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November 12, 2002

Mr. Dale Hardy Roberts  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**FILED<sup>3</sup>**  
NOV 12 2002

**Re: Case No. TT-2003-0043**

**Missouri Public  
Service Commission**

Dear Mr. Roberts:

Enclosed for filing on behalf of Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra"), please find an original and eight (8) copies of Surrebuttal Testimony of Arthur P. Martinez.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

*Sondra B. Morgan*

Sondra B. Morgan

SBM/lar  
Enclosure

cc: Office of the Public Counsel  
Arthur Martinez  
Parties of Record

Exhibit No: \_\_\_\_\_  
Issue: Access Tariff Deposit Requirements  
Witness: Arthur P. Martinez  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: Spectra Communications  
Group, LLC d/b/a CenturyTel  
Case No.: TT-2003-0043  
Date: 11/12/02

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. TT-2003-0043

**FILED<sup>3</sup>**

NOV 12 2002

Missouri Public  
Service Commission

SURREBUTTAL TESTIMONY

OF

ARTHUR P. MARTINEZ

ON BEHALF OF

SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYTEL

NOVEMBER 12, 2002

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Tariff of Spectra           )  
Communications Group, LLC, PSC MO.       )  
No. 2, Facilities for Intrastate Access       )

Case No. TT-2003-0043

County of Cole    )  
                          )ss  
State of Missouri )

AFFIDAVIT OF ARTHUR P. MARTINEZ

Arthur P. Martinez, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony entitled "Surrebuttal Testimony of Arthur P. Martinez"; that said testimony was prepared by him and/or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.

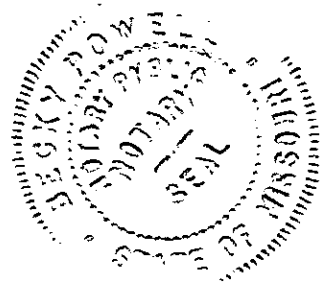


Subscribed and sworn to before me this 12 day of November, 2002.

  
Notary Public

My Commission expires:

BECKY POWELL  
NOTARY PUBLIC, STATE OF MISSOURI  
COUNTY OF COLE  
MY COMMISSION EXPIRES MAY 8, 2005



1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2 A. My purpose is to present surrebuttal testimony on behalf of Spectra  
3 Communications Group, LLC d/b/a CenturyTel ("Spectra") to provide certain  
4 clarifications to Spectra's proposed deposit tariff revisions and to respond to  
5 rebuttal testimonies filed by, Mr. John Van Eschen on behalf of the Missouri  
6 Public Service Commission Staff (Staff), Mr. R. Matthew Kohly on behalf of  
7 AT&T, and Mr. Don Price on behalf of MCI WorldCom.

8 **CLARIFICATION OF PROPOSAL**

9 Q. PLEASE SUMMARIZE THE CLARIFICATIONS SPECTRA IS WILLING TO  
10 MAKE?

11 A. Certainly. Spectra would like to address the following topics:

- 12 1. what constitutes a history of late payments;
- 13 2. the size of the required deposit;
- 14 3. how that deposit will be held;
- 15 4. whether interest will be paid on the deposit;
- 16 5. Spectra's willingness to make a good faith attempt to address disputed  
17 amounts; and
- 18 6. how Spectra proposes to handle companies who do not have a bond  
19 rating.

20 Q. PLEASE EXPLAIN HOW SPECTRA WILL DECIDE A HISTORY OF LATE  
21 PAYMENTS?

22 A. Currently our deposit tariff states that a deposit may be required when "the  
23 customer has established a history of late payments to the Telephone Company."

1 In order to remove any doubt as to when such a history would be established  
2 Spectra will propose a history of late payments to be two or more late payments  
3 within a twelve month period as sufficient history to require a deposit.

