

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

In the Matter of the Petition for Waivers)	
Of Certain Rules and Statutes)	Case No. _____
On Behalf of AT&T Corp.)	

PETITION FOR WAIVERS ON BEHALF OF AT&T CORP.

COMES NOW, AT&T Corp., and hereby petitions the Commission for a waiver of the application and enforcement of certain rules and statutes not previously waived on AT&T Corp.'s behalf by the Commission, pursuant to Sections 392.185, 392.361.5 and 392.420, as amended by HB 1779. These rules and statutes are limited to those which are no longer applicable to other telecommunications companies -- such as CenturyTel, Embarq, Southwestern Bell Telephone Company (d/b/a AT&T Missouri) and Spectra, by virtue of their having elected to waive the application and enforcement of these rules and statutes, in each case with Staff's support.¹ In further support of this Petition, AT&T Corp. states:

1. AT&T Corp. is a New York corporation whose principal office is One AT&T Way, Bedminster, New Jersey, 07921. AT&T Corp. is authorized to do business in Missouri.²
2. AT&T Corp. may be contacted at the electronic mail address, facsimile and telephone numbers of its attorneys, as set out under the signature block of this Petition.³ All correspondence, pleadings, orders, decisions, and communications regarding this proceeding should be sent to:

¹ See, Case No. IE-2009-0079, September 26, 2008 Staff Recommendation and October 23, 2008 Order Concerning Election of Waivers regarding CenturyTel of Missouri, LLC ("CenturyTel"); September 26, 2008 Staff Recommendation regarding Embarq Missouri, Inc. ("Embarq"); Case No. IE-2009-0082, September 26, 2008 Staff Recommendation regarding Southwestern Bell Telephone Company ("SWBT"); IE-2009-0080, September 26, 2008 Staff Recommendation regarding Spectra Communications Group, LLC ("Spectra").

² Pursuant to Commission Rule 2.060(1)(C) (4 CSR 240-2.060(1)(C)), on August 13, 2008, AT&T Corp. submitted in Case No. TA-2009-0045 a copy of a certificate from the Secretary of State reflecting that AT&T Corp. is authorized to do business in Missouri.

³ See, Commission Rule 2.060(1)(A) (4 CSR 240-2.060(1)(A)).

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3. AT&T Corp. has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve retail customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of this Petition.⁴

4. AT&T Corp. does not have any overdue annual reports or regulatory assessment fees.⁵

5. On August 13, 2008, AT&T Corp. filed an application, which the Commission granted on September 25, 2008. In its Order then issued in Case No. TA-2008-0045 (“Order”), the Commission granted AT&T Corp. a certificate of service authority to provide nonswitched local exchange telecommunications services in the state of Missouri, classified AT&T Corp. as a competitive telecommunications company, and waived the application of several statutes and regulatory rules which have traditionally been waived for other similarly situated companies prior to the implementation of HB 1779. *See*, Order, at 5.

6. On August 28, 2008, after AT&T Corp. filed its above-referenced application but before the Commission issued its Order, new HB 1779 became effective. Among other things, HB 1779 mandated lesser regulation in certain respects pertinent to this Petition. More specifically, as Staff has accurately noted, “[t]wo separate sections of new HB 1779, Section

⁴ *See*, Commission Rule 2.060(1)(K) (4 CSR 240-2.060(1)(K)). However, AT&T Corp. is a named defendant in Higdon v. AT&T Corp., et al, Case C08 03526, filed July 23, 2008, in the United States District Court for the Northern District of California, along with its many affiliates providing local telecommunications services in 22 states.

⁵ *See*, Commission Rule 2.060(1)(L) (4 CSR 240-2.060(1)(L)).

392.420 and 392.245.5(8), provide the genesis for waiving various statutes and Commission rules for telecommunications companies.”⁶

7. Section 392.420 provides, in pertinent part:

The commission is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange service authority or the modification of a certificate of public convenience and necessity for interexchange or local exchange telecommunications service, to entertain a petition to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter. In the case of an application for certificate of service authority to provide basic telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company’s authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected. (emphasis added). (emphasis added).

8. Section 392. 245.5(8) provides, in pertinent part:

An incumbent local exchange telecommunications company deemed competitive under this section and all alternative local exchange telecommunications companies shall not be required to comply with customer billing rules, network engineering and maintenance rules requiring the recording and submitting of service objectives or surveillance levels established by the commission. (emphasis added).

⁶ See, Notice of Election of Waivers of Southwestern Bell Telephone Company, d/b/a AT&T Missouri, Case No. IE-2009-0082, Staff Recommendation filed September 26, 2008, Appendix A (Memorandum from Telecommunications Department, through General Counsel, to Official Case File).

9. Section 392.361.5(8) provides, in pertinent part:

By its order classifying a telecommunications service as competitive or transitionally competitive or a telecommunications company as competitive or transitionally competitive, the commission may, with respect to that service or company and with respect to one or more providers of that service, suspend or modify the application of its rules or the application of any statutory provision contained on sections 392.200 to 392.340, except as provided in section 392.390.

10. As explained in greater detail, AT&T Corp. is qualified, pursuant to the above-mentioned statutes and Section 392.185, for a waiver of the application and enforcement of the following Commission rules and state statutes, to the extent such waivers have not already been granted by the Commission's September 25, 2008 Order:⁷

- Rule 3.550, sections (4) and (5)(A)
- Rule 32.060
- Rule 32.070
- Rule 32.080
- Rule 33.040, sections (1) through (3) and sections (5) through (10)
- Rule 33.045
- Rule 33.080, section (1)
- Rule 33.130, sections (1), (4) and (5)
- Section 392.210, subsection 2, RSMo.
- Section 392.240, subsection 1, RSMo.
- Section 392.270, RSMo.
- Section 392.280, RSMo.
- Section 392.290, RSMo.
- Section 392.300, RSMo.
- Section 392.310, RSMo.
- Section 392.320, RSMo.
- Section 392.330, RSMo.
- Section 392.340, RSMo.

