

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

In the Matter of the Review of the Competitive        )  
Classification of the Exchanges of Southwestern        )        Case No. TO-2007-0053  
Bell Telephone, L.P., d/b/a AT&T Missouri.            )

**AT&T MISSOURI’S RESPONSE TO  
OPC REQUEST FOR PUBLIC HEARINGS**

AT&T Missouri<sup>1</sup> respectfully opposes Office of the Public Counsel’s (“OPC’s”) request for the Missouri Public Service Commission (“Commission”) to hold local public hearings. Such hearings are beyond the scope of the Commission’s notice in this case and are not contemplated by the operative statute. Moreover, the issues OPC proposes to be addressed at such hearings have no relevance to the statutory criteria for competitive classification.

**Background**

1. On August 8, 2006, the Commission’s Staff filed a report pursuant to Section 392.245.5 RSMo (2005 C. Supp.) concluding that the conditions for competitive classification for AT&T Missouri’s business and residence services in its competitively classified exchanges continue to exist.

2. On August 14, 2006, the Commission issued an Order directing that notice of this proceeding be given to all parties that participated in Case Nos. TO-2006-0093 and TO-2006-0102, to all certificated CLECs and incumbent LECs in the state, to the Missouri General Assembly and to the news media. It also set a date for interested parties to file requests to intervene and stated that “if no hearing is requested, the Commission may make its determination based on the verified pleadings and recommendations.”<sup>2</sup>

---

<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri will be referred to in this pleading as “AT&T Missouri.” It previously conducted business as “SBC Missouri.”

<sup>2</sup> Order Directing Notice and Adding Party, Case No. TO-2007-0053, issued August 14, 2006 at p. 1.

3. On August 18, 2006, OPC filed a request for an evidentiary hearing stating that “interested parties should have a meaningful opportunity to participate in the process and offer any arguments or evidence to assist the Commission in making this review.”<sup>3</sup> AT&T Missouri has not opposed OPC’s request for an evidentiary hearing.

4. In addition, OPC on August 18, 2006, filed a request for local public hearings in AT&T Missouri’s service areas. In its request, OPC states the purpose of such local public hearings would be to:

obtain customer comments concerning the impact that the reclassification of exchanges has had on quality of service, response to customer problems, billing and collection matters, the ability to contact AT&T by telephone via the advertised customer service numbers in a reasonable time, the ability to have corrective action taken with their service or billing problem in a timely manner, availability of advanced services in the exchange, price for service, and the investment the company has made in the exchanges and the purpose of that investment, as well as other issues that competition was suppose [sic] to address.<sup>4</sup>

### **Argument**

5. The Commission’s Order. OPC’s request for local public hearings is beyond the scope of the Commission’s August 14, 2006 Order Directing Notice, as the Order does not contemplate the holding of local public hearings. Rather, the Commission has provided an opportunity for interested parties to intervene and request a hearing before the Commission (which OPC has done and AT&T Missouri has not opposed). An evidentiary hearing which focuses on whether the conditions for competitive classification continue to exist in AT&T Missouri’s competitively classified exchanges is appropriate to address whatever legitimate issues the parties raise.

6. The Statutory Criteria. OPC’s request for local public hearings is not designed to address the limited issues identified by the Legislature in determining whether the conditions for

---

<sup>3</sup> Office of the Public Counsel’s Request for an Evidentiary Hearing, Case No. TO-2007-0053, filed August 18, 2006 at p. 1.

<sup>4</sup> Office of the Public Counsel’s Request for Public Hearings, Case No. TO-2007-0053, filed August 18, 2006 at p. 1.

competitive classification continue to exist. With respect to the 30-day proceeding, Section 392.245.5 RSMo (2005) simply calls for the Commission to count the number of competitors providing service in an exchange:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. . .<sup>5</sup>

Based on this language, the Commission denied OPC's request for local public hearings in the 30-day proceeding in Case No. TO-2006-0093:

The Commission finds that while public comment is generally an aid to the Commission in its proceedings, the Commission in making its determination in this case cannot consider public favor or opposition to the current application. Pursuant to statute, the Commission must determine "whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange. . . ." Thus, the Commission finds that public comment in favor of or opposition to the application would serve no purpose in the current proceeding because the Commission may only determine if the requisite number of competitors are providing service and, if so, the tariffs "shall [be] approve[d]." Therefore, the Commission will deny Public Counsel's request for a local public hearing.<sup>6</sup>

OPC's request here is similarly beyond the scope of what the Commission may properly consider. None of the issues identified by OPC are directed to whether the requisite number of entities are providing service in a particular exchange using its own facilities. Instead, OPC seeks input on matters unrelated to the proper statutory inquiry. And with respect to the 60-day proceeding, Section 392.245.5 RSMo (2005) also does not contemplate holding public hearings:

---

<sup>5</sup> Section 392.245.5 RSMo (2005), (emphasis added).

