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FILED

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Missouri Public
Service Commission

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65101

Re: Case No. TO-2000-16

Dear Judge Roberts:

Enclosed please find the original and fourteen (14) copies of the Mid-Missouri Group's response to the reports of AT&T and staff, as directed by the commission's last order. Copy this letter in confidence. Enclosed response has been served on all counsel of record. Thank you for seeing this filed.

Sincerely,

Craig S. Johnson

Enclosure

cc: Mid-Missouri Group Managers
Attorneys of Record

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Motion to Establishe a Docket Investigating The intraLATA Toll Service Provisioning Practices of Missouri Interexchange Carriers, Public Untility or Common Carrier Duties Of Interexchange Carriers, Motion To Show Cause, Request for Emergency Hearing, and Alternative Petition for Suspension and Modification.	)	**Case No. TO-2000-16**

Response of MMG to Reports of AT&T and Staff

Comes now the Mid-Missouri Group of local exchange companies, pursuant to the Commission's August 10, 1999 Order, and files this response to the September 8, Reports of AT&T and Staff.

At the time of filing the pleading intitiating this case, AT&T had announced it was reneging on its previously stated willingness to be an available 1+ intraLATA toll carrier in SC exchanges. AT&T made this announcement even though the Commission had approved SC ILPs which provided that, if customers requested AT&T, AT&T would provide service.

Now the matter has progressed farther. In its "Report", AT&T has failed to acknowledge that many SC customers were told by AT&T service representatives AT&T would provide them 1+ service at premium rate plans. Many SC customers, in reliance upon these AT&T promises, have directly requested from their LEC to be PICed to AT&T. It is the customer's right, and the LEC's obligation, to honor customer-initiated AT&T PIC selections. As a result, these customers' traffic is being routed to AT&T.

AT&T has now indicated they will not provide the service they previously promised to customers. AT&T has indicated they will not provide 1+ service, and will not provide premium rate plans in SC exchanges.

AT&T's verified report completely fails to mention, acknowledge, or quantify the number of customers to whom these promises were made. Based upon the customer reports to the MMG companies, it is believed that the number of these customers is great.

It borders on fraud and misrepresentation for customers to now be making 1+ calls in reliance upon AT&T's promise. To compound the damage to customers, AT&T is making little or no effort to notify these customers.

Additionally, AT&T has proposed two new services, "overlay" and "all in one", which offer new rate plans. Although overlay was suspended as a permanent offering, AT&T has nonetheless proceeded to provide the service under the guise of a "promotional tariff". In order for a customer to obtain either overlay or all in one service, the customer must choose AT&T as its 1+ carrier for both interLATA and intraLATA toll service. As AT&T's current position is that it will only provide "dial around" intraLATA toll in SC exchanges, SC customers cannot avail themselves of overlay or all in one service.

What is particularly egregious is the pretextual basis of AT&T's overt discrimination against SC customers. AT&T's pretext for discriminating against SC exchange residents is high SC access rates. However, AT&T is making 1+ and premium services available in GTE and Sprint exchanges, which have access rates higher than the majority of SC exchanges. SC exchange residents have been severely abused by these

unwarranted actions of AT&T. The extent of the damage, as well as public outcry, will not be known until toll billing cycles have been completed.

Lack of Compliance with Commission Order

The MMG ability to fully respond to the reports of Staff and AT&T are hindered by their failure to adhere to the Commission's August 10 Order. Staff was specifically directed to investigate AT&T's refusal to serve customers in SC exchanges. The Staff report makes no mention of any investigation as to refusal to serve customers. Staff should be directed to produce the results of this investigation. To the MMG knowledge any such investigation did not involve the SCs, who possess information relevant to any such customer-based investigation.

AT&T would leave the impression that it now is in control of what customers are being told. Based upon information the MMG is receiving, that is not the case. Although there was a temporary lull in customers being told by AT&T customer service representatives they would receive AT&T 1+ service and premium plans, the lull apparently is over. AT&T is still telling customers they will receive AT&T premium 1_ service.

Some customers are still being given false reasons for not receiving AT&T service. AT&T is still refusing to abide by accepted industry practices regarding jurisdictional indicators on PIC change requests. In short, it still appears that AT&T remains out of control, and customers continue to suffer.

