

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 6th day of  
September, 2007.

In the Matter of the Tariff of Southwestern Bell Telephone, )	
d/b/a AT&T Missouri, increasing local residential basic )	<b><u>Case No. TT-2008-0062</u></b>
local service rates in certain exchanges designated as )	Tariff No. JI-2008-0136
competitive pursuant to Section 392.245.6, RSMo 2000 )	
(as amended 2005). )	

**ORDER DENYING MOTION TO REJECT TARIFF**

Issue Date: September 6, 2007

Effective Date: September 16, 2007

On August 28, 2007, Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, submitted tariff sheets proposing increased rates for basic local telecommunications services in competitive exchanges. The effective date of the tariff sheets is September 7, 2007.

On August 29, 2007, the Office of the Public Counsel filed its "Objections and Opposition" to the rate increases and requested that the Commission reject the tariff sheets. Public Counsel argues that the tariff sheets are "inconsistent with the stated purpose of Missouri's telecommunications law in Chapter 392, RSMo," because the tariffs are "contrary to the public interest and the protection of the ratepayers." Public Counsel cites to numerous transcripts of Commission proceedings as support for its contention that AT&T Missouri has represented to the Commission that it would not raise basic local rates.

The Staff of the Missouri Public Service Commission filed a response on August 31, 2007. In its response, Staff states that the tariff filings comply with the requisite

Commission rules and statutes. Further Staff states that in its opinion, the Commission does not have the authority to reject these tariffs. Staff counsel argues that the Appellate Court:<sup>1</sup>

. . . rejected the Commission's contention that the Commission could conduct an independent just-and-reasonable analysis separate from its analysis concerning whether the proposed rate increases were in keeping with the statutory maximum. The Court explained that the Commission upholds its duty of ensuring that the rates are just, reasonable and lawful by ensuring that the rates do not exceed the maximum allowable price.

Although the proposed rates at issue in the present case are not for price-capped non-basic telecommunications services as was the case in the cited court case, the reasoning is the same. The Commission upholds its duty of ensuring that the proposed rates at issue in this case are just, reasonable and lawful—and not contrary to the public interest and the protection of the ratepayers—by ensuring that the rate increases comply with the applicable statutes.

AT&T Missouri filed a response on September 5, 2007. In its response, AT&T Missouri urged the Commission to deny Public Counsel's request to reject the tariffs. AT&T Missouri agrees with the Staff's recommendation that the Commission does not have jurisdiction to reject price increases for these competitive services. AT&T Missouri further argues that the proposed increases bring AT&T Missouri's basic local rates more in-line with current market prices under the theory that its current prices are artificially low.

On September 5, 2007, Public Counsel replied to Staff and AT&T Missouri's responses. Public Counsel suggested that these price increases are not "just and reasonable" and renewed the request for the tariff sheets to be rejected.

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<sup>1</sup> Citing to *State of Missouri ex rel. Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. Missouri Public Service Commission*, 173 S.W. 3d 327 (Mo. App. W.D. 2005).

The tariff sheets at issue involve services and exchanges that have been designated as competitive.<sup>2</sup> Section 392.245.5(6), RSMo Cum. Supp. 2006, states:

If the services of an incumbent local exchange telecommunications company are classified as competitive under this subsection, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment, upon filing tariffs which shall become effective within the time lines identified in section 392.500. The commission shall, at least every two years, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive, review those exchanges where an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange . . . .

Section 392.500 allows any such change to go into effect in ten days so long as customers receive appropriate notice. Staff's recommendation included an analysis of the tariff provisions and concluded that the tariffs were in compliance with the applicable statutes and regulations.

The legislature has provided that if the services in the exchange are designated as competitive, AT&T Missouri may raise or lower its prices "as it determines appropriate."<sup>3</sup> The services within the exchanges have been designated as competitive. Thus, the Commission has reviewed the motion and determines that it is not appropriate to reject the tariffs.

The legislature has also required, however, that when basic local rates are raised in a competitive exchange, the Commission must investigate the status of competition in

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<sup>2</sup> Southwestern Bell Telephone Company, L.P., d/b/a AT&T Missouri, P.S.C. Mo. – No. 24, Local Exchange Tariff, Sheets 3 and 3.01; and, Tariff File no. JI-2008-0136. See also, Commission Case Nos. TO-2001-467 and TO-2007-0053.

<sup>3</sup> Section 392.245.5(6), RSMo Cum. Supp. 2006.

the exchanges to determine if the conditions for competitive classification continue to exist. If AT&T Missouri raises its rates in the manner proposed, it will trigger this investigation requirement.

Staff has previously informed the Commission of its intent to conduct such a review on a routine basis in order to ease its administrative burden in complying with the statute.<sup>4</sup> Thus, the Commission anticipates that its Staff will file its latest investigation into the competitive status of AT&T Missouri's exchanges consistent with Section 392.245.5(6) and will inform the Commission specifically of the status of competition in each exchange in which AT&T Missouri has raised basic local rates. In addition to the types of information that Staff has previously presented, the investigation should include, if practicable, whether competition in each exchange consists of more than one customer and an analysis of whether there is any correlation between the level of competition and the rate increases by rate class and category in each exchange.

**IT IS ORDERED THAT:**

1. The request to reject Tariff File No. JI-2008-0136, filed on August 29, 2007, by the Office of the Public Counsel, is denied.
2. If Southwestern Bell Telephone Company, L.P., d/b/a AT&T Missouri, raises basic local rates in its competitive exchanges, the Staff of the Missouri Public Service Commission shall conduct an investigation as required by Section 392.245.5(6), RSMo, and open a new case with regard to that investigation for further determinations of the Commission.

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<sup>4</sup> In Case No. TO-2007-0053, the Staff indicated its intent to investigate annually, following the filing of annual reports.

3. This order shall become effective on September 16, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton, and Appling,  
CC., concur.  
Gaw, C., dissents, with separate opinion to follow.

Dippell, Deputy Chief Regulatory Law Judge