

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

In the Matter of a Repository Case in Which to	)	
Receive Feedback and Other Suggestions	)	
Concerning Staff's Proposed Consolidation and	)	Case No. TW-2014-0295
Simplification of the Commission's	)	
Telecommunications Rules	)	

**AT&T'S COMMENTS**

AT&T<sup>1</sup> appreciates the collaborative approach Missouri Public Service Commission Staff has taken in its effort to consolidate and simplify the Commission's rules concerning telecommunications companies, video and interconnected VoIP providers. AT&T supports this effort and wishes to participate.

Pursuant to the Commission's invitation<sup>2</sup> to submit comments on Staff's proposal, AT&T states<sup>3</sup>:

1. Workshops. The opening of a working case and invitation to comment on Staff's proposals prior to embarking on a formal rulemaking should help streamline the proceeding by the early identification of possible areas of disagreement. AT&T suggests the Commission also schedule one or more workshops to be led by Staff. Workshops, like those Staff hosted prior to previous rulemakings, will provide an opportunity for face-to-face dialogue to resolve points of disagreement without Commission action.

2. Elimination of Outdated or Unnecessary Rules. AT&T concurs with Staff's general proposal to eliminate outdated rules and those that no longer apply. In addition to those proposed by Staff, consideration should also be given to the elimination of 4 CSR 240-2.061 (Filing

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<sup>1</sup> Southwestern Bell Telephone Company, d/b/a AT&T Missouri will be referred to in this pleading as "AT&T."

<sup>2</sup> Order Opening a Working Case to Receive Feedback and Other Suggestions Regarding Staff's Proposal to Consolidate and Simplify the Commission's Telecommunications Rules, Case No. TW-2014-0295, issued April 23, 2014, at p 2.

<sup>3</sup> AT&T's comments provide initial suggestions and examples for consideration and do not necessarily reflect a comprehensive review of Staff's proposal.

Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest). Given the proliferation of all-distance calling plans offered by wireline, wireless and VoIP providers, the process for obtaining expanded calling in an area is unneeded, as reflected in the absence of filings under this rule.

AT&T also suggests re-examining the need for 4 CSR 240-33.150 (Verification of Orders for Changing Telecommunications Service Provider), which appears to have been significantly streamlined and moved to the new 4 CSR 240-28.060(5). Current FCC rules fully address this area<sup>4</sup> (making separate state rules redundant) and the Commission routinely waives this rule upon request during carrier certification proceedings and has waived this rule for LECs in response to previous legislation.<sup>5</sup>

3. Rule Consolidation. AT&T also agrees with Staff's effort to consolidate remaining rules in one location, which should make them more easily accessible. To that end, it may be desirable to move the only two remaining rules from Chapter 33 (Service and Billing Practices for Telecommunications Companies) - 4 CSR 240-33.100 (Variance) and 4 CSR 240-33.110 (Commission Complaint Procedures) - to the proposed new Chapter 28 (Telecommunications, I-VoIP, Video Services) for ease of reference. The inclusion of a variance provision in the new Chapter 28 may also be useful from both a substantive and operational perspective.

4. Consistency with Underlying Legislation. Throughout the rule consolidation and streamlining process, care must be taken to ensure consistency with underlying legislation. To that end, consideration should be given to utilizing statutory definitions when available to avoid any

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<sup>4</sup> See 47 C.F.R. §§ 64.1100 – 64.1190. Specifically, 47 C.F.R. § 64.1120 sets out the requirements for verifying telecommunications service orders; and 47 C.F.R. § 64.1190 addresses “preferred carrier freezes.”

<sup>5</sup> Sections 392.245.5(8) and 392.461(1) RSMo. See also, e.g., *In the Matter of the Application of FidelityLink, LLC for a Certificate of Service Authority to Provide Basic and Non-Switched Local Telecommunications Services in Portions of the State of Missouri and To Classify Said Services and the Company as Competitive*, Case No. CA-2013-0548, Order Granting Certificate to Provide Basic Local and Non-switched Local Telecommunications Services, issued August 2, 2013, 2013 WL 4507693 (Mo.P.S.C.) (waiving anti-slamming requirements).

possibility of conflict or confusion.

In addition, proposed rule 4 CSR 240-28.060 (Service Requirements) improperly over-rides Section 392.245(8) RSMo., which affirmatively relieves competitively classified incumbent local exchange telecommunications companies and CLECs from service quality rules and metrics. This statutory provision states that such carriers:

shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the commission, but shall be subject to commission authority to hear and resolve customer complaints to the extent the customer complaint is based on Truth-in-Billing regulations established by the Federal Communications Commission, or network engineering and maintenance standards established within the National Electric Safety Code. (emphasis added)

Moreover, Section 392.420, expressly permits companies to waive service quality rules and metrics. Proposed rule 4 CSR 240-28.060, however, appears to re-impose service installation requirements<sup>6</sup>, service restoration requirements,<sup>7</sup> surveillance levels for trouble reports,<sup>8</sup> and quarterly service quality reporting on an exchange-specific basis<sup>9</sup> when a company “elects to be subject to certain statutes pertaining to duties, obligations, conditions or regulations on retail telecommunications services.”<sup>10</sup> Agency regulations may not conflict with state statutes and courts have routinely held that any regulation that does so must fall.<sup>11</sup>

5. Fiscal Impact. AT&T would not expect the proposed rule revisions to have a fiscal

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<sup>6</sup> Proposed rule 4 CSR 240-28.060(3)(A).

<sup>7</sup> Proposed rule 4 CSR 240-28.060(3)(B).

<sup>8</sup> Proposed rule 4 CSR 240-28.060(3)(C).

<sup>9</sup> Proposed rule 4 CSR 240-28.060(3)(D).

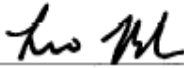
<sup>10</sup> Proposed rule 4 CSR 240-28.060(3).

<sup>11</sup> *Parmley v. Mo. Dental Bd.*, 719 S.W.2d 745, 755 (Mo. banc 1986) (“The well established rule is that regulations may be promulgated only to the extent of and within the delegated authority of the statute involved . . . When there is a direct conflict or inconsistency between a statute and a regulation, the statute which represents the true legislative intent must necessarily prevail”); *Osage Outdoor Advertising, Inc. v. St. Highway Comm’n*, 624 SW2d 535, 537-538 (Mo. App. W.D. 1981) (invalidated rule allowing Commission to void previously issued permits in absence of statute granting such authority); *Gasconade County Counseling Services, Inc. v. Missouri Dept. of Health*, 314 S.W.3d 368, 378 (Mo.App. E.D. 2010) (Community Mental Health Services Act does not preclude for-profit providers from being eligible to receive mental health funds and to the extent the Department’s regulations set forth contradictory prerequisites, “the regulation is a nullity”).

impact to the extent the Commission confines them to deleting obsolete or unnecessary rules and relocating the remaining rules to one chapter. But to the extent the revisions impose new requirements or re-impose previously waived requirements, further study will be required to determine fiscal impact.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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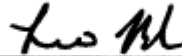
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## **CERTIFICATE OF SERVICE**

Copies of this document and all attachments thereto were served on the following by e-mail on May 16, 2014.



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