

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

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| In the Matter of the Tariff Filing by) | <u>File No.</u> | <u>TT-2012-0</u> |
| Southwestern Bell Telephone) | Tariff No. | JI-2012-0549 |
| Company d/b/a AT&T Missouri) | | JI-2012-0551 |
| | | JI-2012-0552 |
| | | JI-2012-0553 |
| | | JI-2012-0554 |
| | | JI-2012-0563 |

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, Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T” or “the Company”) made a filing in which it sought to “detariff” the service offerings in ten of its existing tariffs; on and after May 1, 2012, those retail services be offered through the Company’s web site. While the filing resulted in the complete deletion of four tariffs (which the Staff does not oppose), the Company proposes to maintain portions of the other six tariffs.

4. As more fully discussed in the attached Staff Memorandum, the Staff opposes the filings for several different reasons. Some 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. One tariff pertains to wireless interconnection, which is not a retail service to end users, and which may not be detariffed. Some tariffs remove the rates and some terms, but retain extensive provisions concerning the obligations of customers and limitations on the Company’s liability. The Staff questions whether it should permit the continuation of those limitations, in light of the Commission’s present examination of such provisions in File No. AO-2012-0173. Moreover, under the filed-rate doctrine, if the web site provisions (or negotiated contract provisions) were different from the tariff provisions, the tariff provisions would always prevail. Finally, most of the tariffs retain specific language pertaining to local taxes. Although the Staff’s position is that detariffing should occur by service (so that when the rates for the service are removed, then all other provisions pertaining to that service should be removed as well), the Company desires to keep these provisions in its tariffs. In recent and pending litigation concerning such a pass-through, a court found that the Company

could pass through those taxes and fees because the tariff specifically provided for it. The Company is concerned that removal of those provisions would adversely affect current and pending litigation. However, as the Staff's interpretation requires that detariffing must cover all the rates, terms and conditions of a given service, the continued inclusion of this provision would need to be granted a variance by the Commission. For all these reasons, the Staff recommends that the six pending tariff revisions be suspended for further review.

WHEREFORE, the Staff requests that the Commission allow the four tariff withdrawals contained in this filing to take place as proposed by the Company, but that the Commission suspend for further review the six proposed tariff revisions, denominated JI-2012-0549, JI-2012-0551, JI-2012-0552, JI-2012-0553, JI-2012-0554 and JI-2012-0563, 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 16th day of April, 2012.



MEMORANDUM

To: Missouri Public Service Commission Official Case File
Southwestern Bell Telephone Company d/b/a AT&T Missouri

From: William Voight
Supervisor, Telecommunications Rates and Tariffs

Subject: Staff's Recommendation to Suspend the Effective Dates of the following
Six (6) AT&T Missouri Tariff Filings

Jl-2012-0553 Southwestern Bell Telephone Company d/b/a AT&T Missouri
Jl-2012-0552 Southwestern Bell Telephone Company d/b/a AT&T Missouri
Jl-2012-0551 Southwestern Bell Telephone Company d/b/a AT&T Missouri
Jl-2012-0554 Southwestern Bell Telephone Company d/b/a AT&T Missouri
Jl-2012-0563 Southwestern Bell Telephone Company d/b/a AT&T Missouri
Jl-2012-0549 Southwestern Bell Telephone Company d/b/a AT&T Missouri

Date: April 12, 2012

Executive Summary: This Memorandum discusses ten tariff filings of AT&T Missouri and explains why the Staff recommends the Commission suspend six (6) of those filings for further consideration. The tariff sheets have a proposed effective date of May 1, 2012. Fundamentally, the Staff has concerns that the six AT&T Missouri tariff proposals 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 Southwestern Bell Telephone Company d/b/a AT&T Missouri (AT&T Missouri) submitted a series of letters electing to "detariff" ten such tariffs. Those ten tariffs and associated tracking numbers are as follows:

| | | |
|--------------|-------------|---|
| Jl-2012-0546 | Tariff # 24 | Local Exchange |
| Jl-2012-0547 | Tariff # 27 | WATS |
| Jl-2012-0548 | Tariff #41 | Integrated Services |
| Jl-2012-0550 | Tariff #17 | Exchange Area Maps (Cross-boundary portion) |
| Jl-2012-0553 | Tariff #26 | Long Distance Telephone Service |
| Jl-2012-0552 | Tariff #29 | Private Line Service |
| Jl-2012-0551 | Tariff #35 | General Exchange |
| Jl-2012-0554 | Tariff #38 | Digital Link |

| | | |
|--------------|------------|----------------------------------|
| JI-2012-0563 | Tariff #40 | Wireless Carrier Interconnection |
| JI-2012-0549 | Tariff #45 | Advanced Services |