AT&T was directed to report stating, by exchange, the number of intraLATA 1+ service requests it has received, the number of requests it has accepted, and the number it

has declined. AT&T's filing fails to comply in many respects. It is apparent AT&T is only tracking requests it actually imputs into computers. The MMG has indirect information from customers which indicates AT&T is attempting to significantly understate the number of customers who have been verbally promised by AT&T that they would be provided service. AT&T should be directed to provide the Commission with an estimate of the number of customers that AT&T customer service representatives verbally told would be provided service.

AT&T has failed to include any information as to business customers. The Commissions should order AT&T to provide this information.

Instead of indicating how many customers had been received, accepted, or rejected, AT&T has filed a confusing chart of "orders held, sent, processed, accepted, declined, and received". AT&T confuses its back office business practices with its obligations as a public utility, which will be discussed later.

The per exchange chart of AT&T indicates that AT&T has "received" only 2,794 orders for service, but has "declined" up to 121,377. Obviously AT&T cannot decline more requests than it received. The chart indicates AT&T has accepted 881 orders and declined a minimum of 1,995. The total of 881 accepted and 1995 delined again adds up to more than the number of orders "received", which cannot be. AT&T should be ordered to file information in compliance with the Commission Order.

AT&T was directed to begin keeping and tracking **actual** information, if actual information was not being retained as of the August 10 Order. AT&T failed to distinguish between estimated data and the actual information. AT&T should be ordered

to file the actual information retained after August 10 in compliance with the Commission Order.

The information AT&T has filed is designed to further AT&T's position in this docket, rather than provide the information the Commission directed. AT&T's report and affadavits are predicated upon the assumption that it is AT&T who "accepts" customer requests for service. AT&T is a public utility. It provides service and facilities on a statewide basis pursuant to approved tariffs. AT&T's tariffs constitute its offer of service to the public. Consumers accept AT&T services by requesting service. Consumers can accept AT&T service by choosing AT&T as their 1+ intraLATA toll carrier directly from the serving LEC.

AT&T's chart assumes that AT&T is in a position of "accepting" customer orders. It is apparent AT&T would like its back office practices deemed as part of what must occur before an IXC can "accept" service. AT&T's assumption is at odds with its obligations as a public utility offering service through tariff. The law, Commission Order approving ILP Plans and customer notices, and even FCC decisions approving slamming rules recognize the customer can select AT&T as a carrier by making a direct request from the customer's LEC. Staff's analysis of AT&T's obligation is deficient. Staff completely fails to examine the propriety of the back office business practices used by AT&T as an excuse not to provide service to customers. Staff seems to think that only AT&T has enforceable property rights in a competitve environment, and the customers have none.

AT&T is a public utility with an obligation to provide 1+ intraLATA toll to SC customers

The MMG agrees with staff that AT&T is a public utility as defined by 386.020(42) RSMo. The MMG disagrees with Staff's conclusion that the law imposes no obligation to serve upon public utilities. Staff only attempts a literal reading of certain statues without a thorough understanding of the nature of a public utility's devotion of property to public use. Without this understanding, Commission regulation of utilities does not make sense. Without this understanding, concepts such as carrier of last resort, universal service, parity of rates, obligation to serve, prohibition of rate deaveraging, and the prohibition against defining services as different based upon locality, make no sense.

Applying Staff's analysis of service obligation to ILECs, ILECs could refuse to install the facilities necessary to provide basic local service to new customers. Under Staffs's analysis, a company can side-step the prohibition against rate deaveraging simply by attempting to refuse service to SC exchanges, as AT&T is attempting to do here. Public utility obligation to serve is more profound that Staff's simple analysis. The words "public" and "utility" have significance. "Public Service" has significance. Staff's conclusion that AT&T has no obligation to make 1+ intraLATA toll service to customers who request it is simply erroneous.

The general definition of a public utility is a business organization which regularly supplies the public with some commodity or service, including telephone service. See 73B CJS Public Utilities, § 2. The distiguishing characteristic of a public utility is the devotion of private property to a use that the public generally, or that part of the public which has been served and has accepted the service, as long as it is continued,

with reasonable efficiency and under proper charges. A public utility may be required to serve every applicant within the territory it professes to serve. As a public utility it is bound to furnish such public service in such quantities as the public may require. A public utility may not refuse service because of some collateral matter related to the service. A public utility must serve the general public without arbitrary discrimination. It cannon arbitrarily select the persons for whom it will provide service, or to refuse to provide one class of persons a service it has extended to another. A public utility has no right to refuse, discontinue, or abandon service except with consent of the state. See 73B CJS, Public Utilities §§ 7-9.

