

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

In the Matter of Southwestern Bell Telephone, L.P.,)	
d/b/a AT&T Missouri's Proposed Tariff to Extend a)	Case No. TO-2006-0334
Promotional Offer for Metropolitan Calling Area Service)	Tracking No. JI-2006-0641
for Residential Customers.)	

**AT&T MISSOURI'S REPLY TO STAFF'S OPPOSITION
TO AT&T MISSOURI'S APPLICATION FOR REHEARING
AND MOTION FOR EXPEDITED APPROVAL OF TARIFF**

COMES NOW Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri ("AT&T Missouri") and for its Reply to Staff's Opposition to AT&T Missouri's Application for Rehearing and Motion for Expedited Approval of Tariff ("Staff Opposition") states as follows:

1. AT&T Missouri filed its tariff to decrease prices for certain residential customers subscribing to Metropolitan Calling Area ("MC") service on February 22, 2006, on one days' notice pursuant to the provisions of Section 392.500(1). The reduced price is available to new or current customers who subscribe to MCA service and a u-Select service offering, as well as to current customers to those services who receive an offer from a competitor. The u-Select service offerings offer a choice of services from a group of vertical services including Call Waiting, Call Forwarding and a number of other services. Customers who commit to taking these services for 12 months receive MCA service at a price of \$5.00 per month for up to three years, a significant reduction from the otherwise applicable price of \$9.95 for MCA customers subscribing to a u-Select service.¹

2. The tariff filing was refused by the administrative arm of the Commission responsible for the electronic filing system.² The rejection was based on "discussion in agenda on February 7" a few weeks earlier. No order was issued by the Commission reflecting any

¹ Customers subscribing to MCA service without u-Select service are charged \$12.25 - \$32.50 depending on the tier in which they reside.

² See Exhibit A.

decision or rule adopted at the agenda meeting, nor was any order issued by the Commission concerning the purported rejection of AT&T Missouri's tariff filing.

3. In its Application for Rehearing and Motion for Expedited Treatment ("Application for Rehearing"), AT&T Missouri explained that residential MCA service was a competitive service, as all of the exchanges in which it is offered have been classified as competitive pursuant to the provisions of Section 392.245. As a competitive service, price decreases are subject to the provisions of Section 392.500(1). That section provides that tariff filings which have the effect of decreasing prices go into effect on one days' notice. AT&T Missouri also pointed out that the Commission had never promulgated any rule, nor issued any order, that would authorize its tariff administrative personnel to "reject" a tariff filing on the basis of discussion at an agenda meeting, nor had an order accompanied the rejection of the tariff here.

4. In its Opposition, Staff attempts to justify the rejection of the tariff on different grounds than those advanced by Commission's administrative arm. While the tariff was rejected on the basis of "discussion in Agenda on February 7 ", Staff now claims that the tariff was rejected because it was not filed on seven days' notice pursuant to 4 CSR 240-3.545(19). Opposition at Para. 7. Staff further claims that the discussion at the agenda meeting was merely a decision by the Commission not to pursue Staff's "informal suggestion" to amend 4 CSR 240-3.045(19) to reflect shorter period for filings. Staff Opposition, Para. 15. Even assuming that Staff's revised explanation of the reason for rejection must be considered, Staff is simply wrong.

5. Staff's Opposition is predicated upon the erroneous premise that AT&T Missouri's tariff filing is not authorized under Section 392.500(1). Although Staff concedes that MCA is a competitive service, Staff contends that the tariff does not contemplate a price decrease. Staff

Opposition, Paras. 6,14. Staff's contention does not withstand scrutiny. Under AT&T Missouri's tariff filing, customers who subscribe to a u-Select service may subscribe to MCA service for \$5.00 per month, a substantial reduction from the otherwise applicable rate of \$9.95 for customers subscribing to u-Select. Those customers who subscribe to u-Select and also subscribe to MCA service clearly and unequivocally receive a lower price for MCA service than would otherwise apply. The current tariff, which is being extended by the tariff which was rejected, was filed and became effective on one days' notice as it resulted in a price decrease for qualifying customers.

6. The tariff filing is clearly within the ambit of Section 392.500(1). That section provides:

Any proposed decrease in rates or charges, or proposed change in any classification or tariff resulting in a decrease in rates or charges, for any competitive telecommunications service shall be permitted only upon the filing of the proposed rate, charge, classification or tariff after one days' notice to the Commission.

