

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

In the Matter of the Tariff Filing of SBC)	
Long Distance, LLC, d/b/a AT&T Long Distance,)	Case No. TT-2008-0372
Increasing the MRC on Consumer Calling Plans)	Tariff No. JX-2008-0673

**AT&T LONG DISTANCE’S RESPONSE TO THE OFFICE OF PUBLIC COUNSEL’S
OBJECTION TO ITS PROPOSED TARIFF**

AT&T LD¹ respectfully submits this response to the objection of the Office of Public Counsel² to AT&T LD’s above-referenced tariff. The tariff would increase, by \$1, the monthly recurring charge associated with certain of AT&T LD’s consumer calling plans; it would not alter the present per minute usage rate of any of them. For the reasons explained below, OPC’s objection should be rejected. The pricing flexibility AT&T LD seeks to exercise here is authorized by the governing law. In any event, OPC’s claims are out of step with the marketplace and with the legislature’s general policy that full and fair competition should substitute for regulation.

OPC appears to understand that the Commission has no basis for rejecting the proposed tariff, as OPC has not specifically sought suspension or rejection of the tariff. OPC merely seeks to complain about the modest price increases proposed in the tariff and asks that the Commission “decline to approve” the tariff. Given OPC’s lack of a specific request to suspend or reject the tariff under any specific statutory authority, it appears that OPC simply does not want the Commissioners to actually vote to approve the proposed tariff, but rather to simply permit it to go into effect. Rather than seeking to actually reject the tariff, OPC’s filing appears to be more of a vehicle to complain about the dynamics of a competitive telecommunications marketplace

¹ SBC Long Distance, LLC, d/b/a AT&T Long Distance (“AT&T LD”).

² The Office of Public Counsel (“OPC”).

and the transition to a less-regulated environment being brought about by HB 1779 and other legislative and regulatory changes.

Moreover, OPC's notion that a competitive market does not exist if there are price increases within that market is clearly out of touch with reality. We see in competitive markets everyday that prices tend to rise over time to account for rising costs. Certainly, prices sometimes fall for particular services within a marketplace and for various periods of time. Both principles are at work in the competitive telecommunications markets. AT&T LD's proposal to increase the prices of certain long distance calling plans (many of them grandfathered plans no longer available) does not imply that there is no competition. To the contrary, it is indicative of the variability of pricing consistent with competitive markets.

AT&T LD is classified as a competitive telecommunications company under Missouri law, i.e., all of its services are classified as competitive services.³ Section 392.500, RS Mo. (Cum Supp. 2007) mandates that proposed rate increases for competitively-classified services shall become effective ten days after filing:⁴

Except as provided in subsections 2 to 5 of Section 392.200, proposed changes in rates or charges, or any classification or tariff provision affecting rates or charges, for any competitive telecommunications service, shall be treated pursuant to this section as follows:

...

(2) Any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for any

³ See, In the Matter of the Application of Southwestern Bell Communications Services, Inc., d/b/a SBC Long Distance, for a Certificate of Service Authority to Provide Interexchange Telecommunications Services within the State of Missouri; In the Matter of the Application of Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long-distance, for a Certificate of Service Authority to Provide Interexchange Telecommunications Services within the State of Missouri, Case No. TA-2001-475, 2001 Mo. PSC LEXIS 1620, November 27, 2001, at *35 ("The Commission therefore concludes that SBCS's services should be classified as competitive services, and SBCS should be classified as a competitive company."). AT&T LD is the successor company to Southwestern Bell Communications Services, Inc., d/b/a SBC Long Distance.

⁴ AT&T LD nevertheless submitted its filing even further in advance, i.e., on May 12, approximately thirty days prior to June 12, the scheduled effective date.

competitive telecommunications service shall be permitted ten days after the filing of the proposed rate, charge, classification or tariff and upon notice to all potentially affected customers through a notice in each customer's bill at least ten days prior to the date for implementation of such increase or change, or, where such customers are not billed, by an equivalent means of prior notice. (emphasis added).