4 Q. HOW DID SPECTRA DETERMINE THE AMOUNT OR SIZE OF THE  
5 DEPOSIT TO BE REQUIRED?

6 A. The logic behind such a determination is really quite practical and simple.  
7 Currently access charges are assessed in arrears and IXCs have 30 days from the  
8 date of billing to pay their bill. Therefore, a delinquent amount would not be  
9 detected until the end of the first month after billing. Spectra would then make  
10 attempts, depending on the amount in question to contact the carrier and seek  
11 collection from the carrier. By then Spectra may be well into a second month of  
12 delinquent receivables before it can pursue disconnection of service. A two-month  
13 deposit would allow Spectra a reasonable cushion to cover its losses should the  
14 carrier fail to pay its bill. It should be noted that this deposit is not being  
15 requested of carriers whose credit history and credit rating are within reasonable  
16 limits. This deposit would apply only to carriers that may default on their  
17 obligations. As Mr. Van Eschen notes, a two month deposit is consistent with  
18 deposits required of other customers and required by other companies. It should  
19 also be noted that Spectra's current deposit tariff calls for a security deposit to  
20 "not exceed an amount equal to the total rates and charges for the service(s)  
21 ordered for a two-month period."<sup>1</sup>  
22

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<sup>1</sup> Spectra's PSC MO. NO. 2, Original Sheet 16; Direct Testimony of Arthur Martinez, Exhibit APM-1.

1 Q. ONCE A DEPOSIT IS OBTAINED FROM A CARRIER, HOW DOES  
2 SPECTRA PROPOSE TO HOLD SUCH A DEPOSIT?

3 A. As I will address later in my testimony, other CenturyTel companies have been  
4 authorized to implement similar deposit requirements in eight of their operating  
5 states. To my knowledge the method of holding a deposit was not an issue in  
6 those states. It has only been addressed by Oregon in an open proceeding and by  
7 this Commission. In Oregon, and as proposed by Mr. Van Eschen in this  
8 proceeding, it is recommended that Spectra hold such deposits in escrow.

9 Q. DOES SPECTRA OPPOSE SUCH RECOMMENDATIONS?

10 A. No. It may be beneficial to all parties involved, including Spectra, that deposits  
11 collected from carriers whose credit ratings have dropped below acceptable  
12 standards be held in an escrow account. Spectra, however, should be given the  
13 discretion to choose the financial institution where it will bank such deposits and  
14 the opportunity to earn interest on such deposits to help defer bank fees,  
15 administrative costs, and the interest paid on the deposit amounts.

16 Q. WOULD YOU PLEASE ELABORATE ON THE INTEREST SPECTRA IS  
17 PROPOSING TO PAY ON DEPOSITS WHETHER THEY BE HELD BY  
18 SPECTRA IN ITS MAIN BANK ACCOUNT OR IN AN ESCROW  
19 ACCOUNT?

20 A. Certainly. On proposed P.S.C. M.O. No. 2, Original Sheet 16.1, Spectra proposes  
21 the following language:

1           *"For the period the deposit is held by the Telephone Company, the*  
2           *customer will receive simple interest at the same percentage rate as that*  
3           *set forth in the Telephone Company General and/or Local Tariff."*

4           The percentage in effect is contained in P.S.C. M.O. No. 1, Section 2, First  
5           Revised Sheet 20 and is calculated as follows:

6           *"The deposit shall bear interest at a rate which is equal to one percent*  
7           *(1%) above the prime lending rate as published in the Wall Street Journal.*  
8           *The rate shall be adjusted annually on December 1 using the prime*  
9           *lending rate as published in the Wall Street Journal on the last business*  
10          *day of September of each year, plus one percent (1%). The interest shall*  
11          *be credited annually upon the account of the customer or paid upon the*  
12          *return of the deposit, whichever occurs first. Interest shall not accrue on*  
13          *any deposit after the date on which a reasonable effort has been made to*  
14          *return it to the customer."*

15    Q.    IS SPECTRA WILLING TO MAKE A GOOD FAITH EFFORT TO ADDRESS  
16           ANY DISPUTED AMOUNTS?

17    A.    Our existing access tariff has provisions for dealing with billing disputes. I have  
18           attached P.S.C. M.O. No. 2, Original Sheet 18, addressing the procedures Spectra  
19           would follow in the event of a billing dispute. (Exhibit APM-3)

20    Q.    FINALLY, HOW WOULD SPECTRA PROPOSE TO ADDRESS CARRIERS  
21           WHO DO NOT HAVE A BOND RATING ASSOCIATED WITH IT?