<sup>6</sup> Order Denying Motion for Local Public Hearing, Case No. TO-2006-0093, issued September 22, 2005 at p. 2.

Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest.<sup>7</sup>

While the Commission did schedule public hearings in the 60-day proceeding in Case No. TO-2006-0120, little interest was shown by the public.<sup>8</sup>

7. The Relevance of OPC's Issues. Finally, the issues OPC proposes to be addressed at local public hearings have no relevance to the criteria for determining whether competitive classification should be maintained. Section 392.245.5(6) charges the Commission with determining "if the conditions of this subsection for competitive classification continue to exist in the exchange." As is clear from the statutory criteria for the 30 and 60-day proceedings quoted above, there is nothing in Section 392.245 that would even suggest that the quality of service being provided by an incumbent LEC is an appropriate area of inquiry in a proceeding conducted under the statute. In fact, the statute makes clear that quality of service standards are not to be relaxed as a result of a grant of competitive classification:

Nothing in this section shall be interpreted to alter the commission's jurisdiction over quality and conditions of service or to relieve telecommunications companies from the obligation to comply with commission rules relating to minimum basic local and interexchange telecommunications service.<sup>9</sup>

Thus, an incumbent LEC that has received competitive classification for its services in an exchange remains fully subject to the Commission's quality of service standards set out in 4 CSR 240-32.070

---

<sup>7</sup> Section 392.245.5(6) RSMo (2005).

<sup>8</sup> At the October 3, 2005 local public hearings, two people appeared in Moberly, four in Carthage and two in Union. At the October 4, 2005 local public hearing, five appeared in Kennett, and three appeared in Excelsior Springs. At the October 5, 2005 local public hearing, two people appeared in Marshall. And at the October 3, 2005 local public hearings, one appeared in Kirksville, four in Mexico and zero in Hannibal. See transcripts from Case No. TO-2006-0102, Vols. 1-4.

<sup>9</sup> Section 392.245.6 RSMo (2005).

and to the Commission's Rules establishing service objectives and surveillance levels set out at 4 CSR 240-32.080. Moreover, the availability of competitive alternatives in an exchange (as shown by Staff's report) is an even greater incentive to maintain service quality standards because end users are more likely to choose a competitive alternative if the incumbent's quality of service deteriorates.

**Conclusion**

8. Neither the Commission's August 14, 2006 Order Directing Notice nor the competitive classification statute contemplates local public hearings. The issue OPC proposes for local public hearings have no relevance to the statutory criteria for competitive classification and judicial economy would not be served by adding such hearings to the proceedings in this case.

WHEREFORE, AT&T Missouri respectfully requests the Commission to deny OPC's request for public hearings.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.,  
D/B/A AT&T MISSOURI

BY  \_\_\_\_\_

PAUL G. LANE #27011

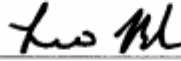
LEO J. BUB #34326

ROBERT J. GRYZMALA #32454

Attorneys for AT&T Missouri  
One AT&T Center, Room 3518  
St. Louis, Missouri 63101  
314-235-2508 (Telephone)/314-247-0014(Facsimile)  
[leo.bub@att.com](mailto:leo.bub@att.com)

**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on August 24, 2006.



\_\_\_\_\_  
Leo J. Bub

William Haas  
General Counsel  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, MO 65102  
[William.Haas@psc.mo.gov](mailto:William.Haas@psc.mo.gov)  
[general.counsel@psc.mo.gov](mailto:general.counsel@psc.mo.gov)

Michael F. Dandino  
Public Counsel  
Office of the Public Counsel  
PO Box 7800  
Jefferson City, MO 65102  
[mike.dandino@ded.mo.gov](mailto:mike.dandino@ded.mo.gov)  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)