

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

In the Matter of the Tariff Filing by )	<b>File No.</b>	<b>TT-2012-0</b>
AT&T Communications of the )	Tariff No.	JX-2012-0555
Southwest, Inc. )		JX-2012-0556

**STAFF MOTION TO SUSPEND TARIFFS**

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

1 Section 392.461. RSMo provides:

Notwithstanding other provisions of this chapter or chapter 386, a telecommunications company may, upon written notice to the commission, elect to be exempt from any requirement to file or maintain with the commission any tariff or schedule of rates, rentals, charges, privileges, facilities, rules, regulations, or forms of contract for telecommunications services offered or provided to residential or business retail end user customers and instead shall publish generally available retail prices for those services available to the public by posting such prices on a publicly accessible website.

2. Although this new provision of law, which went into effect on August 28, 2011, allows telecommunications companies to charge rates and apply terms and conditions without having them in a tariff, there is no language that relieves the companies of their obligation to offer safe and adequate service on a non-discriminatory basis at just and reasonable rates, terms and conditions. Section 392.200.1 provides that:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable

charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

3. On March 30, AT&T Communications of the Southwest, Inc. (“AT&T” or “the Company”) made a filing in which it sought to “detariff” the service offerings in seven of its existing tariffs. All of those retail services to end users will, on and after May 1, 2012, be offered through the Company’s web site. In addition to the deletion of those six tariffs, the Company proposed two tariffs. The Company will have an existing contractual relationship with its customers, except in two circumstances: when customers dial a 1010 number to reach AT&T service (casual callers) and when customers choose AT&T as their presubscribed interexchange carrier (PIC) but have not yet formalized the relationship with AT&T by going to its web site and clicking the “I agree” box to the rates, terms and conditions (initial subscriptions).

4. As more fully discussed in the attached Staff Memorandum, the Staff does not oppose a tariff in those two circumstances, in that those are the situations in which a customer with no established relationship with the Company can use its services. If the Company wants its rates, terms and conditions to be binding on its customers without a contract, it must rely on a tariff. However, in this instance the Staff is of the opinion that the per-minute rate for the business customers is unreasonably high and should not be permitted. In addition, both tariffs refer to the web site for certain terms and conditions, which the Staff believes is inherently unreasonable. A tariff should be a complete “four corners” document that can stand on its own, as a substitute for a contract in a situation when an actual contract does not exist. Finally, the Staff questions whether it should permit the inclusion of the liability limitations contained in both proposed tariffs, in light of the Commission’s present examination of such provisions in

File No. AO-2012-0173. For all these reasons, the Staff recommends that the two proposed tariffs be suspended for further review.

**WHEREFORE**, the Staff requests that the Commission allow the seven tariff withdrawals contained in this filing to take place as proposed by the Company, but that the Commission suspend for further review the two proposed tariffs, denominated JX-2012-0555 and JX-2012-0556, for further examination of whether the provisions thereof are just and reasonable.

Respectfully submitted,



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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 12<sup>th</sup> day of April, 2012.



# MEMORANDUM

**To:** Missouri Public Service Commission Official Case File  
AT&T Communications of the Southwest, Inc.

**From:** William Voight  
Supervisor, Telecommunications Rates and Tariffs

**Subject:** Staff's Recommendation to Suspend the Effective Date of the following  
Two (2) AT&T/SW Tariff Filings:

JX-2012-0555 AT&T Communications of the Southwest, Inc.  
JX-2012-0556 AT&T Communications of the Southwest, Inc.

**Date:** April 12, 2012

**Executive Summary:** This Memorandum discusses several tariff filings of AT&T/SW and explains why the Staff recommends the Commission suspend two of those filings for further consideration. The tariffs have a proposed effective date of May 1, 2012. Fundamentally, the Staff has concerns that AT&T/SW's tariffs may contain liability and indemnification provisions currently being examined by the Commission in Case No. AO-2012-0173: RE: *In the Matter of an Investigation Into Tariff Provisions Governing Liabilities in Utility Operations*.

**Background:** Section 392.461 RSMo permits telecommunications companies to submit a letter to the Missouri Public Service Commission (Commission) electing to become exempt from tariff filing requirements for retail telecommunications services. On March 30, 2012 AT&T Communications of the Southwest, Inc. (AT&T/SW) submitted letters electing to "detariff" a series of seven such retail service tariffs. Those seven tariffs and associated tracking numbers are as follows:

Tariff #10	Digital Dataphone	JX-2012-0540
Tariff #15	Message Telecommunications Services	JX-2012-0535
Tariff #22	Custom Net	JX-2012-0536
Tariff #23	Private Line Schedule 9	JX-2012-0538
Tariff #24	Private Line Schedule 11	JX-2012-0539
Tariff #21	Local Exchange	JC-2012-0537
Tariff #2	Local Exchange	JC-2012-0541

Additionally, AT&T/SW d/b/a ConQuest and AT&T/SW d/b/a SmarTalk submitted letters denoted Tracking Numbers No.'s JX-2012-0543 and JX-2012-0542, respectively, in which the companies expressed a desire to detariff each of their respective PSC Mo. No. 1 long distance tariffs.

