

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

In the Matter of the Application of)
Southwestern Bell Telephone, L.P., d/b/a) Case No. TM-2007-0184
AT&T Missouri, for Authority to Transfer)
Certain Assets.)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. On November 8, 2006, Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, filed an Application under §392.300 RSMo requesting approval of its proposed sale of the One AT&T Center, a 42-story building located in St. Louis. AT&T Missouri requested expedited treatment.

2. Case law provides that the Commission may “not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc., v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980), citing to *State ex rel. City of St. Louis v. Public Serv. Comm’n of Mo.*, 73 S.W. 2d 393, 400 (Mo. banc 1934).

3. In the attached Memorandum, which is labeled Appendix A, the Staff provides its analysis of the proposed sale, its opinion that the proposed sale is not detrimental to the public interest, and its recommendations.

WHEREFORE, the Staff recommends that the Commission approve the Application with the following provisions: 1) Approve the Application, permitting sale of certain assets; 2) Require AT&T Missouri to provide the Staff with all closing entries to record the sale of certain AT&T Missouri assets. This filing should be made within 60

days following the final closing of this transaction; 3) Hold that nothing in the Commission's order shall be considered a finding by the Commission of the value of these transactions for ratemaking purposes, and the Commission reserves the right to consider the ratemaking treatment to be afforded these transactions in any later proceeding if AT&T Missouri becomes subject to rate of return regulation.

Respectfully submitted,

/s/ William K. Haas

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4th day of December, 2006.

/s/ William K. Haas

William K. Haas

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. TM-2007-0184
Southwestern Bell Telephone L.P. d/b/a AT&T Missouri

FROM: David G. Winter, Project Coordinator/Auditing Department
Amanda C. McMellen, Auditing Department

/s/ David G. Winter 12/4/06
Project Coordinator/Date

/s/ William K. Haas 12/4/06
General's Counsel Office/Date

SUBJECT: Staff's Recommendation concerning authority to transfer certain assets pursuant to 4 CSR 240-3.520.

DATE: December 4, 2006

On November 8, 2006, Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (Applicant or AT&T Missouri) filed an Application pursuant to 4 CSR 240-3.520 and 4 CSR 240-2.080(16) seeking approval from the Missouri Public Service Commission (Commission) to transfer certain assets (One AT&T Center) located at 900 Chestnut Street in the St. Louis central business district. AT&T Missouri requested the Commission grant this Application by no later than December 15, 2006. The application was docketed as Case No. TM-2007-0184.

AT&T Missouri is a "local exchange telecommunications company" and a "public utility" and is authorized to and does provide "telecommunications service" within the State of Missouri, as each of those terms is defined in 386.020 RSMo 2000.

DETRIMENT TO THE PUBLIC INTEREST STANDARD

Staff utilized the "detriment to the public interest" standard in this proceeding. If the Applicant fails to show that the proposed transfer of assets is not detrimental to the public interest in Missouri (i.e., if it is demonstrated that the Missouri public will be harmed by the proposed transfer), then the Commission should reject this application and not approve the transfer of asset. Staff Counsel has advised that the "not detrimental to the public interest" standard is based on case law generally cited in court opinions such as State ex rel. City of St. Louis v. Public Serv. Comm'n, 73 S.W.2d 393 (Mo. banc 1934); State ex rel. Fee Fee Trunk Sewer Co., Inc. v. Litz, 596 S.W.2d 466 (Mo. App. 1980). Staff Counsel also advises that the Commission has incorporated the "not detrimental to the public interest" standard in its rules. 4 CSR 240-3.520(D).

Consistent with Staff's position in acquisition, merger and restructuring cases, Staff views the members of the "public" that are to be protected as those consumers taking and receiving utility service from AT&T Missouri in the State of Missouri.

In this case, Staff would define "public interest" as referring to the nature and level of the impact or effect that AT&T Missouri's transfer will have on its Missouri customers. There is a fundamental concern in the regulation of public utilities that the public being served will not be impacted adversely or harmed by those responsible for providing monopoly services. Telecommunications companies in Missouri are charged with providing adequate facilities at just and reasonable rates. If this transfer results in adverse or negative impacts to AT&T Missouri's Missouri customers, then the Commission should not approve the Applicants' Application or, in the alternative, impose conditions sufficient to overcome the detriments of the transfer.

ASSET TRANSFER

AT&T Missouri proposes to transfer certain assets that consist of:

One AT&T Center located at 900 Chestnut Street in the St. Louis central business district...It is a 42 story building consisting of approximately 1.2 Million feet. There are approximately 4295 employees in the Facilities, comprised primarily of employees performing functions for various subsidiaries of AT&T, Inc., AT&T Missouri's parent company, including information technology and finance support. Additionally, a significant portion of the employees in the Facilities are employees of AT&T, Inc.'s yellow pages subsidiary. Of the total employee base in the Facilities, only twenty-four are AT&T Missouri employees.

