

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

In the Matter of Southwestern Bell Telephone,)	
L.P. d/b/a AT&T Missouri's Revision to its)	Case No. IT-2007-0187
General Exchange Tariff, PSC Mo-No. 35)	Tariff Tracking No. JI-2007-0260
Regarding Provision of 811 Service.)	

**AT&T MISSOURI'S RESPONSE TO
MOTION TO SUSPEND**

Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, ("AT&T Missouri") respectfully submits this response to the November 13, 2006, motion of Missouri One Call Systems, Inc. ("MOCS") to suspend AT&T Missouri's proposed 811 Service tariff. For the reasons explained below, MOCS' motion should be denied and AT&T Missouri's tariff should be allowed to take effect.

BACKGROUND

1. On October 19, 2006, AT&T Missouri submitted to the Commission its proposal to revise its General Exchange Tariff, by adding Section 59, effective November 18, 2006. The submission was assigned Tariff Tracking No. JI-2007-0260. The proposed tariff is intended to offer 811 Service, pursuant to the Federal Communications Commission's March 14, 2005, Order.¹

2. In its Order, the FCC determined to implement the federal Pipeline Safety Act,² which provides for the establishment of a nationwide toll-free abbreviated dialing arrangement to

¹ Sixth Report and Order in the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, 20 FCC Rcd 5539 (2005) ("Order").

² Pipeline Safety Improvement Act of 2002, Pub. L. No. 107-355, § 17, 116 Stat. 2985, 3008 (2002) (the "Pipeline Safety Act"), 49 U.S.C. §§ 6101 et seq.

be used by state One Call notification systems. The FCC's Order designated 811 as the national abbreviated dialing code to be used by state one call notification systems for providing advanced notice of excavation activities to underground facility operators.³

3. As the FCC explained, in 1998, pursuant to the Transportation Equity Act for the 21st Century,⁴ the United States Department of Transportation (“DOT”) established the one call notification program to enhance public safety, protect the environment, minimize risks to excavators, and prevent disruption of the nation's vital underground public services by reducing the occurrence of damage to these underground facilities during excavation. States and localities use, as part of the one call system, numbers that contractors or property owners call to access the local one call center to notify the center of their intent to excavate. Upon receipt of such notice, the one call center transmits this information to the underground facility operators that participate in the one call program in that area. The facility operators that have underground facilities in the area of the proposed excavation site then arrange for the identification and marking of their facilities.⁵

4. As the FCC further explained, on December 17, 2002, the Pipeline Safety Act was signed into law. The Pipeline Safety Act, among other things, is designed to strengthen the federal government's support for the one call program by requiring the DOT, in consultation with the Commission, to “provide for the establishment of a 3-digit nationwide toll-free telephone

³ Order, para. 1.

⁴ Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, § 6105, 112 Stat. 107 (1998) (“Transportation Equity Act”); see, 49 U.S.C. §§ 60101 et seq.

⁵ Order, para. 5.

number system to be used by State one-call notification systems.”⁶ DOT’s petition for rulemaking ultimately resulted in the issuance of the FCC’s Order.⁷

MOCS’ MOTION SHOULD BE REJECTED

5. MOCS’ motion challenges AT&T Missouri’s proposed 811 Service tariff on the singular ground that, if approved, the tariff would charge MOCS, as the only customer in Missouri, a nonrecurring charge of \$235.12 per host or stand alone switch. MOCS’ Motion, p. 5. MOCS does not argue that the charge exceeds AT&T Missouri’s true costs incurred to implement the FCC’s Order. Instead, MOCS merely argues that the FCC intended for the expense represented by this charge “to fall on the party intended – namely the telecommunications provider.” MOCS’ Motion, p. 6. According to MOCS, “Congress placed the burden on the telecommunications industry to implement an 811 alternative and that is where the financial burden should remain and not on one call centers.” MOCS’ Motion, p. 8. No citation to the Transportation Equity Act, the Pipeline Safety Act or the FCC’s Order is provided by MOCS to support any of these assertions.

6. Congress did not intend for telecommunications companies offering 811 Service to shoulder the costs of implementation. As the FCC noted, under the Transportation Equity Act, “grants are made to states to establish or improve One Call notification systems.”⁸ The legislation expressly provides that “[a] State may provide funds received under this section directly to any one-call notification system in such State that substantially adopts the best practices identified under section 6105.”⁹

⁶ Order, para. 6, citing, Pipeline Safety Act § 17; see, 49 U.S.C. § 60114.

⁷ Order, para. 7.

⁸ Order, n. 7, citing, 49 U.S.C. §6105(c).

⁹ 49 U.S.C. §6106(c).

7. Moreover, the Pipeline Safety Act's provision implemented by the FCC's Order does not mention telecommunications companies. Rather, it mentions others:

Within 1 year after the date of enactment of this Act, the Secretary of Transportation shall, in conjunction with the federal Communications Commission, facility operators, excavators, and one-call notification system operators, provide for the establishment of a 3-digit nationwide toll-free telephone number system to be used by State one-call notification systems.¹⁰

Additionally, like the Transportation Equity Act, the Pipeline Safety Act provides for grants to states to develop and establish one-call notification systems,¹¹ and nothing indicates any intention to place on telecommunications companies the costs of enabling implementation of a "3-digit nationwide toll-free telephone number system."

8. Moreover, it appears that MOCS intends to continue to "promote[] its toll free number 800-344-7483 (800-DIG-RITE)" and that it views 811 as a "safety device employed by the telecommunications industry" and "not a service used by one call centers." MOCS' Motion, p. 7. However, 811 Service would be but another mechanism by which to communicate with a one call center, and a center subscribing to 811 Service would "use" it no less than a center subscribing to – and paying for – 800 service. In any case, the very first paragraph of the FCC's Order removes any doubt that the "nationwide toll-free abbreviated dialing arrangement" which is the subject of the FCC's Order would be an arrangement "used by state One Call notification systems."¹² AT&T Missouri cannot dictate that MOCS shall use its 811 Service instead of continuing to promote its 800 number. However, if MOCS does use the 811 Service, then it must pay for it.

¹⁰ Pipeline Safety Act § 17.

¹¹ 49 U.S.C. § 60114(b).

¹² Order, para. 1. (emphasis added).

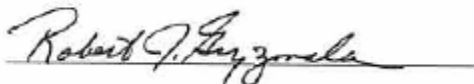
9. In addition, on October 27, 2006, the Kansas Corporation Commission (“KCC”) approved substantially the same tariff as AT&T Missouri has filed with this Commission. The AT&T Kansas tariff imposes virtually the same nonrecurring charge per host or stand alone switch as would AT&T Missouri’s tariff.

10. Finally, it is noteworthy that a subscriber purchases and pays for other N11-related service, including 211, 311 and 911. No different result should obtain for this particular N11 service.

For the foregoing reasons, the Missouri One Call Systems, Inc.’s motion to suspend AT&T Missouri's proposed 811 Service tariff should be denied and the tariff should be permitted to become effective as scheduled, on November 18, 2006.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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