

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

In the Matter of the Tariff of Southwestern Bell)	
Telephone, d/b/a AT&T Missouri, increasing local)	Case No. TT-2008-0062
residential basic local service rates in certain)	
exchanges designated as competitive pursuant to)	Tariff File No. JI-2008-0136
Section 392.245.5, RSMo 2000 (as amended 2005))	

**AT&T MISSOURI’S RESPONSE TO
OPC’S OBJECTIONS**

AT&T Missouri¹ respectfully requests the Missouri Public Service Commission (“Commission”) deny Office of the Public Counsel’s (“OPC’s”) August 29, 2007, objections to price increases AT&T Missouri proposes for competitively-classified basic local residential services. Under controlling statutes, a telecommunications company is permitted to “adjust its rates for . . . competitive services upward or downward as it determines appropriate in its competitive environment.”²

Over the years, public policy has kept AT&T Missouri’s local residential rates artificially low. With the introduction of telecommunications competition, public policy has shifted to allow pricing to follow market principles, as explained in detail below. Through these proposed price increases, AT&T Missouri seeks to bring its competitively-classified basic local residential prices more in line with what it believes are appropriate market prices, just as other prices, such as long distance and vertical service package prices, have been reduced over time to more market-based levels. Missouri law provides no jurisdiction for the Commission to reject the proposed price adjustments. It should permit them to go into effect on September 7, 2007, as scheduled.

¹ Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as “AT&T Missouri.”

² Section 392.245.5(6) RSMo (2006 C. Supp.).

1. The Commission has no Jurisdiction to Reject Upward or Downward Rate Adjustments for Competitively-Classified Services.

Upon the Commission's recognition of competitive classification for business and/or residential service in various AT&T Missouri exchanges throughout the state,³ controlling Missouri law gave the company discretion to adjust its rates for such services upward or downwards:

If the services of an incumbent local exchange telecommunications company are classified as competitive under this subsection, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment, upon filing tariffs which shall become effective within the time lines identified in section 392.500.⁴

And Section 392.500 mandates that rate increases for competitively-classified services become effective ten days after filing:

Except as provided in subsections 2 to 5 of Section 392.200, proposed changes in rates or charges, or any classification or tariff provision affecting rates or charges, for any competitive telecommunications service, shall be treated pursuant to this section as follows:

...

(2) Any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for any competitive telecommunications service shall be permitted ten days after the filing of the proposed rate, charge, classification or tariff and upon notice to all potentially affected customers through a notice in each customer's bill at least ten days prior to the date for implementation of such increase or change, or, where such customers are not billed, by an equivalent means of prior notice. (Emphasis added).

As reflected in AT&T Missouri's August 28, 2007 tariff filing, AT&T Missouri fully complied with the statutory requirements by notifying all potentially affected customers through bill notifications during July and early August,⁵ and filing its proposed tariff on ten days notice. Once the Commission determines that these statutory conditions are met, the Commission has no authority to

³ In proceedings conducted pursuant to Section 392.245.5 RSMo (2005 Supp.), the Commission granted competitive classification to AT&T Missouri for business services in 75 exchanges and for residential services in 77 exchanges. See Case Nos. TO-2006-0093 and TO-2006-0102.

⁴ Section 392.245.5(6) (emphasis added).

⁵ A copy of the customer notifications were attached to AT&T Missouri's August 28, 2007 tariff filing, Tariff File No. JI-2008-0136.

reject the proposed increases and must allow them to go into effect. Staff concurs with this analysis.⁶

OPC, however, asks the Commission to reject the proposed tariff, claiming it is “inconsistent with the stated purpose of Missouri’s telecommunications law . . . in that it does not ensure that customers pay only reasonable charges for telecommunications service.”⁷ But in asking the Commission to conduct a reasonableness analysis of the proposed prices, OPC would have the Commission unlawfully ignore the clear statutory scheme. By Section 392.500’s (quoted above) preserving the Commission’s jurisdiction under only subsections 2-5 of Section 392.200, the Legislature has specifically removed the Commission’s Section 392.200.1 jurisdiction to review adjustments in competitive rates for justness and reasonableness.⁸

OPC’s claims about the ability of competition to “function as a substitute for regulation” and the protection of ratepayers⁹ similarly have no place in the statutory procedure for reviewing rate adjustments for competitively-classified services. As Staff points out in its Recommendation for the Commission to either approve or allow the proposed increases to go into effect, the Commission “upholds its duty of ensuring that the proposed rates at issue in this case are just, reasonable and lawful -- and not contrary to the public interest and the protection of ratepayers -- by ensuring that the rate increases comply with applicable statutes.”¹⁰ The Legislature has also charged the Commission under Section 392.245.5(6) with conducting a periodic review to ensure that continued

⁶ Staff Recommendation and Response to Public Counsel, filed August 31, 2007, p. 1, citing State of Missouri ex rel. Southwestern Bell Telephone, L.P., d/b/a SBC Missouri v. Missouri Public Service Commission, 173 S.W.3d 327 (Mo. App. W.D. 2005).

