite 900  
Austin, TX 78701

**Enclosed find certified copy of NOTICE in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**Uncertified Copy:**

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

AT&T Communications of the Southwest,	)	
Inc., et al.,	)	
	)	
Complainants,	)	
v.	)	<u>Case No. TC-2000-15</u>
	)	
Southwestern Bell Telephone Company,	)	
	)	
Respondent.	)	

**NOTICE OF COMPLAINT**

Legal Department  
Southwestern Bell Telephone Company  
One Bell Center  
St. Louis, Missouri 63101  
**CERTIFIED MAIL**

On July 13, 1999, AT&T Communications of the Southwest, Inc. filed a complaint with the Missouri Public Service Commission against Southwestern Bell Telephone Company, a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, Respondent Southwestern Bell Telephone shall have **30 days** from the date of this notice to file an answer or to file notice that the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer shall be due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainant.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,  
on this 16th day of July, 1999.

Copy to: Paul S. DeFord  
Lathrop & Gage, L.C.  
2345 Grand Boulevard  
Kansas City, Missouri 64108

Register, Regulatory Law Judge

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

AT&T Communications of the Southwest, Inc.,     )  
et al,     )  
    Complainants,     )  
v.     )  
    )  
Southwestern Bell Telephone Company,     )  
    Respondent.     .)

Case No. TC- 2000-15

**COMPLAINT AND REQUEST FOR DECLARATORY RULING**

COMES NOW AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. and  
TCG ST. LOUIS, INC., an AT&T company, (hereafter collectively "AT&T") pursuant to  
Sections 386.090, 386.400, 392.200 RSMO. and 4 CSR 240-2.070 and in support of this  
Complaint and Request for Declaratory Ruling would show as follows:

1.     AT&T Communications of the Southwest, Inc. is a competitive  
interexchange telecommunications company duly incorporated and existing under and by  
virtue of the laws of the State of Delaware, authorized to do business in the State of  
Missouri as a foreign corporation. AT&T's principal Missouri offices are located at 1100  
Walnut, Kansas City, Missouri 64106. AT&T is an authorized provider of intrastate  
interexchange telecommunications services in Missouri under authority granted and  
tariffs approved by the Commission, as well as an authorized provider of interstate  
interexchange telecommunications services under a certificate granted and tariffs  
approved by the Federal Communications Commission. AT&T holds a Certificate of  
Service Authority to provide local exchange service and basic local exchange service in  
portions of Missouri. (Mo PSC Case No. TA 96-322).

2. TCG St. Louis, Inc. is a competitive interexchange telecommunications company that currently holds Certificate of Service Authority to provide intrastate interexchange and local exchange telecommunications service in the State of Missouri. TCG's principal Missouri offices are located at 1 City Place Drive, St. Louis, Missouri 63141. TCG holds Certificate of Service Authority to provide basic local exchange service in the 314 area of Southwestern Bell Telephone Company's (SWBT) service territory. (Mo PSC Case No. TA-96-345).

3. SWBT is a Missouri Corporation authorized to do business and doing business in the State of Missouri. SWBT provides local exchange, exchange access, and certain intrastate long distance services within the State. SWBT also provides service under the Commission's mandated Metropolitan Calling Area plan.

4. All communications and pleadings in this docket should be directed to:

Paul S. DeFord  
Lathrop & Gage L.C.  
2345 Grand Boulevard  
Kansas City, MO 64108  
(816) 460-5827 (ph.)  
(816) 292-2001 (fax)

Kevin K. Zarling  
AT&T Communications of the Southwest, Inc.  
919 Congress. Suite 900  
Austin, Texas 78701  
(512)370-2010 (ph.)  
(512)370-2096 (fax)

5. In December 1998, AT&T began providing local exchange service to a limited number of customers in Missouri. Among other locations, AT&T began serving customers in Fenton, Missouri. Fenton is included in Zone 3 of the St. Louis Metropolitan Calling Area (MCA).

6. Shortly after undertaking to serve customers in the St. Louis MCA Zone 3, AT&T learned that various SWBT local exchange customers were experiencing difficulty reaching those AT&T customers. The problems experienced ranged from not being connected, without explanation (dead air), to being advised that the call attempted required one plus dialing and that toll charges were applicable. AT&T has discussed and has attempted to resolve these problems with SWBT. SWBT has indicated that the calls that failed to connect, without explanation to customers, were in some instances due to AT&T NXX codes having been opened with an incorrect local calling scope. SWBT has represented that those problems have been resolved and that all SWBT customers are able to complete calls to AT&T's Fenton customers.