11. The above-cited statutes are specifically referenced in Section 392.420. The above-cited rules constitute “quality of service and billing standards” as these terms are used in Section 392.420 and/or “customer billing rules, network engineering and maintenance rules

⁷ All references to rules are to 4 CSR, Division 240 of the Code of State Regulations (e.g., Rule 32.060, at 4 CSR 240-32.060).

requiring the recording and submitting of service objectives or surveillance levels” as these terms are used in Section 392.245.5(8). On August 14, 2008, following discussion among members of the Commission’s Staff and members of the telecommunications industry, Staff agreed that the above-cited rules would constitute “Staff’s Proposed Minimum Set of Rules Waived Under HB 1779.” Additionally, Staff has since expressly supported waiving the same rules and statutes on behalf of incumbent LECs (including CenturyTel, Embarq, AT&T Missouri and Spectra) and alternative LECs (including AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis).⁸

12. Pursuant to the first sentence of Section 392.420, the Commission may, and should, issue an order in connection with its previous September 25 issuance of a certificate of authority to AT&T Corp., which waives the application and enforcement of those foregoing rules and statutes not previously waived on AT&T Corp.’s behalf by the Commission. AT&T Corp.’s application for certification was filed prior to August 28, before any relief could be obtained pursuant to HB 1779, which was not then effective. Moreover, because it was not certificated as of August 28, AT&T Corp. could not qualify as an “existing alternative local exchange telecommunications compan[y]” for purposes of the second sentence of Section 392.420. Yet, AT&T Corp. is such a company. An “alternative local exchange telecommunications company” includes a company authorized to provide basic or nonbasic local telecommunications service. Section 386.020(1). AT&T Corp. is now certified to provide nonbasic local telecommunications service (nonswitched local exchange telecommunications service).

⁸ See, note 1, *supra*; see also, Petition for Waivers on Behalf of the AT&T Joint Petitioners, Case No. TO-2009-0064, Staff Recommendation filed October 3, 2008. While the aforementioned petition references the statutory waivers, tariff filings reflecting the rule waivers were made by each of these companies on August 28, 2008 and each became effective on September 27.

13. Alternatively, the Commission should issue an order pursuant to Section 392.361.5 holding that, as a competitive telecommunications company, AT&T Corp. should be granted the same rule and statute waivers as have been obtained by incumbent LECs -- such as CenturyTel, Embarq, Southwestern Bell Telephone Company (d/b/a AT&T Missouri) and Spectra -- by virtue of their having elected to waive the application and enforcement of these rules and statutes.

14. Such interpretations of Section 392.420 and/or 392.361 also are in keeping both with the legislature's declared purposes of Chapter 392 and real-world marketplace realities. Section 392.185 states that the provisions of Chapter 392 "shall be construed to . . . [p]ermit flexible regulation of telecommunications companies and competitive telecommunications services," and to "[a]llow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest." Section 392.185, subsections (5), (6). To decline granting this Petition would deny AT&T Corp. the flexible regulation to which it is entitled as a competitive company (and which other companies, both incumbent and otherwise, now enjoy) and would elevate regulation over competition without any corresponding public interest or consumer benefits.

15. The marketplace realities are that AT&T Corp.'s advanced telecommunications services (the same offered for many years by SBC Advanced Solutions, Inc.) have been and will continue to be subject to competition from other carriers already certified within Missouri. As the FCC has noted, "there are a myriad of providers prepared to make competitive offers to enterprise customers demanding packet-switched data services located both within and outside any given [ILEC's] service territory. These competitors include the many competitive LECs, cable companies, systems integrators, equipment vendors, and value-added resellers providing


services that compete against AT&T.”⁹ Moreover, the FCC has also acknowledged that enterprise customers of these kinds of services “deal at the most sophisticated level with the providers of these services.”¹⁰ Neither the public interest in general nor enterprise customers in particular require the rules and statutes which are the subject of this Petition.

16. Concurrent with the filing of this Petition, AT&T Corp. is filing appropriate tariff revisions reflecting a waiver of the rules and statutes which are the subject of this Petition.

WHEREFORE, AT&T Corp. respectfully requests that the Commission grant its Petition.

Respectfully submitted,

AT&T Corp.

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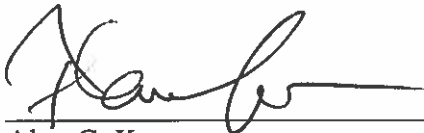
⁹ Petition of AT&T, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services, Memorandum Opinion and Order, WC Docket No. 06-125, FCC 07-180, October 11, 2007, ¶ 22.

¹⁰ *Id.*, ¶ 24.

CITY OF ST. LOUIS)
)
STATE OF MISSOURI) SS

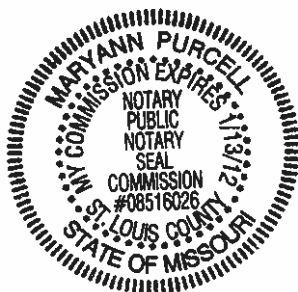
VERIFICATION

I, Alan G. Kern, being duly sworn upon my oath, state that I am over twenty-one, sound of mind, and Director-Regulatory of AT&T Services, Inc. I am authorized to act on behalf of AT&T Corp. regarding the foregoing document. I have read it and verify that the facts contained in it are true and correct according to the best of my knowledge, information and belief.



Alan G. Kern

Sworn and subscribed to before me this 4th day of November, 2008.





Notary Public

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on November 4, 2008.


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