⁷ OPC Objections, p. 2. OPC also alludes to these prices as being “unreasonable, excessive, unfair or not affordable.” *Id.*, pp. 2-3.

⁸ Brown v. Morris, 290 S.W.2d 160, 166 (Mo. 1956) (under the rule that the express mention of one thing implies the exclusion of another, where special powers are expressly conferred or special methods are expressly prescribed for the exercise of the power, other powers and procedures are excluded); Harrison v. MFA Mutual Ins. Co., 607 S.W.2d 137, 146 (Mo. banc 1980) (mention of one thing in a statute implies exclusion of another).

⁹ OPC Objections, p. 2.

¹⁰ Staff Recommendation and Response to Public Counsel, p. 2.

competitive classification is appropriate.¹¹ Under the statutory scheme, however, the Commission has no jurisdiction to reject tariffs proposing rate adjustments for competitively classified services. Rather, the statute directs such increases be permitted to go into effect ten days after filing.

2. The Proposed Increases Bring AT&T Missouri's Competitively-Classified Basic Local Residential Rates More In Line with the Market.

Despite OPC's claim that the proposed price increases "show a serious failure of the competitive system to protect consumers,"¹² the context in which these price increases were made demonstrates the opposite. Currently, the price of AT&T Missouri's flat-rated, one-party, basic residential telephone service ranges from \$7.15 to \$13.00, depending on the customer's location, placing Missouri in the lowest price quadrant nationally for basic local service. After the proposed price increases, AT&T Missouri's prices will range from \$7.15 to \$13.75. Even the highest price of \$13.75 is only \$1.25 higher than the same price was in 1984. In fact, the price in St. Louis in 1974 (over 30 years ago) was \$14.00. Had these 1974, or even 1984, prices simply kept pace with inflation, basic local service prices would be significantly higher than what they are today. After the proposed price increases become effective, AT&T Missouri's highest price for basic residential

¹¹ Section 392.245.5(6) RSMo (2006 C. Supp) states in pertinent part:

The Commission shall, at least every two years, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive, review those exchanges where an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange and if the commission determines, after hearing, that such conditions no longer exist for the incumbent local exchange telecommunications company in such exchange, it shall reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.

¹² OPC Objections, p. 10.

phone service will be \$13.75, which still keeps Missouri among the lowest priced states in the country.¹³

While OPC suggests that basic local service is the building block for all other telecommunications services, OPC's assertion is incorrect in today's marketplace. Today, most customers purchasing services now choose to buy packages where the price of basic local service is not the building block as OPC asserts and AT&T Missouri is not increasing package prices. And, while OPC complains of rising prices, the reality is that customers have seen falling prices through the past several years as new packages with lower prices and more features have continued to evolve in the competitive marketplace.

While it is apparent that OPC views *any* increase in basic local service pricing as contrary to the public interest, such a view is contrary to Missouri law. Section 392.245.5(6) itself specifically authorizes pricing increases after services have been declared competitive by the Commission. Similarly, the Commission has recognized that price increases are normal occurrences in competitive markets:

. . . although falling rates are often touted as an argument for establishing a competitive market, there is no economic, or logical reason why prices must always fall in a competitive market. Sometime prices do rise in markets that are clearly competitive. Any motorist that observes the price fluctuations in the competitive retail gasoline market is aware that competition does not always result in falling prices. In fact, it is possible that the competitive market rates for telephone service are higher than the rates imposed on that market under rate of return regulation and carried through under price cap regulation. If that is the case, then rates will rise in a competitive market.¹⁴

As competition continues to erode the subsidies that helped maintain artificially low basic local service prices, pressure to move toward more market-based pricing levels for residential basic

¹³ For example, even with this increase, the highest Missouri price for basic local residential service is still lower than those in surrounding states. In Arkansas, AT&T's highest price is \$16.85; in Kansas, it is \$15.70; in Illinois, it is \$13.85; in Kentucky, it is \$18.40; and in Oklahoma, it is \$16.24.

¹⁴ In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc., Case No. IO-2003-0281, Report and Order, issued December 4, 2003 at p. 31.

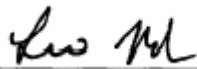
local service continues to increase, particularly as costs for such things as labor and healthcare continue to rise. Accordingly, AT&T Missouri has been taking measured steps to move its residential basic local service prices more in line with market-based prices and to continue to recover more of the costs of providing this service, which historically was set below cost to promote social objectives.

Had the Legislature intended for consumers to be shielded from basic local price increases, it would have prohibited them in some fashion (for example, the law could have treated basic local services as it does switched access services). The law, however, makes clear that basic local service is to be included in the services that become competitively classified once an exchange is declared competitive and that the marketplace is to determine pricing levels in competitively classified exchanges. Of course, this makes sense as consumers have a numerous choices for service from both wireline and wireless providers.

WHEREFORE, AT&T Missouri respectfully requests the Commission to deny OPC's objections to AT&T Missouri's proposed rate adjustments and to permit them to go into effect on September 7, 2007, as scheduled.

Respectfully submitted,

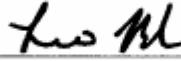
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on September 5, 2007.



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