

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 634-7431
E-MAIL: WREBSE@AOL.COM

CHARLES E. SMARR
DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
RACHEL M. CRAIG
BRIAN T. MCCARTNEY
DALE T. SMITH

September 2, 1999

FILED

SEP 2 1999

**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

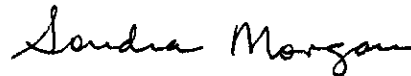
Re: Case No. TA-2000-35

Dear Mr. Roberts:

Enclosed for filing with the Commission please find an original and fourteen (14) copies of the Response of Grand River Communications to AT&T's Motion to Suspend.

Please see that this filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this filing, please feel free to give me a call at your convenience. Otherwise, I thank you in advance for your cooperation in this matter.

Sincerely,



Sondra B. Morgan

SBM/da
Enclosure

cc: Parties of Record
Mr. Phil Johnson

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

FILED

SEP 2 1999

Missouri Public
Service Commission

In the Matter of the Application of Grand River)
Communications, Inc. d/b/a Grand River Long Distance)
for a Certificate of Service Authority to Provide)
Interexchange and Local Exchange Telecommunications)
Services in Missouri.)

Case No. TA-2000-33

In the Matter of the Application of Grand River)
Communications, Inc. d/b/a Lathrop Long Distance)
for a Certificate of Service Authority to Provide)
Interexchange and Local Exchange Telecommunications)
Services in Missouri.)

Case No. TA-2000-35

**RESPONSE OF GRAND RIVER COMMUNICATIONS
TO AT&T'S MOTION TO SUSPEND**

Comes now Grand River Communications, Inc. ("Grand River") and for its Response to AT&T Communications of the Southwest, Inc.'s ("AT&T") Motion to Suspend states to the Missouri Public Service Commission ("Commission") as follows:

1. On June 10, 1999, the Commission issued a Report and Order in Case No. TO-99-254¹ which terminated the Primary Toll Carrier ("PTC") plan and established guidelines for the implementation of intraLATA dialing parity ("ILDLP"). The Commission also approved the ILDP plans of Grand River Mutual Telephone Corp. and Lathrop Telephone Company.² Under these ILDP plans, those customers who had not made an affirmative choice of an intraLATA toll provider by October 20, 1999 would be assigned to their interLATA carrier for intraLATA

¹ *In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity.*

² Orders approving the ILDP implementation plans were also issued by the Commission on June 10, 1999 in Case Nos. TO-99-506 and TO-99-512.

service, provided that the interLATA carrier was providing intraLATA service. Those customers who could not be assigned to their interLATA carrier would be assigned to 101XXXX dialing until they indicated a carrier preference.

2. Out of concern for the number of customers that might be defaulted to a 101XXXX dialing pattern at the termination of the PTC plan, Grand River Mutual Telephone Corp. and Lathrop Telephone Company ("the Companies") have been pursuing a plan to create an IXC affiliate that would be in a position to provide default intraLATA service to customers who would otherwise be defaulted to 101XXXX dialing. On June 18, 1999, the Companies sought the Commission's approval to pursue this plan and submitted proposed modifications to their customer notifications. At page nine of its June 24, 1999 *Order Regarding Requests for Clarification and Motion to Modify Customer Notice*, the Commission determined that the Companies' proposed plan and notices were reasonable, and the Commission clarified its Reports and Orders to allow them.

3. After the Commission issued its July 10, 1999 Report and Order in Case Nos TO-99-254, TO-99-506, and TO-99-512, AT&T indicated that it would not be providing 1+ intraLATA toll service to the exchanges served by the Companies.³ Because a large portion of

³ See AT&T's June 18, 1999 Application for Rehearing, Reconsideration, and Clarification in Case No. TO-99-254 at p. 4 ("At present, AT&T does not intend to accept 1+ intraLATA traffic from the secondary carrier exchanges.")