Case law interpreting Missouri's regulation of public utilities confirms that Missouri applies these general obligations of public utilities. Missouri statutes imposing obligations to serve all members of the public without unde preference or advantage are merely codifications of the common law duties of public utilities. Overman v SWB Telephone, 675 SW2d 419, 424 (Mo App 1984), citing CJS. As a public utility, AT&T must furnish service to the general public it has undertaken to serve, without arbitrary discrimination, and must, to the extent of its capacity, serve all who apply on equal terms, as far as they are in the same class and similarly situtated. See Videon Corp. v Burton, 369 SW2d 264, 271 (Mo App 1963). To constitute a public utility, AT&T must simply be subject to regulation by the MoPSC and it must offer service devoted to public use. Osage Water v Miller County Water Authority, 950 SW2d 569, 574-575 (Mo App 1997). It is the clear intent of the public service commission law that utilities shall, without the supervision of their customers, provide adequate service at only the corrrect rate, and no more. De Paul Hospital v SWB Telephone, 539 SW2d 542, 547 (Mo App 1976).

Missouri statutes make it clear that AT&T is a regulated public utility. § 386.020(42) RSMo declares that every telecommunications company is a public utility. The regulatory control of the PSC established in chapters 386 and 392 apply to AT&T as a regulated public utility. The Commission—not AT&T-- decides where AT&T serves, where AT&T does not serve, and where AT&T can be required to serve. The Commission even has jurisdiction to compel AT&T to install additional facilities and capacity if it is reasonably necessary to fulfill the quantity of services customers demand.

Missouri statute extends complete authority of the Commission over AT&T with respect to facilities and services, and as a public utility. § 386.250 (2), (5), and (6) RSMo. The Commission is to exercise general supervision over AT&T as a public utility, including AT&T's property as well as AT&T services. § 386.320 RSMo. Chapter 392 RSMo is to be interpreted to promote the availability of service, diversity in the supply of service and products, as well as parity of urban and rural service. § 392.195 RSMo.

In its August 10 Order, the Commission asked Staff to pay particular attention to 392.200 RSMo. Staff's anaysis consists of the conclusion that this statute did not "contain any provision that expressly prohibits AT&T from offering intraLATA toll services as it proposes to do". This analysis is inadequate.

At hearing AT&T admitted that it had toll facilities and was providing both interLATA and intraLATA toll service in every Missouri exchange. As a public utility, AT&T has property devoted to public use in every Missouri exchange, and must provide service to all on a nondiscriminatory basis, in such quantities as the public demands.

Staff attempts to somehow distinguish "1+" from "dial around" intraLATA toll service. While they are separate and distinct dialing patterns, the service the IXC provides is the same—intraLATA interexchange (toll) service. They are not separate services. It is ironic that for years both Staff and AT&T wanted 1+ intraLATA capability, but now both Staff and AT&T are inclined to limit its availability in SC exchanges. For years in Missouri, AT&T has sought to provide the same service on the same dialing basis, and only with elimination of the PTC Plan does AT&T now want to continue dial around only in SC exchanges. The attempt of Staff and AT&T to distinguish the service as a different based upon dialing prefix is disingenous, and not in the interest of customers in SC exchanges.

§ 392.200.1 RSMo requires AT&T to provide, with respect to intraLATA toll service, such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. If more customers request intraLATA toll service from AT&T, AT&T has an obligation to add sufficient capacity. AT&T's attempt to distinquish dial around from 1+ dialed service is not just, and violates this statute. It is the location of the calling and called parties that determines if the service is intraLATA toll, not how the call is dialed. It is neither just nor reasonable for AT&T to offer the service on a 1+ basis in GTE, Sprint, and SWB exchanges, but not in SC exchanges. Even were higher cost a justification, which it is not, AT&T's actions are not just and reasonable based upon cost. AT&T is offering 1+ in Sprint and GTE exchanges, where costs are higher than in most SC exchanges.