22    A.    Spectra would propose a method similar to that employed by Southwestern Bell  
23           Telephone Company (SWBT) in its proposed federal tariff filing discussed in Mr.

1 Van Eschen's testimony on page 7, lines 14-18. SWBT's proposal to define  
2 impairment of credit worthiness is as follows:

3 *"[I]f the customer does not have outstanding securities rated by credit*  
4 *rating agencies, e.g., Standard and Poor's and the customer is*  
5 *rated (a) 'fair' or below in a composite credit appraisal published*  
6 *by Dun and Bradstreet, or (b) 'high risk' in Paydex score as*  
7 *published by Dun and Bradstreet."*

8 Spectra would be willing to add similar language to its proposed tariff in order to  
9 address those companies that do not have bond ratings.

10 **RESPONSE TO SURREBUTAL TESTIMONY**

11 Q. BEGINNING ON PAGE 4, LINE 24 AND CONTINUING ON PAGE 5 LINES  
12 1-8, MR. KOHLY APPEARS TO CRITICIZE SPECTRA'S PROPOSED  
13 DEPOSIT TARIFF BECAUSE IT REPRESENTS A SIGNIFICANT  
14 DEPARTURE FROM THE CURRENT DEPOSIT POLICY. IS THIS AN  
15 APPROPRIATE CRITICISM?

16 A. No. Spectra's tariff filing is an attempt to manage the Company's risk in the  
17 current uncertain telecommunications climate. Desperate times sometimes  
18 require desperate measures. The deposit tariff is needed to allow LECs such as  
19 Spectra to protect their interests in providing safe and adequate service to local  
20 exchange customers at reasonable rates. A departure from current deposit policy  
21 is necessary to meet current risks.



1 Q. BOTH MR. KOHLY AND MR. PRICE RECOMMEND THAT THE  
2 COMMISSION POSTPONE THIS ISSUE UNTIL THE FCC ACTS. IS THAT  
3 APPROPRIATE IN YOUR OPINION?

4 A. No. First, the state of Missouri and the FCC represent two distinct jurisdictions.  
5 Any deposit provisions promulgated by the FCC would only apply to interstate  
6 tariffs and could only be imposed upon the interstate portion of an IXC's access  
7 obligation to Spectra. In addition, there is no restriction on a state imposing  
8 different obligations than those required by the FCC. Second, several state  
9 jurisdictions have approved similar deposit requirements. Eight states in which  
10 CenturyTel operates have allowed similar deposit provisions to take effect. Those  
11 states are Alabama, Colorado, Louisiana, Minnesota, Montana, Wisconsin,  
12 Washington, and Wyoming. The issue is also currently being considered in  
13 Oregon. In that proceeding, the Oregon PUC Staff supports CenturyTel's  
14 proposed deposit tariff revisions with certain modifications.

15 Q. BEGINNING AT PAGE 10 OF HIS REBUTTAL TESTIMONY AND  
16 CONTINUING ON PAGE 11, MR. KOHLY ASSERTS, "[T]HE MARGINS  
17 SPECTRA AND OTHER MISSOURI LECS ENJOY ON ACCESS SERVICES  
18 ARE WILDLY EXCESSIVE." HOW DO YOU RESPOND?

19 A. Mr. Kohly would have you believe that Spectra is an unconstrained monopolist  
20 setting rates as it sees fit. What Mr. Kohly fails to identify in his rebuttal  
21 testimony is that Spectra and every other incumbent local exchange provider  
22 operating in Missouri is under the jurisdiction of this Commission and as such  
23 cannot charge a rate or rates that do not comply with the rules and laws of this

1 state. Spectra is currently a rate of return company whose earnings are set and  
2 monitored by the Commission.

3 Q. IS IT NECESSARY FOR SPECTRA TO SHOW FINANCIAL NEED BEFORE  
4 BEING ALLOWED TO IMPOSE ADDITIONAL DEPOSIT RESTRICTIONS?