Also, AT&T Equal Access Coordinator Fran Gramiccioni's letter to the small companies dated July 1, 1999 states, "Because AT&T has decided not to participate in your company's intraLATA 1+ toll market at this time, AT&T will not pay any originating access charges to your company for 0288 and 0732 intraLATA 1+ toll traffic."

the Companies' end users have chosen AT&T as their interLATA carrier,⁴ AT&T's decision will have substantial impacts upon the Companies' customers.

4. On July 19, 1999, Grand River Communications, Inc. d/b/a Grand River Long Distance (GRLD) filed an application to provide long-distance service in the service area of Grand River Mutual Telephone Company, and Grand River Communications, Inc. d/b/a Lathrop Long Distance (LLD) filed an application to provide long-distance service in the service area of Lathrop Telephone Company. Proposed tariffs were attached to these applications. These proposed tariffs were identical except that GRLD proposed to provide services in the exchanges served by Grand River Mutual Telephone Corporation and LLD proposed to provide services in the exchanges served by Lathrop Telephone Company. Grand River filed separate applications and tariffs because it had been made aware of the Commission's preference to have separate applications and tariffs for each fictitious name under which a company proposed to do business. (See CASES in Staff's August 17, 1999 Response at page 3, para. 5)

5. On August 6, 1999, AT&T filed Applications to Intervene in the Companies' tariff filings. AT&T's pleading states that **"AT&T does not oppose approval of the applications or the accompanying tariffs."** (emphasis supplied) However, AT&T claims that the applications and their accompanying tariffs are similar to AT&T's proposed "intraLATA toll overlay plan" tariff which was suspended by the Commission in Case No. TT-2000-22.

6. On August 16, 1999, Grand River responded to AT&T's Application to Intervene and explained that Grand River's proposed tariffs are identical except for the fictitious names of

⁴ See STCG witness Schoonmaker's Surrebuttal Testimony - RCS Schedule 36 in Case No. TO-99-254.

the two long distance companies. Because of this fact, AT&T's allegation that Grand River will be "charging different rates for 1+ interexchange service based upon the underlying ILEC franchise territory" is simply not true. Grand River's Response also explained that "Grand River's filings are clearly different from AT&T's intraLATA overlay plan because AT&T's plan has proposed to charge different rates in different parts of the state.

7. On August 17, 1999, the Staff of the Public Service Commission ("Staff") filed a response recommending that, other than the consolidation of MoPSC Case No. TA-2000-33 with MoPSC Case No. TA-2000-35 for hearing and allowing intervention, AT&T's *Application to Intervene and Motion to Consolidate* should be denied.

8. On August 31, 1999, AT&T filed a Motion to Suspend and Reply to Grand River and Staff's Responses. In this Motion, AT&T repeated its argument that Grand River's filings would put into place a rate structure identical to that proposed by AT&T's "intraLATA overlay plan" tariff. For the reasons detailed below, the Commission should reject AT&T's Motion to Suspend:

A. Ripeness. AT&T argues that "Grand River Communications, Inc., will have the ability to charge different rates for 1+ intraLATA and interLATA interexchange service in different geographic areas defined by the service area of the respective ILEC. This obviously creates a situation where the company *may* engage in geographic deaveraging . . ." (emphasis added) However, Grand River is not proposing to engage in geographic deaveraging. Rather, Grand River is proposing to charge the exact same rates in the areas it proposes to serve. AT&T, on the other hand, is currently attempting to geographically deaverage rates through its "intraLATA overlay" plan. This fact makes Grand River's applications and tariffs clearly

distinguishable from AT&T's "intraLATA overlay" plan. Also, because Grand River is not actually attempting to deaverage rates, AT&T's objections to Grand River's applications and tariffs are not ripe at this time. AT&T is arguing about the mere *possibility* of rate deaveraging that might or might not happen in the future, as opposed to the rate deaveraging that AT&T has already filed tariffs seeking to accomplish as soon as possible. The issue of rate deaveraging is simply not ripe in this case. AT&T should only be allowed to object in the event that Grand River actually does file tariffs designed to deaverage rates.