Staff's interpretation that 392.200.1 means no company has to provide additional service to additional customers is ridiculous. This statute is generic to all service, local

and interexchange. Surely Staff is not advocating a decision that means no company has the obligation to provide additional service to new customers.

§ 392.200.2 RSMo precludes AT&T from using "dial around" as a means of charging SC customers higher rates than AT&T charges SWB, GTE, and Sprint customers for intraLATA toll service. As discussed elsewhere, Staff's conclusion that dial around toll is a different service from 1+ toll is not supported by statute or past practice.

§ 392.200.3 RSMo prohibits preference or advantage to a particular locality. AT&T's actions are consciously and specifically designed to make SC exchange locality a disadvantage in receiving intrLATA toll service. Staff seems to interpret this section as authorizing AT&T to treat different customers differently based upon the differing profitability of serving differeent customers. This concept is also at odds with public utility law. This concept is at odds with charging all local ratepayers the same local rate regardless of differing costs of loop. This concept is at odds with charging different customers the same toll rate, even though some customers usage patterns make the service more or less profitable. This concept is completely at odds with geographic rate averaging requirements in state and federal law. This concept is at odds with the principles of universal service.

§ 392.200.4(1) RSMo has been violated by AT&T attempting to define intraLATA toll service as different (different dialing and different rates) based on geographic area (SC exchanges), unless AT&T makes application for specific relief

approved by the Commission. In this case AT&T has attemped by back office practices to accomplish what by law requires a Commission order.

§ 392.200.5 RSMo prohibits AT&T from charging a different price per minute for the same, substitutable, or equivalent interexchange service. Notwithstanding the provisions of this statute, by denying SC exchange residents access to the premium rate plans available to SWB, GTE, and Sprint exchange residents who can choose AT&T as their 1+ intraLATA carrier, AT&T will be in violation of this statute.

Improper AT&T back office practices

When a customer attempts to select AT&T as its 1+ intraLATA toll provider, three relationships are involved. All three must be properly handled in order for the change to be effected seamlessly. First, the customer needs to inform its serving LEC of that AT&T has been selected as the intraLATA primary interexchange carrier (PIC). Second, AT&T and the serving LEC need to have an established a relationship whereby the LEC can bill AT&T for exchange access. Third, the rate plans selected by the customer must be properly inputted in the billing system of either AT&T or LEC if the LEC bills for AT&T.

Unfortunately, there does not appear to be well established rules regarding each of these relationships. It is the difference in expectations between the establishments of carrier relationships that AT&T uses to obfuscate the customers' right to select AT&T and all tariffed rate plans. It was a principal aim of the MMG opening this docket to assure that the customer rights and carrier obligations were determined by the Commission, to avoid further confusion. Continued confusion sets up a situation where

carriers argue carrier obligations before the Commission, but customer rights are overlooked. This is precisely what AT&T and Staff have done in their reports in this docket.

With respect to the selection of a carrier, slamming rules establish what authorizations must be received by the submitting and executing carrier before the PIC can be changed via a carrier-initiated request. However,the slamming rules do not apply to PIC changes initiated by a request directly from the customer to the serving LEC. The PIC change rules, the approved ILPs, and the Commission Orders approving customer notices, all recognize that the customer has a right to select AT&T merely by telling their serving LEC AT&T is their desired PIC.

AT&T's report attempts to quantify not customer requests, but how AT&T handles customer requests. AT&T disregards the customers' right to select AT&T, and select any tariffed service plan available (or which should be available). Instead, AT&T focuses on its "right" to "accept" the customer, a process which AT&T has structured in its back offices to always require "acceptance" by AT&T, and an "order" from AT&T to the serving LEC. As already discussed, these back office practices are not believed by the MMG to conform to AT&T's obligations as a public utility. When the customer is told by AT&T they will get premium 1+ service, and the customer tells its LEC to PIC him or her to AT&T, the customer is PICed to AT&T. When AT&T in its back office practices fails, refuses, or changes its mind with respect to this customer, that does not negate the customer's AT&T PIC. These back office practices then create problems with respect to the customer-AT&T relationship, and possibly the LEC-AT&T relationship.

The following are the questions which the Commission should answer in determining what obligations AT&T has, what steps must be taken for the state to consent to the AT&T abandonment of service, and what back office practices of AT&T are consistent with its current obligations as a public utility:

1. **Is AT&T a public utility telecommunications company ?** The MMG agrees with staff that AT&T is a public utility.