7. SWBT customers who are MCA subscribers that are not within the limited local calling scope of the Fenton exchange are not permitted to call AT&T's Fenton customers on a toll-free basis. SWBT customers who are MCA subscribers that are not within the limited local calling scope of the Fenton exchange are required to dial 1+ and incur toll charges to reach AT&T's Fenton customers.

8. SWBT customers that are MCA subscribers in MCA Zone 3, not located within the immediate Fenton local calling scope, are not permitted to call AT&T's Fenton customers on a toll free basis. SWBT customers that are MCA subscribers in MCA Zone 3, not located within the immediate Fenton local calling scope, are permitted to call SWBT's Fenton customers on a toll free basis.

9. AT&T's MCA Zone 3 customers are similarly situated to all other MCA Zone 3 customers.

10. SWBT refuses to permit AT&T and its customers to participate in the Commission mandated MCA Plan.

11. Due to the fact that AT&T customers in MCA Zone 3 can only be reached by a very limited number of SWBT customers, on a toll free basis, AT&T has been forced to stop marketing its local exchange services in MCA Zones 3 and 4. Customer dissatisfaction and confusion cannot be overcome under present circumstances.<sup>1</sup>

12. The MCA Plan adopted by the Commission in Case No. TO-92-306 was established to meet customer needs and was designed to reflect the expanded community of interest in and around Missouri's metropolitan areas. AT&T's MCA Zone 3 customers are similarly situated to all other MCA Zone 3 customers.

13. SWBT's policy and practice of imposing toll charges on its customers placing calls to AT&T's Fenton customers and any other similarly situated customers is unlawful in that it violates the spirit and intent of the Commission's order establishing the MCA Plan.

14. SWBT's policy and practice of imposing toll charges on its customers placing calls to AT&T's Fenton customers and any other similarly situated customers constitutes a barrier to entry into the local exchange market in violation of Section 253 of the Telecommunications Act of 1996.

15. SWBT's failure to permit its customers, that are MCA subscribers in MCA Zone 3, to call AT&T's Fenton customers on a toll free basis constitutes a violation of SWBT's Local Exchange Tariff.

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<sup>1</sup> In support of the foregoing allegations, attached hereto as appendices A & B are the affidavits of Bob Schmersahl on behalf of TCG-St.Louis d/b/a AT&T Local Services and C. J. Smith, President C. J. Smith Machinery Company.

16. SWBT's practice and policy of requiring ten digit or one plus dialing to reach AT&T's Fenton customers and any other similarly situated customers constitutes a violation of the requirements of Section 251 of the Telecommunications Act of 1996 mandating dialing parity.

WHEREFORE, AT&T respectfully requests the Commission enter an Order granting the following relief:

- (a) Declare that SWBT's policy and practice of imposing toll charges on its customers placing calls to AT&T's MCA Zone 3 customers and any similarly situated customers is unlawful in that it violates the spirit and intent of the Commissions' order establishing the MCA plan.
- (b) Declare that SWBT's policy and practice of imposing toll charges on its customers placing calls to AT&T's MCA Zone 3 customers and any other similarly situated customers constitutes a barrier to entry into the local exchange market in violation of Section 253 of the Telecommunications Act of 1996.
- (c) Declare that SWBT's failure to permit its customers, that are MCA subscribers in MCA Zone 3, to call AT&T's customers in MCA Zone 3, as well as any other similarly situated customers, on a toll free basis, is a violation of SWBT's Local Exchange Tariff.
- (d) Declare that SWBT's practice and policy of requiring ten digit dialing or one plus dialing for its customers to reach AT&T's customers located in MCA Zone 3 and any other similarly situated customers constitutes a

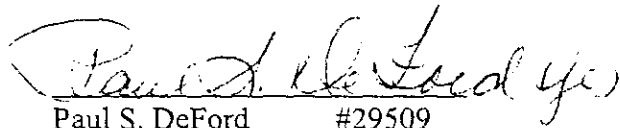


violation of the requirements of Section 251 of the Telecommunications Act of 1996 mandating dialing parity.