B. Customer Concerns. It is because of AT&T's position that the Companies have requested IXC authority in the first place. AT&T's decision not to provide 1+ intraLATA toll service in the Companies' exchanges may leave a large number of the Companies' customers with only dial-around intraLATA service once the PTC plan is terminated.

C. Timeliness. AT&T's *Motion to Suspend* is late. Grand River initially filed its Application on July 19, 1999, and the proposed tariffs originally had effective dates of September 2, 1999. At the request of the Commission's Staff, Grand River voluntarily extended these effective dates to September 13, 1999. On August 31, 1999, Staff issued its recommendation that Grand River be granted a certificate to provide interexchange telecommunications service in both cases. AT&T should not be allowed to step in at the eleventh hour and suspend this tariff, especially in light of the fact that the PTC plan will terminate in the Companies' exchanges on October 20, 1999, and that AT&T's first pleading in this case dated August 6, 1999, did not request suspension of the tariffs.⁵ Suspending the tariffs at this late date will only serve to deprive the Companies' customers of 1+ intraLATA toll service when the PTC plan ends.

⁵See, Application to Intervene and Motion to Consolidate dated August 6, 1999.

D. Rate Deaveraging. Finally, Grand River has no intention to deaverage rates at this time or in the future. In fact, the only reason that Grand River filed for two separate certificates and two sets of tariffs is because that is the way that Grand River believed the Commission desired the application to be presented. Grand River did not, as AT&T alleges, make "... a business decision to seek to be able to deaverage its toll rates prior to entering the interexchange toll market."⁶ Grand River's priority is to ensure the provision of uninterrupted 1+ intraLATA service to the Companies' customers. Therefore, Grand River will gladly re-submit a single application and a single set of tariffs using both fictitious names if that is what the Commission desires and if it will resolve the issue. Alternatively, Grand River is willing to file two tariffs, but with one concurring in the rates and terms of the other tariff to demonstrate Grand River does not intend to deaverage rates.

E. Incorporation by Reference. Grand River also incorporates by reference its August 16, 1999 Response filed in this case as further support for the issues raised herein.

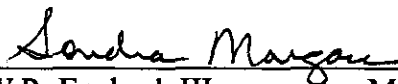
9. Alternatively, if the Commission does determine that Grand River's certificates and tariffs do require further examination, then the Commission should, at the very least, grant temporary certificates to Grand River so that customers in the Companies' exchanges do not experience an interruption in 1+ intraLATA toll service once ILDP is implemented and the PTC exits those markets. A grant of temporary authority as requested will not, as AT&T alleges, allow Grand River to temporarily deaverage rates because the rates Grand River has filed in both

⁶ See AT&T's Motion to Suspend filed August 31, 1999 at p. 7, para. 11.

tariffs are identical.⁷

WHEREFORE, Grand River respectfully requests that the Commission issue an Order: (1) denying AT&T's motion to suspend; (2) approving Grand River's tariffs and applications for certificates of service authority; and (3) for such other orders as are reasonable under the circumstances.

Respectfully submitted,



W.R. England, III Mo. Bar #23975
Sondra B. Morgan Mo. Bar #35482
Brian T. McCartney Mo. Bar #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
P.O. Box 456
Jefferson City, MO 65102-0456
(573) 635-7166
(573) 634-7431/Fax
Attorneys for Grand River Communications, Inc.

⁷ AT&T admits to this fact in its pleading, but then argues the opposite later in the pleading.

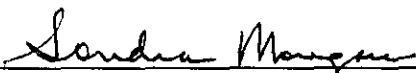
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 2nd day of September, 1999, to:

Martha Hogerty
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

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

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


W.R. England, III/Sondra B. Morgan