2. **Has AT&T devoted its private property to a public use in providing intraLATA toll service ?** The undisputed evidence in TO-99-254 was that AT&T has toll facilities in every ILEC exchange. Through those facilities AT&T has been providing 1+ interLATA toll as well as intraLATA toll. IntraLATA toll has been provided on a 1+ basis in GTE and Sprint exchanges, is being provided on a 1+ basis in SWB exchanges, and has been provided on a "dial around" basis for SCs.

3. **Has the public accepted AT&T service ?** There is no dispute that the answer to this question is "yes".

4. **Does AT&T have an obligation to provide additional facilities if the public demands more quantities ?** Based upon the above-cited law pertaining to public utilities, the MMG believes the answer is "yes". The MMG ILECs have this obligation with respect to local and exchange access facilities. We realize there is a tension between the traditional obligations of public utilities and the needs of a truly competitive market. However, even competitive IXCs and CLECs are still public utilities subject to PSC regulation. It is up to the Commission, not AT&T, other IXCs, or CLECs, to establish the perameters of service necessary to accommodate the exigencies of competition. CLECs are litigating access rate issues before the Commission. ILECs are litigating

terminating traffic issues before the Commission. AT&T is not justified in deciding on its own, in its back offices, what the rules are to be. It is up the Commission, subject to statutes, to establish these rules.

Staff's review of the AT&T PSC Mo No 15 tariff provisions is incomplete. Staff has not indicated any language in any of AT&T's tariffs that renders SC customers ineligible for service. There is no component of AT&T service that is not presently in place and available in SC exhanges. The tariff change effective July 26, 1999 did not authorize AT&T to provide 1+ intraLATA toll only in SWB/GTE/Sprint exchanges. That change only recognized that AT&T was now being allowed to complete 1+ calls, and dial around was no longer required.

5. **Are the back office reasons given by AT&T to refuse service "collateral matters" or "arbitrary discriminations" which violate AT&T's obligations as a public utility ?** As the MMG suggested in its motion initiating this docket, we believe the following list of reasons commonly given by AT&T customer service representatives for refusing PICs or refusing service plans are improper:

a. The LEC is not a multiple carrier office

b. AT&T is not a PICable carrier

c. The LEC is not participating

d. The LEC is blocking calls

e. Service is not available in the LEC area

f. Facilities are not availabe in the LEC area

g. Billing service is not available in the LEC area

h. LEC access rates are too high

After approval of the ILPs, all SCs became multiple intraLATA carrier offices offering intraLATA toll to all carriers. Toll service has been provided by AT&T over AT&T facilites for years. These SCs cannot and are not blocking calls. Billing service has been and remains available, either by AT&T purchasing billing services or performing it on its own. As mentioned before, geographic rate averaging requires AT&T to provide service at rates averaged over the entire state, where access rates are low and high. As SC access rates are generally lower than GTE and Sprint, this is a discriminatory reason for AT&T to refuse service in SC exchanges but not in GTE/Sprint exchanges.

It is the MMG belief that, on the basis of the foregoing simplified analysis, none of the reasons AT&T routinely gives to customers are permissable for a public utility to give.

6. **Has the state of Missouri consented to AT&T abandoning the provision of intraLATA toll service in SC exchanges ?** The MMG is not aware of any such consent give by the Commission or by the legislature. As Staff did note, 392.416 would seem to require AT&T to apply for and receive a modification to its authority before altering the nature or scope of services provided.

7. **If AT&T desires to alter or limit its public utility obligations to discontine the provisioning of intraLATA toll in SC exchanges, what steps must be taken ?** The Commission need look no further than the common law appliable to public utilities, and the procedures the legislature has set forth in § 392.200 RSMo. If AT&T desires to provide intraLATA toll by "dial around" in certain areas and on a 1+ basis in others, or if AT&T desires to provide intraLATA toll priced differently in some

geographical areas than in others, it must obtain the appropriate Commission Order pursuant to 392.200 and/or 392.230 RSMo.

WHEREFORE, the MMG again requests that this docket be opened for full discovery and a full hearing on the issues presented.

ANDERECK, EVANS, MILNE
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By: _____

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ATTORNEYS FOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 20 day of September, 1999, to all attorneys of record

_____
Craig S. Johnson