- (e) Order SWBT to cease and desist in engaging in the foregoing unlawful practices and confirm that AT&T and similarly situated CLECs be permitted to fully participate in the mandated MCA plan.

Respectfully submitted,

LATHROP & GAGE, L.C.



Paul S. DeFord #29509

LATHROP & GAGE, L.C.

2345 Grand Boulevard

Kansas City, MO 64108

Phone: 816-292-2000

FAX: 816-292-2001

Kevin Zarling TX#22249300

919 Congress, Ste. 900

Austin, TX 78701

Phone: 512-370-2010

FAX: 512-370-2096

Attorneys for AT&T Communications

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the above pleading was served, by facsimile and first class United States mail, postage prepaid, on this 13<sup>th</sup> day of July, 1999.

Paul Lane  
Southwestern Bell Telephone Company  
One Bell Center, Room 3518  
St. Louis, MO 63101



An Attorney for AT&T

Communications of the Southwest

Office of Public Counsel  
PO Box 7800  
Jefferson City, MO 65102

**AFFIDAVIT OF BOB SCHMERSAHL  
ON BEHALF OF  
TCG – ST. LOUIS d/b/a AT&T LOCAL SERVICES**

STATE OF MISSOURI       §  
                                     §  
COUNTY OF               §

Bob Schmersahl, of lawful age, being first duly sworn deposes and states:

1. My name is Bob Schmersahl. My business address is 424 Woodsmill Road, Suite 100, Chesterfield, MO 63107. I am employed by TCG St. Louis d/b/a AT&T Local Services ("AT&T") in the position of Regional Sales Director. In that capacity, my primary responsibilities are local service sales to business customers in St. Louis and Kansas City. I also have the responsibility for Dallas and Houston as well as Atlanta, Birmingham, and Omaha. The customer segment that I cover is "growth market segments," which covers medium sized business customers.
2. I graduated from Tarkio College's St. Louis satellite location in 1989 after attending St. Louis community college, the University of Missouri-Rolla, Drake University and Simpson College in Iowa. My degree is in business management. I graduated from college while I was an employee of Contel. I have been in the communications business for 30 years. I began working for Contel in 1969 and stayed there through 1992 when Contel was acquired by GTE. I stayed with GTE through 1993. I worked for PageNet in 1994-1995, and came to TCG in 1996 as the VP/General Manager for St. Louis. I have worked for TCG through its acquisition by AT&T which took place in July 1998, and now work for TCG St. Louis, doing business as AT&T Local Services, which I will call either "TCG" or

"AT&T" in this testimony. My business experience runs the gamut. I started in outside plant records development in engineering working into central office engineering and then into forecasting and long range planning. I then moved to sales with time spent in both the regulated and non-regulated side of the business, local business sales, and national account management. I spent two years in the tenant services business as the director of marketing and 18 months in advertising and marketing promotion. I also spent two years running a business customer service center. I have since held the responsibility of VP-GM at PageNet, then TCG St. Louis and then regional vice president of sales for TCG. I was on the board of directors of the Missouri Telecommunications Industry Association in 1998. I have been on the telecommunications executive committee of the Regional Commerce and Growth Association (RCGA) in St. Louis for the last two years. Through my time with TCG as the VP/GM for St. Louis, I was involved in the interconnection negotiations and held the responsibility for managing the switch readiness. I am familiar with most aspects of TCG's efforts to provide local service to business customers in Missouri.

3. In late December, AT&T began providing local service to a business customer in the Fenton Exchange. The customer, whose name is Charles Smith, operates a business named C. J. Smith Machinery Company. The Fenton exchange is located in MCA Zone-3.
4. Almost immediately after beginning to serve C. J. Smith, many Southwestern Bell Telephone ("SWBT") MCA subscribers notified C. J. Smith that they were unable to place a local call to Mr. Smith's business. In some instances, those SWBT customers received "dead air" while in other instances they were told to dial 1+ and place a toll call.
5. Upon learning of the problem, we escalated it through the standard trouble reporting process and informal discussions with SWBT carrier relations

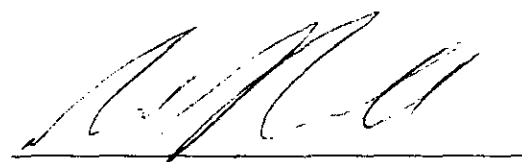
personnel. After these discussions failed to resolve the problem, AT&T notified Mr. Paul Lane in SWBT's Legal Department of these problems on March 3, 1999. A copy of the letter is attached as Exhibit Schmersahl-1. On March 10, 1999, SWBT responded to AT&T's letter. A copy of that response is attached as Exhibit Schmersahl-2.