Staff appears to base its position that no rate is reduced by the tariff filing by asserting that MCA customers who do not subscribe to U-Select service will not receive a price reduction. But the fact that one group of customers will not receive a price reduction cannot alter the fact that the customers affected by the tariff filing do in fact receive a price reduction for MCA service. The tariff proposes to decrease the rates for MCA service to those new and current customers who meet the qualifications listed in the tariff. Customers who would otherwise pay \$9.95 receive MCA service for \$5.00. Staff does not and cannot contend otherwise, nor does Staff even attempt to explain why the current tariff was allowed to become effective on one days' notice. No one can seriously contend that a reduction from the otherwise applicable charge of \$9.95 per month to \$5.00 per month is not a "proposed decrease in rates or charges" or a "proposed change

in any classification or tariff resulting in a decrease in rates or charges" as provided in Section 392.500(1). The customers clearly receive a lower price than would otherwise apply.

7. Staff also appears to object to AT&T Missouri's request for expedited treatment on or before March 1, 2006. According to Staff, if AT&T Missouri accedes to Staff's view that this is not a price decrease, AT&T Missouri can file its tariff on seven days' notice under the provisions of 4 CSR 240-3.545(19). But AT&T Missouri is entitled to file its tariffs reducing prices for competitive prices on the one days' notice directed by the legislature, and neither the Staff nor the Commission can require AT&T Missouri to comply with a longer filing requirement. While filing with a longer effective date may be more administratively convenient for Staff or the Commission, this is beside the point--the legislature has determined that price decreases for competitive services may be made on one days' notice. AT&T Missouri is entitled to the benefits of the statute, which the legislature changed in order to permit the competitive market to work with less regulatory oversight.

8. The Commission must implement the statute as promulgated by the legislature. It cannot ignore the provisions of Section 392.500(1), nor can it lawfully adopt Staff's position that a price reduction really isn't a price reduction. If the Commission does not agree that the proposed tariff is a price reduction which is to become effective on one days' notice, it should do so by issuing an order which explains the basis for its rejection so that the matter is able to be reviewed by the circuit court.

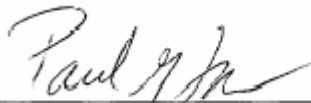
9. Staff does not substantively address AT&T Missouri's second point -- that the Commission must act by promulgating a rule or an order and cannot "reject" a tariff based on discussion at an agenda meeting. Staff's only response is to claim, contrary to the very notice issued by the Commission's administrative arm when it rejected the tariff, that it did so based on

a previously existing rule and not based on an agenda discussion. But that is simply contrary to the facts, as the notice of rejection clearly and unequivocally states that it is based on a discussion at an agenda meeting. The Commission can act only by promulgating a rule or issuing an order, either of which is subject to judicial review, and cannot lawfully act without taking official action in a manner permitted by law. If the administrator of the filing system was acting pursuant to a rule or order of the Commission, then that rule or order must be in writing and be subject to judicial review. And if the administrator was not acting pursuant to a rule or order of the Commission, then the purported tariff rejection is unlawful.

WHEREFORE, for all the foregoing reasons, AT&T Missouri respectfully requests the Commission to grant its Application for Rehearing and to approve the tariff which provides a reduction in price for MCA service for those residential customers subscribing to U-Select vertical services, on an expedited basis, but in no event later than March 1, 2006.

Respectfully submitted,

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D/B/A AT&T MISSOURI

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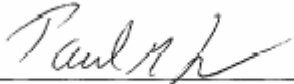
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by electronic mail on February 27, 2006.



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Sent: Wednesday, February 22, 2006 4:29 PM
To: Christy.Kempker@psc.mo.gov; Deborah.Steck@psc.mo.gov; Kim.Happy@psc.mo.gov; Melissa.Anderson@psc.mo.gov; nikki.senn@psc.mo.gov; suzie.mankin@psc.mo.gov; Christine.Koenigsfeld@psc.mo.gov; S.Kohly@psc.mo.gov; William.Haas@psc.mo.gov
Cc: MUSICK FOLEY, MELANIE D (SWBT); MUSICK FOLEY, MELANIE D (SWBT); OLSON, JASON (SWBT); timothy.judge@att.com
Subject: Rejection of Tariff Submission

Tracking No: JI-2006-0641

Associated Case No.: N/A

Utility Company: AT&T Missouri-ILEC(Telephone)

PSC MO No: 24

Effective Date: 2/23/2006

Purpose of Filing: AT&T Missouri proposes to extend a promotional offer for the Metropolitan Calling Area (MCA) service for residential customers. The promotion was scheduled to end March 7, 2006. This tariff revision proposes that the promotion be effective through September 7, 2006.

Submission Details: Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, proposes to revise P.S.C. Mo.-No. 24, Local Exchange Tariff, Sheet 1.0344.

Submission is being Rejected for: Promotional tariff filings are not allowed on one-day filings pursuant to Commission discussion in agenda on February 7, 2006.

Date : 2/22/2006 **Time :** 4:29:03 PM