It is AT&T Missouri's intent to sell the properties to Inland Real Estate Acquisitions, Inc. which is the purchasing arm of The Inland Real Estate Group of Companies, Inc (Inland). Inland was formed in 1994 and is a self-administered and self-managed publicly traded (NYSE: IRC) real estate investment trust (REIT). Inland focuses on owning, acquiring and managing neighborhood and community retail centers located primarily in the midwestern United States, with concentrated property portfolios in Chicago and Minneapolis. The company currently owns and manages 140 retail properties in eight states--more than 12 million square feet of real estate--and more than \$1.2 billion in assets.

Upon the close of the sale transaction, a lease will be executed where AT&T Services, Inc. an affiliate of AT&T Missouri, will leaseback the facilities previously described for 10 years and nine months, with an option to renew the lease. AT&T Services, Inc. will retain all aspects of day-to-day control over the operation of the building and the twenty-four AT&T Missouri employees currently occupying the building will continue to do so pursuant to an affiliate transaction arrangement between AT&T Missouri and AT&T Services, Inc.

No franchises, permits, operating rights or certificates of convenience or necessity are involved in the proposed transfer. AT&T Missouri is not seeking authority to transfer any assets or equipment (including switches, cables, etc.) it currently uses to directly provide telecommunications service in Missouri.

In the Staff's opinion, the approval of the transfer of assets is not detrimental to the public interest and coupled with the condition as outlined in the "Recommendations" section of this memorandum, the Staff recommends the Commission approve the subject transfer.

ACCOUNTING ISSUES

AT&T Missouri represents that:

...this Application will have no impact on any retail rates charged by AT&T Missouri and will be transparent to AT&T Missouri retail customers in Missouri. AT&T Missouri's intrastate regulated telecommunications services have been declared competitive in exchanges serving the vast majority of AT&T Missouri's business and residential customers in Missouri. In exchanges not yet declared competitive, AT&T Missouri is subject to price cap regulation pursuant to 392.245 RSMo 2000. In all exchanges, the completion of the Purchase and Sale Agreement will have no impact on prices charged for Missouri intrastate regulated telecommunications services.

Further, AT&T Missouri commits that:

In the event that AT&T Missouri becomes subject to rate of return regulation in the future, AT&T Missouri agrees that approval of the asset transfer would not constitute a binding determination of the Commission on any cost of service issue.

The Staff agrees with AT&T Missouri's representations and notes the Applicant's agreement if it should become subject to rate of return regulation.

The Staff recommends that AT&T Missouri provide the Staff with all closing entries to record the transfer, which is the subject of this proceeding, within 60 days of the final closing. This will provide the Staff the necessary information as to the final valuation of this transaction.

TAX IMPLICATIONS

The Auditing Staff has reviewed the Application regarding what impact, if any, AT&T Missouri's transfer proposal would have upon the "tax revenues of the political subdivisions in

which any structures, facilities, or equipment of the companies involved in such disposition are located.”¹

AT&T Missouri has represented that the transfer “will not have a material negative impact on the tax revenues of any political subdivision of Missouri.” The Auditing Department agrees with AT&T Missouri’s representations concerning the tax consequences of the proposed transfer.

RECOMMENDATION

The Staff recommends that the Commission approve the Application with the following provisions:

1. Approve the Application permitting purchase of certain assets;
2. Require AT&T Missouri to provide the Staff with all closing entries to record the sale of certain AT&T Missouri assets. This filing should be made within 60 days following the final closing of this transaction;
3. Hold that nothing in the Commission’s order shall be considered a finding by the Commission of the value of these transactions for ratemaking purposes, and the Commission reserves the right to consider the ratemaking treatment to be afforded these transactions in any later proceeding if AT&T Missouri becomes subject to rate of return regulation; and
4. Grant such other relief as is just and reasonable in the circumstances.

¹ Section 392.300, RSMo 2000.

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Bell Telephone, L.P. d/b/a AT&T Missouri for) Case No. TM-2007-0184
Authority to Transfer Certain Assets.)

AFFIDAVIT OF AMANDA C. MCMELLEN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Amanda C. McMellen, of lawful age, on her oath states: that she has participated in the preparation of the following Staff Memorandum; that the information is given by her; that she has knowledge of the matters set forth; and that such matters are true and correct to the best of her knowledge and belief.


Amanda C. McMellen

Subscribed and sworn to before me this 4th day of December 2008


Notary Public



ASHLEY M. HARRISON
My Commission Expires
August 31, 2010
Cole County
Commission #06898978