As reflected in AT&T LD's May 12, 2008, tariff filing, AT&T LD fully complied with these statutory requirements. OPC does not claim otherwise.

Moreover, Staff has no objections to the filing. Among other things, Staff determined that it "reviewed [AT&T LD's] customer notice and finds it acceptable," that "the tariff meets the requirements of all applicable statutes," (listing specifically the above-referenced Section 392.500(2)), and that the tariff "does not conflict with" pertinent Commission rules. *See*, Staff Recommendation, filed May 28, 2008. Once the Commission determines, as did Staff, that these statutory conditions are met, the Commission has no authority to reject the proposed increases and must allow them to go into effect.

OPC claims that the proposed tariff "offers little to no protection for consumers," (OPC's Objection, at 1), and that it is "inconsistent with robust competition." *Id.* But such claims cannot survive the above governing authority, nor do they counter Staff's positive recommendation.

By Section 392.500's (quoted above) having preserved the Commission's jurisdiction under only subsections 2-5 of Section 392.200, the legislature has specifically removed the Commission's Section 392.200.1 jurisdiction to review increases in competitive rates for justness and reasonableness.⁵ Any doubt on the matter was removed two months ago by the Missouri Court of Appeals for the Western District, which approved implementation of various carriers' increases of in-state access recovery surcharges for long distance service (including those of

⁵ *Brown v. Morris*, 290 S.W.2d 160, 166 (Mo. 1956) (under the rule that the express mention of one thing implies the exclusion of another, where special powers are expressly conferred or special methods are expressly prescribed for the exercise of the power, other powers and procedures are excluded).

AT&T of the Southwest, Inc.). *See, State of Missouri, ex rel. Public Counsel v. Public Service Commission of the State of Missouri*, 2008 Mo. App. LEXIS, March 18, 2008 (Mo. App. W.D.).

There, the Court observed that in 2005 the legislature removed Section 392.500's "general reference" to Section 392.200, and thus concluded, in accordance with the express language of the statute, that only subsections 2 through 5 of section 392.200 shall apply to changes in tariffs for competitive telecommunications services. *Id.*, at *17. OPC's objection to AT&T LD's proposed tariff does not rest on any of these subsections.

OPC seeks to rely on subsection 6 of Section 392.185, which generally recites the "purposes" of Chapter 392, in an apparent attempt to evade the specific language of Section 392.500 and the Court of Appeals' holding. However, this reliance is misplaced, as it is but a reincarnation of the same Section 392.200.1 "just and reasonable" arguments that the legislature and the courts have foreclosed under Section 392.500. Indeed, the Court referenced OPC's reliance on Section 392.185(6)) in rejecting OPC's assertions. *Id.* ("Despite the General Assembly's clear language in section 392.500, Public Counsel argues that the amendment of section 392.500 does not take away the Commission's responsibility to ensure just and reasonable utility service for ratepayers. . . . Public Counsel's arguments, however, would render the amendment to section 392.500 meaningless.").

As the Court of Appeals recognized, OPC's reliance on the general purposes clauses of Section 392.185 eviscerates the legislature's intent to remove from the regulatory sphere policy questions regarding the reasonableness of rates for competitive services. In this instance, as in the matter of the case decided by the Court of Appeals, adopting OPC's argument would actually frustrate the very portion of the statute cited by OPC, because it would result in "regulation"

substituting for “full and fair competition,” instead of the other way around, as the subsection specifies. Section 392.185(6).

For the foregoing reasons, AT&T Long Distance respectfully submits that OPC’s objection should be rejected and the Commission should approve (or permit to go into effect) its tariff revisions.

Respectfully submitted,

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D/B/A AT&T LONG DISTANCE

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CERTIFICATE OF SERVICE

A copy of this document was served on each of the following parties by e-mail on June 2, 2008.


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