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 Simplification of the Commission's Telecommunications Rules	)))))	Case No. TW-2014-0295

AT&T'S SECOND ROUND COMMENTS

The collaborative effort Missouri Public Service Commission Staff has undertaken with the industry to consolidate and simplify the Commission's telecom, video and IVoIP rules has been very productive. Staff's approach should narrow the areas of potential disagreement in the planned formal rulemaking proceeding and result in material savings of Commission resources, as well as those of the participating parties. To further aid the parties' efforts in narrowing the areas of disagreement, it would be helpful to understand Staff's views the proposed rules that are intended to be mandatory and the proposed rules that are optional (i.e., "opt-in" under the new statutory framework in SB 651).

As requested by Staff in its August 18, 2014, submission,[1] AT&T[2] submits these additional comments for Staff's consideration in preparing a proposed rule for the formal rulemaking process.[3]

1. Definitional comment. Staff included language to the "certification" definition 4 CSR 240-28.010(1) to recognize that AT&T operates under a charter from the State of Missouri. AT&T recommends a slight rewording of the change to make clear that the charter emanated from the State (rather from the Commission):

[1] Staff's Submission of Documents, Case No. TW-2014-0295, filed August 18, 2014.
[2] Southwestern Bell Telephone Company, d/b/a AT&T Missouri will be referred to in this pleading as "AT&T."
[3] AT&T's comments provide additional suggestions for consideration and do not necessarily reflect a comprehensive review of Staff's proposal.

> Certification: The granting of a certificate of service authority ~~or charter~~ by the Commission or a charter or franchise by the State.

AT&T would also note that it may be necessary to change the word "authorized" on the first line of 4 CSR 240-28.030(6) on p. 7 of the revised draft to "certificated or registered."

2. Comments concerning Reporting Requirements. AT&T questions the need and authority for rules requiring outage reports (4 CSR 240-28.040(5)), disaster recovery plans (4 CSR 240-28.040(6)), and bankruptcy notifications (4 CSR 240-28.040(6)). AT&T suggests the rules could be further streamlined by eliminating these requirements. AT&T intends to continue working with SEMA during state emergencies, however, imposing outage reporting and disaster plan requirements for such a small segment of today's communications marketplace (i.e., legacy TDM services like plain old telephone service ("POTS")) makes no sense, is discriminatory, and beyond the Commission's authority.

3. Comments concerning Service Standards. AT&T questions the need and authority for rules pertaining to safety standards (4 CSR 240-28.060(1)) and the termination of IVoIP calls (4 CSR 240-28.060(2)). In addition, AT&T remains concerned that even with the proposed revisions, 4 CSR 240-28-060(3), as drafted, improperly over-rides Section 392.611.1 (which relieves a telecommunications company of various statutory and regulatory obligations except to the extent it elects to retain them). AT&T believes that Staff intends this section to apply to carriers electing to remain subject to service quality metrics and recommends the following revision to make that intent clear:

> (3) A telecommunications company that is not subject to any statute in chapters 386 or 392 (nor any rule promulgated or order issued under such chapters) that imposes duties, obligations, conditions or regulations on retail telecommunications services provided to end user customers, but that elects to remain subject to ~~certain statutes, rules or orders~~ service quality rules by notification to the Commission shall comply with the following requirements:
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> * * *

As an example where clarity on "mandatory" versus "opt-in" rules apply would be helpful, 4 CSR 240-28-060(5) creates a state-level requirement to comply with the federal anti-slamming rules. AT&T understands that Staff is seeking to follow a statutory requirement that the Commission maintain an anti-slamming rule (Section 392.540), however, under other state statutes, companies are not required to follow such a requirement. As such, it may add clarity for the "opt-in" requirements, such as this one, to add some prefatory language such as, "For those companies electing to be subject to anti-slamming requirements, companies shall comply with …"

AT&T further notes that the words "or order" on the second line of 4 CSR 240-28-060(6) appear extraneous. While AT&T intends to continue working with the Commission Staff to informally resolve customer disputes, the requirements set out in 4 CSR 240-28-060(6) are beyond the Commission's authority. Additionally, from a procedural perspective, AT&T views the response times set out in 4 CSR 240-28-060(6)(A) and (B) as too short in that they do not provide carriers sufficient time to investigate and respond to the Staff inquiries.

4. Comments concerning interconnection agreement rule changes. Staff in its second informal draft has proposed two changes to 4 CSR 240-28.080 (Interconnection Agreements): the first concerns the addition of new language that would allow the adoption of expired interconnection agreements ("ICAs"); and the second incorporates the existing procedure for seeking approval of ICA amendments previously approved by the Commission. AT&T has the following comments and concerns:

(a) The proposed language allowing MFN into an expired ICA should not be adopted. In response to an oral comment raised during the July 17, 2014, workshop, Staff has proposed adding a new provision to 4 CSR 240-28.080 (2) (Interconnection Agreements) stating:

> Approved interconnection agreements whose original term has expired, but which remain in effect pursuant to term renewal or extension provisions, will be subject to adoption for so long as the interconnection agreement remains subject to the renewal or extension

provision.

This new provision should not be added to the consolidated rules. First, this addition exceeds the stated scope of the proceeding to "consolidate and simplify the Commission's telecommunications rules."[4] While just a single sentence, the new provision injects into this proceeding a complex and substantive new policy issue that will necessarily involve the application and interpretation of the federal Telecommunications Act and FCC rules. This proposed addition unnecessarily complicates this rulemaking, and raises matters best left to individual proceedings where facts can be presented in the context of a concrete dispute between carriers - - in the event one arises - - rather than in the hypothetical context of a rulemaking.