6. In SWBT's response, SWBT indicated that its investigation of the issue it discovered that in some instances the TCG NXX codes were opened with an incorrect local calling scope. SWBT also indicated that an incorrect opening of an NXX code could result in a customer receiving "dead air". SWBT indicated this problem would be corrected. However, SWBT still refused to recognize AT&T's NXX code as part of the MCA Zone-3.
7. SWBT's refusal to recognize AT&T's NXX code as part of the MCA Zone-3 results in the MCA service being discriminatory to different carriers' customers and serves as a barrier to entry for AT&T in outer tier areas. SWBT's refusal to recognize AT&T's NXX codes in the MCA-3 rate center means AT&T customers are unable to receive calls on a toll-free, seven or ten digit dialed basis from SWBT MCA-3 and MCA-4 subscribers. This means that when a SWBT MCA subscriber in Zone-3 calls an AT&T customer in Zone-3, the SWBT customer must dial 1+ and incur toll charges even though they have paid SWBT for MCA service. When that same SWBT MCA subscriber in Zone-3 calls another SWBT customer in Zone-3, the call is a toll-free, seven or 10 digit dialed call.
8. SWBT's implementation of the MCA has harmed SWBT's customers and AT&T's existing business and our customers. Because of the problems we encountered with the MCA services, AT&T recommended that C. J. Smith return to SWBT until the problem was resolved. To date, Mr. Smith has refused to do this. In order to minimize his damages, AT&T suggested Mr. Smith use his existing 800 number for his customers to use to contact him until this issue is

resolved. AT&T is issuing credits to the 800 number until this can be resolved. Even with this remedy, C. J. Smith has indicated that he has lost business through missed orders from customers who were unable to contact him.

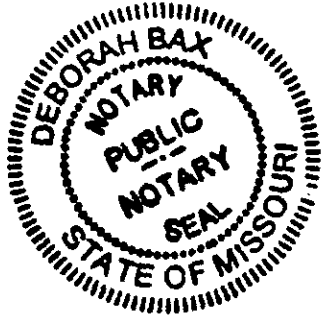
9. SWBT's implementation of the MCA services has forced AT&T to stop providing service to new customers in the MCA Zone-3 and MCA Zone-4. AT&T has invested heavily in St. Louis through investment in network plant and through collocations with SWBT and GTE. AT&T is unable to fully utilize its investment because AT&T has stopped selling services to new customers in the outer MCA zones because of our problems with the MCA service. AT&T estimates the lost revenue from delaying service contracts has resulted in an estimated loss of new revenue per month of approximately \$15,000.
10. The Missouri Public Service Commission must ensure that mandated calling plans, such as MCA, are competitively neutral and do not penalize new entrants and their customers. For local competition to exist, customers must be able to change their local phone company without adversely affecting their ability to place calls to and receive calls from customers of other local companies. SWBT should be required to allow its MCA customers to continue to make toll-free local calls to the same people and businesses in the MCA, regardless of whether those people or businesses use SWBT, AT&T Local Services, or any other local phone company.

Further Affiant sayeth not.



Robert J. Schmersahl

Sworn and Subscribed to before me this \_\_\_\_ day of June, 1999, to certify which witness my hand.



Deborah Bay

Notary Public

My Commission Expires: 8/27/00  
St. Louis County



Kevin K. Zarling  
Senior Attorney

Suite 900  
919 Congress Avenue  
Austin, Texas 78701-2444  
512 370-2010  
FAX: 512 370-2096

March 3, 1999

Mr. Paul G. Lane  
Southwestern Bell Telephone Company  
One Bell Center, Room 3516  
St. Louis, MO 63101

RE: Routing of SWBT Customer Traffic to AT&T Customer C.J. Smith, Fenton, Mo.