5 A. Absolutely not. This proceeding is about allowing a company to take prudent  
6 steps to protect itself and its customers from financial risk. Mr. Kohly seems to  
7 suggest that as long as Spectra's earnings are reasonable and it continues to  
8 provide safe and adequate service, it is not necessary for it to take reasonable  
9 measures to protect itself and its customers from customers who are more likely  
10 not to pay their bills. Waiting to act until Spectra's earnings go down the drain or  
11 its service is inadequate or unsafe, is like closing the barn door after the horse has  
12 left. The time to act is now, not later.<sup>2</sup>

13 Q. DO YOU AGREE THAT CREDIT RATINGS ARE NOT AN INDICATOR OF  
14 A COMPANY'S ABILITY TO PAY ITS BILLS?

15 A. No. Credit ratings are a means to gauge the likelihood that a particular person or  
16 entity will default on an obligation. The bond rating of BBB is not an infallible  
17 predictor. Spectra, however, must draw a line at some point, and we believe that  
18 point to be a bond rating of BBB. A Moody's Investor Service report shows that  
19 "over 90% of all rated companies that have defaulted since 1983 were rated Ba3  
20 or lower at the beginning of the year in which they defaulted."<sup>3</sup> The Moody's Ba  
21 rating is equivalent to the S&P rating of BB. Spectra's tariff proposed a

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<sup>2</sup> As an example, during the first six months of 2002, NECA has incurred estimated uncollectible revenues due to payment defaults of over \$70 million.

<sup>3</sup> Moody's Investor Service Rating Policy, "Understanding Moody's Corporate Bond Ratings and Rating Process" at 9 (May 2002).

1 minimum S&P credit rating of BBB for a customer to be considered credit  
2 worthy. Mr. Van Eschen believes Spectra's use of a BBB bond rating to be a  
3 "reasonable" threshold in evaluating a carrier's ability to meet its financial  
4 obligations.<sup>4</sup>

5 Q. IS SPECTRA'S PROPOSED TARIFF UNJUST AND UNREASONABLE?

6 A. No. On pages 23-25 of his testimony, Mr. Kohly would have you believe that  
7 Spectra or any other company, including his own, must account for every  
8 conceivable nuance in assessing an entity's creditworthiness. This is simply  
9 impracticable. Taking into account the clarifications I have identified above,  
10 Spectra has developed reasonable, clear, and concise deposit provisions to deal  
11 with the escalation in defaulting carriers described by Mr. Van Eschen in his  
12 testimony at pages 3 and 4. Further, Spectra's existing and proposed deposit  
13 language states the Company "may" require a deposit.<sup>5</sup> This would allow Spectra  
14 and the affected carrier an opportunity to better evaluate that carrier's financial  
15 condition and possibly settle any default amounts. Such discretion would go a  
16 long way to address the nuances Mr. Kohly addresses in his testimony.<sup>6</sup>  
17 Unfortunately, the very thing that should make Spectra's proposal more  
18 acceptable to AT&T is considered by them to be anticompetitive and  
19 discretionary.<sup>7</sup>

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<sup>4</sup> Rebuttal Testimony of John Van Eschen, Page 4, Lines 16-20.

<sup>5</sup> Direct Testimony of Arthur Martinez, Exhibit APM-2, p. 1.

<sup>6</sup> Kohly, Pages 23-25.

<sup>7</sup> Kohly, Pages 25-28.

1 Q. HOW COULD THE COMMISSION ADDRESS AT&T'S FEARS WITH  
2 REGARD TO SPECTRA'S DISCRETION?

3 A. The Commission could simply direct Spectra to amend the proposed tariff  
4 language from "may be required" to "shall be required." This would make the  
5 deposit requirements absolute to be applied without exception. Spectra would not  
6 recommend such a change for the reasons I addressed earlier in my testimony.  
7 But if the Commission shares AT&T's concerns that discretionary application of  
8 the deposit requirement may be abused, then Spectra would not object to making  
9 it mandatory.

10 Q. HAS THE DISCRETION ALLOWED IN SPECTRA'S EXISTING DEPOSIT  
11 TARIFF ALLOWED SPECTRA TO ADEQUATELY MANAGE ITS DEPOSIT  
12 POLICY?

13 A. Yes it has. Until the unprecedented bankruptcy of WorldCom and the free fall of  
14 companies such as AT&T and Qwest, Spectra was able to maintain acceptable  
15 balances for uncollectibles which allowed Spectra, as well as other Missouri  
16 LECs, to rarely, if ever, require a deposit. That has all changed. AT&T alone  
17 "has lost nearly \$15 billion in market value" from November 2001 to November  
18 2002.<sup>8</sup> Spectra cannot sit idly by and not do anything to protect its customers  
19 from this increased risk of nonpayment.

20 Q. MR. PRICE STATES IN HIS TESTIMONY THAT SPECTRA'S CURRENT  
21 DEPOSIT TARIFFS ARE ADEQUATE TO ADDRESS ITS CONCERNS. DO  
22 YOU AGREE?

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<sup>8</sup> "AT&T Moves To Cut Ties To Small Investors," The Plain Dealer, 11/02/02, Exhibit APM-4.

1 A. No. As was stated in my Direct Testimony, there is nothing in the existing tariff  
2 to protect the Company in the situation where an existing IXC may not be able to  
3 pay its debts when due.

4 Q. SHOULD THE PAST DEPOSIT PRACTICES OF SPECTRA AND THE  
5 OTHER MISSOURI LECs BE A CONCERN IN THIS PROCEEDING?

6 A. No. First, if the Commission felt that Spectra, or any other LEC, was not  
7 applying its tariff properly they would have certainly taken steps to rectify the  
8 situation, either by requiring Spectra to require deposits under certain  
9 circumstances or by taking away the Company's discretion in applying deposits  
10 and making them mandatory. Second, no one anticipated the collapse of  
11 WorldCom including, in my opinion, those who perpetuated the crimes. We are  
12 talking about the largest bankruptcy in history. Mr. Kohly's suggestion that "the  
13 Commission should assess whether Spectra properly managed its uncollectible  
14 risk and sought to mitigate its risk through the use of its current deposit policy" is  
15 without merit and a waste of the Commission's resources. Rather, the  
16 Commission should allow those under its jurisdiction to take prudent steps to  
17 avoid a repeat of the past by approving Spectra's proposed deposit provisions.

18 Q. ARE SPECTRA'S PROPOSED DEPOSIT POLICIES ANTI-COMPETITIVE?

19 A. No. On page 34 of Mr. Kohly's testimony, he implies that because Spectra is in a  
20 position to provide wholesale services to its affiliate, CenturyTel Long Distance,  
21 that affiliate enjoys a unique competitive advantage. While there may be  
22 marketing advantages in such an arrangement, the Commission has since  
23 considered such an arrangement to be an acceptable condition as the industry

1 moves toward competition by its approval of SWBT's 271 application.<sup>9</sup> Mr.  
2 Kohly apparently has no faith in this Commission to regulate the companies under  
3 its jurisdiction. On page 26, lines 13-17, Mr. Kohly implies that Spectra can cut  
4 special deals with its IXC affiliate, CenturyTel Long Distance, or shift monies  
5 from one entity to the other without any legal or regulatory repercussions. This is  
6 simply not the case.

7 Q. MR. PRICE STATES AT PAGE 9 OF HIS TESTIMONY THAT THE  
8 AMOUNT OF PRE-PETITION DEBT THAT SPECTRA WILL RECOVER IS  
9 YET TO BE DETERMINED. WHAT IS YOUR RESPONSE?

10 A. Spectra does not expect to recover any significant amount of pre-petition debt  
11 from WorldCom. We have yet to see the bottom of WorldCom's financial woes.  
12 Attached as Exhibit APM-5 is a recent USA Today article released last week,  
13 reporting that WorldCom's overstated earnings may grow by more than \$2  
14 billion.

15 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

16 A. The Commission should allow Spectra's tariff to become effective. Spectra has  
17 identified certain aspects of its tariffs which, coupled with Staff's recommended  
18 changes, provide reasonable recourse for the Company without overburdening an  
19 otherwise fiscally sound interexchange carrier. The parties who oppose the  
20 proposed deposit requirements have failed to present compelling testimony as to  
21 why the tariff is not a reasonable attempt to mitigate Spectra's exposure to losses  
22 which the Company may experience as a result of financially distressed

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<sup>9</sup> Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section

1 interexchange carriers by developing reasonable, clear, and concise deposit  
2 provisions.

3 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

4 A. Yes. It does.

## FACILITIES FOR INTRASTATE ACCESS

RECEIVED

2. GENERAL REGULATIONS (Cont'd)

MAY 10 2000

2.4 Payment Arrangements and Credit Allowances (Cont'd)

MO. PUBLIC SERVICE COMM

2.4.1 Payment of Charges and Deposits (Cont'd)

(D) (Cont'd)

- (2) In the event of a billing dispute, the customer must submit a documented claim for the disputed amount.

- If the claim is received within 6 months of the payment due date, and the customer has paid the total billed amount, any interest credits due the customer upon resolution of the dispute shall be calculated from the date of overpayment.

- If the claim is received more than 6 months from the payment due date, any interest credits due the customer upon resolution of the dispute shall be calculated from the later of the date the claim was received or the date of overpayment.

A credit will be granted to the customer for both the disputed amount paid and an amount equal to the percentage rate in (1).

The Telephone Company will assess or credit late payment charges on disputed amounts to the customer as follows:

- If resolved in favor of the Telephone Company and the customer has paid the disputed amount on or before the payment due date, no late payment charges will apply.
- If resolved in favor of the Telephone Company and the customer has withheld the disputed amount, any payments withheld pending settlement of the dispute shall be subject to the late payment charge in (1).
- If resolved in favor of the customer and the customer has withheld the disputed amount, the customer shall be credited for each month or portion thereof that the late payment charge in (1) may have been applied. In the event the customer has paid the late payment charge, a credit will be granted to the customer for both the late payment charge paid on disputed amount and an amount equal to the percentage rate in (1).

2.4.2 Minimum Periods

- (A) The minimum periods for which FIA are provided and which rates and charges are applicable are in 3.2.4.
- (B) The minimum periods for which FIA are provided and which rates and charges are applicable for Specialized FIA or Arrangements provided on an Individual Case Basis, as in Section 7 are established with the individual case filing.
- (C) For discontinuances of FIA with a one month minimum period, all applicable charges for the one month period will apply. In instances where the minimum period is greater than one month, however, the charge will be the lesser of the Telephone Company's non-recoverable costs less the net salvage value for the discontinued service of the minimum period charges.
- (D) (Reserved for Future Use)

Missouri Public  
Service Commission  
00-182

FILED AUG 01 2000





## THE PLAIN DEALER

### AT&T moves to cut ties to small investors

11/02/02

Associated Press

New York - For years, AT&T was the most widely held stock, and AT&T nurtured the relationship by giving every shareholder free calling cards and other tokens.

Even though today's AT&T is not your father's AT&T because of multiple spinoffs and restructurings and telecommunications turmoil, there still are 300,000 people who own fewer than five shares, according to the company.

Now in another sign of AT&T's transformation, the company is about to cut its ties to those tiny investors.

The shares will be cashed out to the small holders as a result of AT&T's highly unusual decision to pull off a 1-for-5 reverse stock split immediately after it completes the upcoming spinoff of its cable TV division, AT&T Broadband, which is likely to be merged with Comcast Corp. this month. AT&T won shareholder approval for the reverse stock split in July.

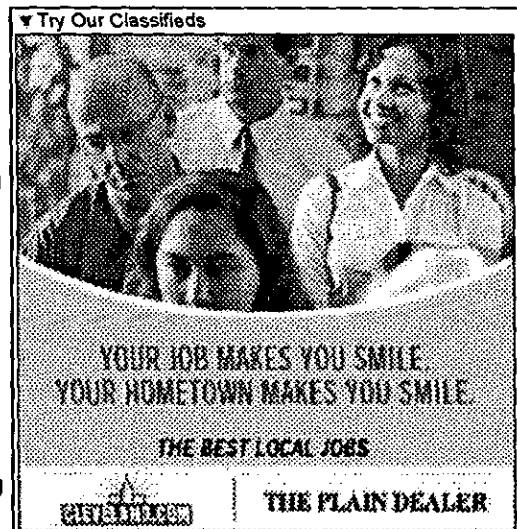
A reverse split, which boosts a company's stock price by decreasing the number of outstanding shares, usually is a last-ditch tactic used by companies facing stock market delisting because their shares are selling for less than \$1.

This reverse split is partially for aesthetic reasons.

AT&T, which has lost nearly \$15 billion in market value over the last 12 months, has seen its stock price mired in the low teens most of that time. With the broadband division gone, the remaining AT&T will be worth less, probably dropping its shares into the \$5 range.

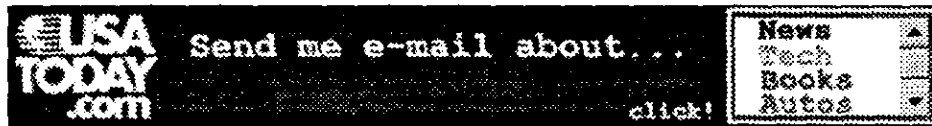
Extremely proud of its image, AT&T wants its stock price five times higher, even though the company's overall value will be unaffected.

People with 1,000 AT&T shares will now have 200, though each share will be worth five times as much. If you have, say, one share, you'll get a check for the value of one-fifth of a share at the time of the split, and AT&T will say goodbye.



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## WorldCom restatement may top \$9 billion

By Jon Swartz and Andrew Backover, USA TODAY

WorldCom said Tuesday that its financial restatement may eclipse \$9 billion — nearly \$2 billion more than already disclosed — and that it is in settlement talks with the government on its fraud case against the company.

The Securities and Exchange Commission, meanwhile, added two new fraud charges Tuesday. It claims WorldCom misstated its finances and misled investors going back to 1999, which is a longer period than the SEC initially included in its complaint.

WorldCom, owner of MCI, says the restatements will have "no impact" on its ability to serve its 20 million customers or on its plans to emerge from bankruptcy-court protection next year. It said several months ago that restatements would likely grow and go back to 1999. There may be even more, people familiar with the matter say.

The SEC's broadened attack comes as the two sides near settlement, those people say. The SEC charges that WorldCom, which has admitted accounting misdeeds, committed fraud by manipulating financial records. One SEC official cautioned against expecting a fast settlement.

"The commission has no intention of seeking dismissal of its fraud charges or any of its other claims against WorldCom," said Peter Bresnan, the SEC's deputy chief litigation counsel. A deal could impose a multimillion-dollar fine and bar WorldCom from violating securities laws, legal experts say.

The potential settlement — just five months after the SEC filed charges — could lessen the threat of further federal legal action and aid the recovery of the struggling No. 2 long-distance provider.

"A quick settlement allows WorldCom to get on with business," says attorney Kenneth Vianale of Milberg Weiss Bershad Hynes & Lerach, which has a pending shareholder lawsuit against WorldCom.

Any deal with WorldCom will be closely scrutinized. The SEC faces mounting criticism for his handling of the appointment of a chairman for a new auditing oversight board. Detractors also question whether the SEC is an effective enforcer.

WorldCom, which in July filed the largest bankruptcy case ever, had previously admitted in two separate instances \$7.2 billion in accounting misdeeds. The new revelations deal with billing

EXHIBIT APM-5

errors, asset write-downs and accounting for foreign subsidiaries.

The Justice Department continues its inquiry. It has brought charges against several former employees.

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**Find this article at:**

[http://www.usatoday.com/tech/techinvestor/techcorporatenews/2002-11-05-worldcom-sec-charges\\_x.htm](http://www.usatoday.com/tech/techinvestor/techcorporatenews/2002-11-05-worldcom-sec-charges_x.htm)

☐ Check the box to include the list of links referenced in the article.