Recommendation to Take No Action on Four Notification Letters: The Telecommunications Staff (Staff) has examined AT&T Missouri’s notification letters and is satisfied the following four of the ten are compliant with the relevant aspects of §392.461.

| | | |
|--------------|-------------|---|
| JI-2012-0546 | Tariff # 24 | Local Exchange |
| JI-2012-0547 | Tariff # 27 | WATS |
| JI-2012-0548 | Tariff #41 | Integrated Services |
| JI-2012-0550 | Tariff #17 | Exchange Area Maps (Cross-boundary portion) |

Notwithstanding concerns over remnants of AT&T’s General Exchange Tariff No. 35, which apply to all customer contracts and which will be further explained, AT&T Missouri’s actions in the above four filings appear to constitute a detariffing process in which all aspects of the services appear to be offered to the public via the following AT&T Missouri website <http://www.att.com/servicepublications>. The detariffed services offered in the above filings appear to permit customers to examine information and make decisions based solely on what they are viewing on the Web site. *The Staff recommends that these notification letters and associated tracking numbers be allowed to take effect, and that the Commission take no action concerning them.*

Recommendation to Suspend Six AT&T Missouri Tariff File Numbers:

Contemporaneously with the above four filings, AT&T Missouri submitted six other notification letters to the Commission which contain tariff filings which the Staff *does* oppose. Those tariff filings are:

| | | |
|--------------|------------|----------------------------------|
| JI-2012-0553 | Tariff #26 | Long Distance Telephone Service |
| JI-2012-0552 | Tariff #29 | Private Line Service |
| JI-2012-0551 | Tariff #35 | General Exchange |
| JI-2012-0554 | Tariff #38 | Digital Link |
| JI-2012-0563 | Tariff #40 | Wireless Carrier Interconnection |
| JI-2012-0549 | Tariff #45 | Advanced Services |

Tariff # 35 General Exchange Tariff Tariff File No. JI-2012-0551

AT&T’s General Exchange Tariff proposal should be suspended for further investigation because it attempts to place a continued reliance on Customer Obligations and Company Rights in the tariff instead of relying on the Web site where its retail customers subscribe to services. For example, the following language would remain in Section 17.1 of the General Exchange Tariff:

The regulations specified herein are in addition to the regulations contained in other sections of this General Exchange Tariff and other tariffs. Failure on the part of the customers to observe these rules and

regulations of the Company automatically gives the Company the right to cancel the contract and discontinue the furnishing of service.

Following are but a few examples of the kind of customer obligations and company rights ATT Missouri proposes to leave in its tariff, even though it claims to be relying on material found on its Web site to govern its contractual relations:

- The Telephone Company reserves the right to refuse service to any applicant or former customer who is found to be indebted to the Telephone Company for prior service (17.2).
- The terms and conditions of all contracts are subject to the rules and regulations in this General Exchange Tariff...(17.2)
- Service may be discontinued for failure to post a required deposit or guaranty...(17.4.2.A)
- The customer is responsible for payment of all charges incurred, regardless of whether such charges are associated with his usage or that of any of his authorized users (17.5.1).
- The Company, upon failure of the customer to pay the amount backbilled, shall suspend service to the customer until such time as the backbilled amount plus late payment penalty, if any, are paid in full (17.5.1).
- When some or all of a Customer's services have been disconnected...the Customer may be held responsible for fees associated with collection efforts, including attorney's fees (17.6.1.A).
- Residential customers may have a Convenience Fee [\$5.00] apply in each instance when the subscriber requests a Company Representative's assistance in processing a payment (17.6.1.A).
- The State of Missouri and its State agencies are exempted from the late payment charge unless or until §34.055 RSMo 1994 is revised to authorize telecommunications utilities to impose late penalties if the State does not pay for goods or services within 30 days (17.6.1.B).
- The Telephone Company shall in no way be liable for any harm or any damages arising in connection with any failure to properly ground or bond the service, the premises, any structure in which the service is to be provided or used, any equipment or any associated wiring (17.7.1.E).
- Telephone directories are the property of the Telephone Company and customers must not deface or mutilate such directories or attach or permit attachment of covers of any sort or description without the written consent of the Telephone Company (17.7.2.I).
- The Telephone Company reserves the right to change the telephone number or numbers assigned to a customer or the central office designation associated with such telephone number or numbers, or both, as reasonably appropriate in the conduct of its business (17.7.2.J).