Dear Mr. Lane:

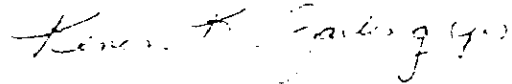
As you are aware from conversations with Paul DeFord, AT&T's outside counsel in Missouri, AT&T is providing local service through its TCG-St. Louis affiliate to a business in Fenton, Missouri. The customer, whose name is Charles Smith, operates a business located within MCA Zone 3; the business' name is C.J. Smith. AT&T has assigned this customer an NXX specific to MCA Zone 3; his number is (314) 651-5400. Many SWBT customers within MCA Zones have notified Mr. Smith that they are unable to place a local call to Mr. Smith's business; in some instances those callers are told they must dial ten digits, and in other instances they only receive "dead air."<sup>1</sup> AT&T believes the current situation is totally unacceptable. AT&T has taken all necessary steps to ensure that its customers will enjoy at least the same local calling scope they had when they were SWBT customers. Similarly, AT&T believes that SWBT customers should not see their local calling scope diminished simply because a competitive carrier has won a customer from SWBT.

In addition to Mr. DeFord's conversation with you, AT&T's Carrier Relations Director, Kathleen Whiteaker, has raised this issue with the SWBT account manager, Jo Ann Gallardo. Despite their discussion, this matter still not yet been resolved, and AT&T is extremely interested in addressing these customer concerns. There does not appear to be any technical limitation, indeed, AT&T has customers in the Chesterfield exchange in MCA Zone 3 where the AT&T NXX is recognized and routed by SWBT's switches as a local call. Furthermore, it is AT&T's understanding that SWBT has readily entered into arrangements with CLECs in Texas in order to treat such extended area traffic as local. While varying explanations about why this problem exists in Missouri have been provided, no solution has been offered.

<sup>1</sup> For example, calls originating from 314-481-0300, 314-832-2091, 314-630-9001, 314-227-2761, 314-727-6200, 314-645-5656, 314-731-3008, 314-232-0232, 314-234-6030.

This issue will obviously affect more customers than Mr. Smith and, if necessary, AT&T is prepared to seek a formal resolution of this matter before the Missouri Commission. It is our hope and desire to avoid such action and I would therefore request that SWBT formally respond to this letter with a proposed solution by March 9, 1999. Please respond to myself or, at your convenience, to Mr. DeFord.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin K. Zarling".

Kevin K. Zarling  
Senior Attorney

cc: Paul DeFord, Lathrop & Gage, L.C.  
Kathleen Whiteaker, AT&T  
Bob Schmersahl, AT&T  
Matt Kohly, AT&T  
Greg Terry, AT&T  
David Young, SBC  
Tom Hughes, SBC



Paul G. Lane  
General Counsel-  
Missouri

Southwestern Bell Telephone  
One Bell Center, Room 3520  
St. Louis, Missouri 63101  
Phone 314 255-4300  
Fax 314 247-0014



VIA FACSIMILE

EXHIBIT SCHMERESAH-2

March 10, 1999

Mr. Kevin K. Zarling  
AT&T Communications of the Southwest, Inc.  
919 Congress Avenue, Suite 900  
Austin, Texas 78701-2444

RE: Routing of SWBT Customer Traffic to TCG Customer C.J. Smith, Fenton, Mo.

Dear Mr. Zarling:

I am writing in response to your letter of March 3, 1999, regarding the routing of Southwestern Bell (SWB) customer traffic to TCG customer C.J. Smith. In your letter, you note that Paul DeFord previously raised this issue with SWB. Mr. DeFord did not however, have the necessary details to permit investigation of the complaint.

The issues referenced in your letter are related to SWB's position on the opening of NXX codes in its central office switches. CLEC NXX codes are to be opened in our switches in accordance with the mandatory local calling scope as defined in the SWB Missouri tariffs and in compliance with our Interconnection Agreement with TCG. In Missouri, the mandatory local calling scope for the Fenton exchange, as referenced in your letter, includes the following: Fenton, High Ridge, Maxville, and Valley Park exchanges and the Sappington and Kirkwood zones of the St. Louis Metropolitan exchange.

SWB customers within the local calling scope for the Fenton exchange are able to call TCG customers in that exchange on a toll free basis. Calls from SWB customers outside the Fenton local calling scope who have not subscribed to optional Metropolitan Calling Area (MCA) service are subject to a toll charge pursuant to SWB's Missouri tariffs. During SWB's investigation of your issue, it was discovered that in some instances the TCG NXX codes were opened with an incorrect local calling scope. In those cases, certain SWB end users would have been able to place local calls to a TCG NXX that should have appropriately been a toll call.

