

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

MISSOURI ONE CALL SYSTEM, INC.'S
REPLY TO AT&T'S RESPONSE TO MOTION TO SUSPEND TARIFFS AND
APPLICATION TO INTERVENE

Comes now Missouri One Call System, Inc. (MOCS) and provides this in reply to Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri's (AT&T) response to MOCS' motion to suspend AT&T's proposed tariffs for 811 Service.

1. The Commission can readily see the issue that divides MOCS and AT&T: MOCS argues that AT&T should absorb the cost of providing 811 in its exchanges and AT&T argues that MOCS should absorb those costs. The primary source of support for AT&T's argument is the Federal Communications Commission's Sixth Report and Order in CC Docket No. 92-105 (the Order); a case in which MOCS was not a party and which was heard before an agency that oversees AT&T, not MOCS. No matter how elaborately AT&T may argue the point, MOCS should not be obligated to finance a telecommunications service it never requested pursuant to an Order of an agency that is powerless to regulate MOCS' operations. The Order cannot be the basis for shifting to MOCS the obligation imposed on AT&T to implement the 811 service.

2. For instance, in paragraph 8 of its response AT&T disagrees with MOCS's assertion that 811 is a safety device employed by the telecommunications industry to assist excavators in providing advance notice to utilities of excavation activities in areas where

facilities are located underground. AT&T points to the first paragraph of the Order where the FCC designates 811 as the national abbreviated dialing code to be “used by state One Call notification systems.” MOCS was not a party to the FCC’s 811 docket, and the FCC’s determinations about the “users” of 811 come without MOCS’s commentary or endorsement.

3. Whatever the conclusions of the FCC, in every practical sense the user of 811 will be the construction excavator who will use the dialing code as another way of contacting the state’s one call notification center. MOCS has already established a toll free number for excavators to contact the center. The implementation of 811 will add another toll free means of contacting the center. Considering the excavator as the “user” of the service is also consistent with the manner in which other abbreviated dialing code services have been provided, a subject taken up in subsequent sections of this reply.¹

4. In paragraph 3 of AT&T’s response, it asserts in error that pursuant to the Transportation Equity Act for the 21st Century, (TEA) the United States Department of Transportation established the one call notification program. The one call notification program in Missouri predates the TEA by thirteen years. The one call notification system in the United States was established by underground facility owners and not an act of Congress. True, MOCS is governed by specific state laws but those were enacted well in advance of the TEA.

5. In paragraph 5, AT&T points out that MOCS has not challenged the charge AT&T proposes for the service. Again, MOCS’s argument is that a charge for the service, whatever it might be, is improper and unreasonable. Analysis of AT&T’s costs is secondary to MOCS’s position but primary for the Staff which presumably has done the evaluation. Nonetheless, MOCS must report that there are telecommunications carriers in this state, and

¹ See discussion of E-911 *supra*.

others, which have decided to implement 811 without charge. If there are companies able to implement 811 on such a basis, the question emerges if the costs of providing it are *de minimis*.

6. In paragraph 6 of its response, AT&T claims that Congress did not intend for telecommunications companies offering 811 to shoulder the costs of implementation; that under the TEA grants can be made to states to improve one call notification systems; and that a state may provide funds received under the TEA. The companies that do not charge for implementation of 811 certainly would not agree with AT&T's assessment of Congressional intent. Such companies are offering the service consistently with what MOCS has argued is the intent of Congress and the FCC, that those directed to implement the Order and achieve its public safety benefits should bear the financial burden of implementation. The purported availability of grants does not change the outcome. Nothing stops AT&T from applying for grants in connection with its duties under the Order.

7. Returning to paragraph 8 of AT&T's response, the Company claims that "811 Service would be but another mechanism by which to communicate with a one call center." MOCS should dispel any impression that availability of 811 to excavators will be easy for MOCS to assimilate into its present operation or that it will have an enhanced safety effect. About one third of all notifications to the center are now via the internet, a practice which MOCS believes will witness even more growth. In the implementation of 811, MOCS's resources initially will be diverted away from its internet ticketing process toward minimizing the confusion that **two** phone numbers are expected to cause among affected excavators. MOCS will incur increased advertising and public education costs so that 811 will not prove an impediment to timely notification of intended excavations.

8. In paragraph 9 AT&T reports that the Kansas Corporation Commission has approved similar tariffs. AT&T does not report that the Kansas state wide notification center has subscribed to the service. MOCS would not find it surprising if the notification center in Kansas has declined 811 service.

9. Last, in paragraph 10, AT&T argues that since a subscriber purchases and pays for other N11 services, such as 211, 311 and 911, no different result should obtain in this instance. These comparisons are seriously flawed. Service under 211 is not a public safety related service and unlike 811, not under a directive that it be statewide. Its current usage in Missouri is consistent with FCC guidelines but is limited to a specific region. Service is restricted to applicants that qualify by Commission rule. Service for 311 is optional and there is no requirement that 311, which is reserved for non-emergency calls to law enforcement or other government services, be implemented on a statewide basis. Service under 911 is paid by taxes on all telephone subscribers under specific taxation statutes found in Sections 190.300 to 190.320, RSMo 2000. Under E-911, it is the caller, (the “user” of the service) not the entity called, which pays for the service under this very organized means of public finance.

10. The provision of 811 is unique in that it involves a statewide public safety feature the implementation of which Congress and the FCC have imposed on the telecommunications industry without specified parameters for cost recovery. The issue of cost recovery is apparently left to the states and this Commission. MOCS sympathizes with its member but if the commands of the FCC’s Order are to be realized, and not left hanging, AT&T must be responsible for the costs of implementation, not MOCS. MOCS does not intend to subscribe to the service. If the tariffs are approved as submitted there will be a zone in the nation the size of AT&T’s Missouri service area without 811. This cannot reconcile with the intention of the Order.

CONCLUSION

Based on the above and MOCS's previously submitted Motion to Suspend with suggestions, MOCS respectfully requests that the Commission reject the tariffs, suspend the same and hold a hearing on the reasonableness thereof, granting MOCS intervention in the matter and the right to fully participate at hearing.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley #28847
Newman, Comley & Ruth P.C.
P.O. Box 537
Jefferson City, MO 65102
573/634-2266
573/636-3306 FAX

Attorneys for Missouri One Call System, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 15th day of November, 2006, to General Counsel's Office at gencounsel@psc.mo.gov; Office of Public Counsel at opcservice@ded.mo.gov; and Robert J. Gryzmala, at robert.gryzmala@att.com, attorney for AT&T Missouri.

/s/ Mark W. Comley