Additionally, even though AT&T Missouri proposes to market services over the Internet, it proposes keeping General Exchange tariff language pertaining to Special Taxes, Fees and Charges which state in small part:

There shall be added to the customer's bill or charge, as a part of the rate for service, a surcharge equal to the pro rata share of any franchise, occupation, business, license, excise, privilege or other similar tax, fee or charge (hereafter called "tax") now or hereafter imposed upon the Telephone Company by any taxing body or authority, whether by statute, ordinance, law, or otherwise and whether presently due or to hereafter become due (Section 17.11).

Staff has other concerns with AT&T's General Exchange tariff as well. For example, Section 28 pertains to 9-1-1 Emergency Service that the Company wants to remain largely intact, yet AT&T Missouri has chosen to inject references to its Internet Guidebook into the tariff ((28.7.1 D; 28.7.4.A.3). Staff's preference would be for AT&T Missouri to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T Missouri's attempt to use both the Internet and a Commission-approved tariff to govern rates, terms, and conditions of service.

Tariff # 38 Digital Link & Premium Digital Service JI-2012-0554

A concern exists that AT&T Missouri wants to leave in two sections of tariff regulations (Sections 1.7 & 3.8) denoted Special Taxes, Fees and Charges. These sections address charges put on customer bills for a pro rata share of franchise, occupation, business, license, excise, privilege and similar taxes. The remaining wording also addresses flat sum payments of money and how the surcharges are pro rated to each customer bill, and that "the tariff charge" constituting the surcharge shall be stated separately on each customer's bill. Staff's preference would be for AT&T Missouri to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T Missouri's attempt at partial detariffing.

Tariff # 40 Wireless Carrier Interconnection JI-2012-0563

A concern exists that AT&T Missouri proposes to make "administrative changes" to incorporate references to an Internet "Guidebook" (Sections 2; 3.4.B; 3.6.A&B). From the Staff's perspective, AT&T Missouri's proposal appears as an attempt to partially detariff non-retail services not specified in §392.461. Staff recommends the Commission suspend this filing for further consideration.

Tariff #45 Advanced Services JI-2012-0549

Many of AT&T Missouri's advanced services offered in this tariff were previously limited to existing customers (i.e., "grandfathered"), and all services (Asynchronous Transfer Mode, Frame Relay, etc.) are now proposed to be detariffed. Nevertheless, AT&T proposes to maintain tariff language holding customers responsible for payment of sales, use, gross receipts, excise, access, subscriber line, franchise, occupation, business, license, privilege or other local, state and federal charges or surcharges, however designated. The tariff wording also binds the customer in agreement to hold AT&T harmless from any and all liability for fees that were delivered to the jurisdiction in question and not returned to AT&T Missouri. Staff's preference would be for AT&T

Missouri to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T Missouri's attempt at partial detariffing.

Tariff # 26 Long Distance Message Telecommunications Service JI-2012-0553

Even though AT&T Missouri proposes to use the Internet to govern retail long distance service and contracts, AT&T Missouri proposes to leave intact that portion of its tariff which automatically adds taxes and surcharges to customer bills for franchise, occupation, business, license, excise and similar taxes and fees. Staff's preference would be for AT&T Missouri to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T Missouri's attempt at partial detariffing.

Tariff #29 Private Line Service JI-2012-0552

As with Long Distance and other offerings, AT&T Missouri proposes to detariff all its private line offerings except customer obligations to pay taxes, which the tariff permits to be added automatically to the customers' bill. Staff's preference would be for AT&T Missouri to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T Missouri's attempt at partial detariffing.

The Staff has examined AT&T Missouri's proposals and recommends the six (6) discussed above be suspended for further consideration. Staff has concerns that the tariff proposals 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 Staff is aware of other detariffing filings by AT&T Communications of the Southwest (AT&T/SW) and SBC Long Distance d/b/a AT&T Long Distance that are currently pending before the Commission, and for which the Staff is filing other recommendations to suspend. Lastly, Staff is aware of other telecommunications companies who have elected to detariff; for example, MCI Metro d/b/a Verizon Access Transmission Services has detariffed its retail local and long distance services in File No.'s JL-2012-0224 and JX-2012-0223. However, unlike AT&T Missouri who proposes to only partially detariff, Verizon's proposals called for detariffing of all rates, terms, and conditions.

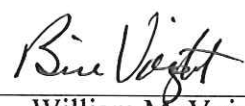
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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|-------------------------------------|---|---------------------------|
| |) | Tracking No. JI-2012-0553 |
| |) | JI-2012-0552 |
| Southwestern Bell Telephone Company |) | JI-2012-0551 |
| d/b/a AT&T Missouri |) | JI-2012-0554 |
| |) | JI-2012-0563 |
| |) | JI-2012-0549 |

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.



William M. Voight

Subscribed and sworn to before me this 12th day of April, 2012.

LAURA HOLSMAN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: June 21, 2015
Commission Number: 11203914



Notary Public