In your letter, you also note that certain SWB customers were not able to contact TCG's Fenton customers. An incorrect opening of an NXX code could also result in a "dead air" situation. That problem has been resolved, and all SWB customers are able to call TCG's Fenton customers.

While SWB believes the issue with TCG's Fenton customer is resolved, in order to avoid any future problems with other customers, SWB will complete a comprehensive review of its switches to identify those situations in which the CLEC codes were opened with an incorrect

Mr. Kevin K. Zarling

March 10, 1999

Page 2

local calling scope. Where inconsistencies are found, corrections will be made. A target date of April 30, 1999 has been established to complete this review.

In your letter, you also discuss the relative calling scopes of TCG and SWB. Each company is free to set its own local calling scope, and each company determines what charges apply to calls placed by its customers. While TCG cannot dictate whether and when SWB customers are assessed a toll charge, if TCG is interested in discussing an arrangement that would permit SWB customers who are not subscribers to optional MCA service to call your Fenton customer on a toll free basis, SWB is willing to negotiate a mutually satisfactory contract.

In conclusion, SWB will ensure all NXX codes have been opened in accordance with SWB's mandatory local calling scope as defined in the local tariffs and in compliance with our Interconnection Agreements. This will ensure consistency across the metropolitan area for all CLEC NXX codes. It is our hope that a consistent application of our position will satisfy your concerns regarding these NXX codes. If you have concerns with this approach, again SWB is willing to negotiate a mutually acceptable arrangement.

Very truly yours,



Paul G. Lane

cc: Mr. Paul DeFord, Lathrop & Gage, L.C.  
Ms. Kathleen Whiteaker, AT&T  
Mr. Bob Schmersahl, AT&T  
Mr. Matt Kohly, AT&T  
Mr. Greg Terry, AT&T  
Mr. David Young, SBC  
Mr. Tom Hughes, SBC

# CJ Smith Machinery Company

## MACHINE TOOLS

1664 Larkin Williams Road • P.O. Box 1210 • Fenton, Missouri 63026

314-651-5400

800-223-3240

Fax: 314-651-4545

Web Site: CJSMTMACHINERY.COM

E-Mail: CJSMTMACH@ATT.NET

May 6, 1999



AT&T

Law & Government Affairs

101 W. McCarty, Ste. 216

Jefferson City, MO 65101

Attention: Mr. Matt Kohly

Subject: Affidavit of Charles J. Smith

Dear Mr. Kohly:

Please see information attached as requested.

Any questions, please do not hesitate to contact us.

Thanks for all your help and assistance.

Yours very truly,

C. J. SMITH MACHINERY COMPANY

Charles J. Smith  
President

CJS:rm

Attachments

costs and inconvenience. These same problems financially harmed my company by causing us to lose orders and increased our cost of doing business.

6. In some instances, my business customers are totally unable to complete calls to me. When they dial the same 7 digit, local call they had before I switched to AT&T Local Service, they receive a recorded message that says they need to dial a "1" or "0". When they attempt to place the call using "1" or "0", they receive a message that says it is not necessary to dial a "1" or "0" to complete these calls. In these instances, these customers are unable to contact my business at all. There is little doubt that this causes lost sales and inconveniences all parties involved.

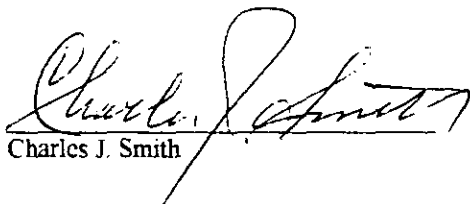
7. My employees who are MCA subscribers of SWBT are no longer able to contact their place of employment on a toll-free, local basis. Instead, they must now pay toll charges for a call that used to be part of their MCA service. Obviously, this causes financial harm and inconvenience to my employees.

8. In attempting to identify and resolve these problems, I have spent considerable time working with the AT&T Local Services personnel. This has forced me to spend substantial time and money on a problem that no consumer should have to deal with. In trying improve the situation, AT&T Local Services has suggested that I switch back to SWBT at their expense until this problem is rectified. That is something I have not been willing to do. However, should this problem persist, the financial realities may force me to switch back to SWBT.