Second, the proposed provision conflicts with federal law. FCC rules do not require an incumbent LEC to make an interconnection agreement available for opt-in indefinitely. Rather, the rules require an agreement to be available only "for a reasonable period of time after the approved agreement is available for public inspection."[5] The Sixth Circuit explained:

> The right to adopt an existing interconnection agreement contains several limitations, one of which is time. Under a regulation promulgated by the Federal Communications Commission (FCC), an entrant seeking to adopt an approved agreement must do so within 'a reasonable period of time after the approved agreement is available for public inspection,' 47 C.F.R. § 51.809(c), which is to say a reasonable time after the state commission has approved the underlying agreement, 47 U.S.C. § 252(e)(1), (h).[6]

Applying this rule, state commissions have held adoption requests exceeded the bounds of a "reasonable period of time" where an agreement at the time of the request had only approximately

[4] In its Order opening this case, the Commission stated "This case is established as a repository for documents and comments regarding Staff's proposal to consolidate and simplify the Commission's telecommunications rules." Order Opening a Working Case, File No. TW-2014-0295, issued April 23, 2014 (emphasis added). Indeed, the style of the case reflects this very purpose: "In the Matter of a Repository Case in Which to Receive Feedback and Other Suggestions Concerning Staff's Proposed Consolidation and Simplification of the Commission's Telecommunications Rules" (emphasis added).

[5] 47 C.F.R. § 51.809(c), entitled "Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act," states:

> Individual interconnection, service or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for inspection under section 252(f) of the Act.

[6] *BellSouth Telecomms., Inc. v. Universal Telecom, Inc.*, 454 F.3d 559, 560 (6th Cir. 2006).

ten months remaining before expiration;[7] and seven months remaining before expiration.[8] While the Commission may have some discretion in determining a "reasonable time" for an adoption, the proposed rule allowing adoption of an already expired agreement clearly falls outside the bounds of its discretion.

(b) The procedure for previously-approved amendments should be further streamlined. In its second informal draft, Staff has added the current procedure from 4 CSR 240-3.513(6) pertaining to the submission of applications for adoption by the Commission of interconnection agreement amendments it has previously approved. AT&T suggests that the rule, in addition to being moved into 4 CSR 240-28.080, can be significantly streamlined with the following edits, to read:

> (3) Approval of ~~A~~an amendment to an interconnection agreement previously approved by the Commission can be requested by either party to the amendment by ~~company~~ submitting a letter to the secretary of the Commission. The amendment will become effective on the date it is properly submitted to the Commission.
>
> (A) The letter shall include:
> 1. A description of the proposed amendment;
> 2. The case number or tracking number in which the agreement was previously approved by the Commission; and
> 3. A copy of the signature page signed by both parties to the adoption of the amendment.
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> (B) ~~If both parties have signed the signature page to the amendment t~~ The request shall be electronically filed as an Interconnection Agreement Informal Submission in EFIS.

AT&T's suggestion includes shortening Section (3) of the rule by eliminating Subsections (3)(C) and (3)(D) from the rule. These two sections provide a procedure for either party to an interconnection agreement to seek to have the Commission impose on the other party, even if that

[7] *In Re: Global NAPs South, Inc.*, 15 FCC Rcd. 23318 (August 5, 1999) (Global NAPs sought adoption of the ICA in August 1998, when the ICA was to expire on July 1, 1999. The Virginia Corporation Commission denied the adoption request because of the limited amount of time remaining under the ICA. As a result, Global NAPs petitioned the FCC for an order preempting the Virginia Commission. The FCC denied Global NAPs' petition).

[8] Order 75360, *Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996, No. 8731, 1999 Md. PSC LEXIS 21 at *7 (Md. PSC July 15, 1999).*

party has neither agreed to nor signed it, an amendment previously-approved by the Commission from another agreement. Not only would eliminating these two subsections streamline this rule, but doing so would also bring the rule in better alignment with the FCC's requirements that no longer allow a CLEC to "pick and choose" elements, including amendments, from another carrier's agreement for inclusion in its own agreement. Under the FCC's "all-or-nothing" rule, CLECs have the right to MFN only into entire agreements within a reasonable time. Explaining, the FCC stated:

> . . . we find that the existing pick-and-choose rule fails to promote the meaningful, give-and-take negotiations envisioned by the Act. Because we find that the current pick-and-choose rule is not compelled by section 252(i) and an all-or-nothing approach better achieves statutory goals, we eliminate the pick-and-choose rule and replace it with an all-or-nothing rule. Under the all-or-nothing rule we adopt here, a requesting carrier may only adopt an effective interconnection agreement in its entirety, taking all rates, terms, and conditions of the adopted agreement.[9]

Similarly, allowing one carrier to impose a previously-approved ICA amendment on another in absence of both parties' agreement does not "promote the meaningful, give-and-take negotiations envisioned by the Act."[10] Moreover, it may also provide rights to change an ICA that would not otherwise exist. Parties to an ICA (or any contract) must abide by its terms. Rights to amend a contract typically arise from the contract itself (e.g., "Change of Law" provisions). Where such a right exists and the parties cannot agree to an amendment, the disagreement should be addressed under the terms of the agreement (e.g., dispute resolution) on a case-by-case basis.

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

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[9] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exch. Carriers*, 19 F.C.C. Rcd. 13494, 13501 (2004).
[10] *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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