The Telecommunications Staff (Staff) has examined AT&T/SW's notification letters and is satisfied they are compliant in all aspects of §392.461. In particular, AT&T/SW's actions constitute a complete detariffing process in which all aspects of the above services are said by the company to be offered to the public via the following AT&T/SW website <http://www.att.com/servicepublications>. *The Staff recommends that these tariffs be allowed to take effect by operation of law, and that the Commission take no action concerning them.*

Contemporaneously with the above filings, AT&T/SW submitted two new tariffs to the Commission which the Staff *does* oppose. Those tariffs are:

AT&T Communications of the Southwest Inc. P.S.C. Mo. No. 25 (File #JX-2012-0555)  
AT&T Communications of the Southwest Inc. P.S.C Mo. No. 26 (File #JX-2012-0556)

AT&T/SW states that the new tariffs are necessitated by withdrawal of AT&T/SW's existing PSC Tariffs No. 15 and 22. AT&T/SW states that it wants to maintain two of its currently tariffed offerings from the tariffs it otherwise proposes to cancel. Those two offerings are the Casual Calling and Initial Subscription service offerings. AT&T/SW's *Casual Calling* permits callers to complete calls by dialing 1010288 or, in the case of AT&T/SW's "Lucky Dog" offering, by dialing 1010345. *Initial Subscription* is used when AT&T/SW does not yet have the billing name, address, and other account information permitting identification of new customers. Initial Subscription charges for new customers may continue for up to 45 days (Tariff Paragraph 4.1); thereafter, customers would presumably be migrated to other long distance service plans.

Staff notes that Tariff No. 25 would be used to provide casual calling and initial subscription residential offerings, while Tariff No. 26 would be used to provide the same offerings to business customers.

In separate filings, and as explained in more detail in the Memorandum associated with those filings, Southwestern Bell Telephone Company d/b/a AT&T Missouri proposes what Staff characterizes as "partial detariffing." That is to say, AT&T Missouri proposes to move subscription of retail services to a Web based application, yet keep tariffs on file which apply terms and conditions to the Web-based services. In contrast, in all AT&T/SW filings but JX-2012-0555 and JX-2012-0556, AT&T/SW is proposing to completely eliminate its tariffs, a practice that Staff finds much more reasonable than partial elimination.

**Staff concerns with AT&T/SW's Tariff # 26; Business Services Tariff (Tariff File No. JX-2012-0556):** This new tariff proposes to establish rates, terms and conditions on retail business service that in the Staff's view, require further consideration. The proposal relies on AT&T/SW's Internet-based Business Service Guide (Tariff Sections 2.5.4 and 1.1.1) for some aspects of the offering, yet it also seeks to rely on the tariff for other aspects of the offering. Staff's preference would be for AT&T/SW to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T/SW's attempt at partial detariffing.

The tariff is also used to limit AT&T/SW's liability for damages, claims, or suits (2.3.1) and to place responsibilities on the customer (2.4.1). AT&T/SW also proposes to use the tariff to assess certain franchise fees, privileges, assessments, license, occupational, excise and similar taxes and fees to AT&T/SW's customers (Section 2.10). Staff also notes some of AT&T/SW's proposed rates range as high as \$2.37 per minute which the Staff finds excessive and potentially unreasonable (Section 4.1).

**Staff concerns with AT&T/SW's Tariff # 25; Residential Services Tariff (Tariff File No. JX-2012-0555):** In addition to initial subscription, this residential tariff offers both 1010288 non-subscriber as well as 1010345 AT&T/SW's "Lucky Dog" non-subscriber offerings. AT&T/SW proposes residential per-minute rates of from \$0.33 to \$0.42 for 1010288 dialing and initial subscription, and \$0.10 per minute for Lucky Dog dialing.

The Staff does not object to the per-minute rates AT&T/SW proposes for this residential offering. However, Staff has the same general concerns over residential limitations of liability and attempts at partial detariffing as with the previously mentioned business offerings. Staff's preference would be for AT&T/SW to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T/SW's attempt at partial detariffing.

The Staff has examined AT&T/SW's proposals and recommends they be suspended for further consideration. Staff has concerns that the tariffs may contain liability and indemnification provisions currently being examined by the Commission in Case No. AO-2012-0173: RE: *In the Matter of an Investigation Into Tariff Provisions Governing Liabilities in Utility Operations*.

***The specific tariffs recommended for suspension are as follows:***

AT&T Communications of the Southwest Inc. P.S.C. Mo. No. 25

AT&T Communications of the Southwest Inc. P.S.C Mo. No. 26

As previously mentioned, the Staff is aware of other detariffing filings by AT&T Missouri as well as AT&T Long Distance that are currently pending before the Commission, and for which the Staff is filing another recommendation to suspend.

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

AT&T Communications of the  
Southwest, Inc.

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Tracking No. JX-2012-0555  
and JX-2012-0556

**AFFIDAVIT OF WILLIAM M. VOIGHT**

**STATE OF MISSOURI**     )  
                                      ) ss  
**COUNTY OF COLE**     )

William M. Voight, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



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William M. Voight

Subscribed and sworn to before me this 12<sup>th</sup> day of April, 2012.





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Notary Public