9. It is my understanding that the reason SWBT MCA customers can no longer make a toll-free local call to my business is that SWBT will not recognize my phone number as a number within the MCA. The effect of this is to punish my business for changing phone companies. However, all customers in the MCA are punished in this type of situation, including SWBT's own customers. This should not be what happens when someone changes their local phone company.

10. The Missouri Public Service Commission should ensure that customers can change their local phone company without changing the way in which people can call or be called, including the cost of making a what had been a local call. SWBT should be required to allow its MCA customers to continue to make toll-free local calls to the same people and businesses in the MCA, regardless of whether those people or businesses use SWBT, AT&T Local Services, or any other local phone company.

Further Affiant sayeth not.

  
Charles J. Smith

**AFFIDAVIT OF CHARLES J. SMITH  
ON BEHALF OF  
C J SMITH MACHINERY COMPANY**

STATE OF MISSOURI       §  
                                  §  
COUNTY OF               §

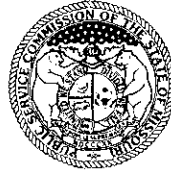
CHARLES J. SMITH, of lawful age, being first duly sworn deposes and states:

1. My name is Charles J. Smith. I am the President of C J Smith Machinery Company. My business address is 1664 Larkin Williams Road, P.O. Box 1210, Fenton, Missouri.
2. In December 1998, my company moved to the Fenton Exchange in MCA Zone 3 and selected AT&T Local Services as my local telephone service provider, and my company obtained a new phone number. Prior to that, Southwestern Bell Telephone Company ("SWBT") was my local telephone service provider in Sunset Hills, Missouri, which is in the Parkview Exchange
3. On April 8, 1999, I sent a complaint to the Missouri Public Service Commission regarding the inability of customers to reach my business through local calling within the St. Louis Metropolitan Calling Area ("MCA"). A copy of that complaint is attached as attachment CJS-1.
4. I have personal knowledge that prior to my business switching to AT&T Local Services, my customers who are MCA subscribers served by SWBT and GTE Midwest, Inc. were able to place seven-digit, local calls to businesses in my area served by SWBT. Once I changed to AT&T Local Services, SWBT MCA Customers were no longer able to place seven-digit, local calls to my business. Instead, those same customers now must dial 1+ toll calls to reach my business even though they may reach businesses in my area served by SWBT by placing a seven-digit, local call. Forcing my customers to now place toll calls to reach my business increases their costs and adversely affects my business. Most of these customers who can no longer reach my business on a toll-free, local basis are SWBT customers.
5. One of my largest customers is Boeing Corporation, a large industrial manufacturer in the St. Louis area. Boeing Corporation is a customer of SWBT and subscribes to MCA service. When I switched to AT&T Local Service, Boeing was no longer able to place toll-free local calls to me. Once Boeing realized they could no longer contact my business they tested their facilities to identify the problem. After determining the problem was not in their facilities, they were forced to use their company operators to contact my business. Boeing was forced to contact my company by using our toll-free 800 number. These problems caused Boeing Corporation to incur additional

Sworn and Subscribed to before me this 6<sup>th</sup> day of May, 1999, to certify which witness my hand.

Richard H. Hickey  
Notary Public

My Commission Expires:



**Commissioners**

**SHEILA LUMPE**  
Chair

**HAROLD CRUMPTON**

**CONNIE MURRAY**

**ROBERT G. SCHEMENAUER**

**M. DIANNE DRAINER**  
Vice Chair

## **Missouri Public Service Commission**

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Acting Executive Director  
Director, Research and Public Affairs

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. KOLILIS**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

### **Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.



Date: January 25, 1999

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Dale Hardy Roberts  
Secretary of the Commission



P 505 766-555 TC-2000-15

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St. Louis, MO 63101

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P 505 766-555

4b. Service Type

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STATE OF MISSOURI

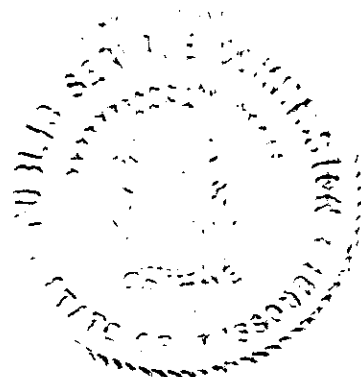
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 16TH day of JULY, 1999.



*[Signature: Dale Hardy Roberts]*

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge