

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office in
Jefferson City on the 13th day of
December, 2001.

In the Matter of AT&T Communications
of the Southwest, Inc.'s Proposed Tariff
to Establish a Monthly Instate Connection
Fee and Surcharge

)
) **Case No. TT-2002-129**
) Tariff No. 200200125
)

ORDER APPROVING TARIFF

This order approves the proposed tariff sheets filed by AT&T.

Brief Procedural History

On September 4, 2001, the Office of the Public Counsel filed with the Missouri Public Service Commission its motion to suspend and reject the proposed tariff sheets of AT&T Communications of the Southwest, filed on August 14, 2001.

Briefly restated, the motion contained the following major points: Public Counsel noted that it filed the motion under Sections 392.200 and 392.185, RSMo 2000.¹ According to Public Counsel, these statutes provide the statutory basis for the Commission to review and suspend the tariff. (The Commission notes that Public Counsel should have cited Section 392.230(3), under which the Commission has the discretionary authority to suspend the effective date of a tariff.) Public Counsel stated that under Section 392.185, the Commission has broad power to protect consumers even if the telecommunications

¹ References to Sections of the Revised Statutes of Missouri, unless otherwise specified, are to the revision of the year 2000.

provider is a competitive company and is providing a competitive service. According to Public Counsel, the Commission's oversight and authority to suspend is an essential power of the Commission to carry out the legislative purpose of Chapters 386 and 392, RSMo.

On September 6, 2001, the Commission ordered that any party wishing to respond to Public Counsel's motion should do so by September 7, 2001. On September 7, 2001, the Staff of the Commission (among others) filed its response, which described the proposed tariff and recommended its approval. Briefly restated, Staff's pleading contained the following major points:

- (1) The Commission has granted AT&T competitive status as a provider of competitive telecommunications service;
- (2) The Commission does not typically scrutinize the rate structure of competitive long distance service providers beyond compliance with a few limited rate requirements identified in Missouri statutes;
- (3) Customers have the ability to switch service providers;
- (4) Public Counsel has suggested that the Commission did not receive a copy of the notice provided to customers as part of the tariff filing, but, in fact, a copy was included with the tariff filing;
- (5) Staff does not believe the charges are discriminatory; and
- (6) Staff observes that monthly-recurring charges and surcharges are common in the industry, and would suggest that AT&T should not be singled out for special treatment by the Commission or the Public Counsel based on AT&T's tariff filing.

The Commission found that, in order to allow more time to study the effect of the proposed tariff sheets, they should be suspended under Section 392.230(3), and on

September 13, 2001, suspended the tariff until October 15, 2001. On September 27, 2001, the Commission suspended the tariff until November 17, 2001, and also ordered that a question-and-answer session on the record should be held on October 31, 2001. That session was held as scheduled and the parties subsequently filed position papers. On November 16, 2001, the Commission further suspended the tariff until December 22, 2001.

Issue and Decision

Has AT&T complied with the statutory provisions governing the filing of tariffs by a competitive telecommunications company? The Commission answers yes, and will thus approve AT&T's tariff.

Discussion

The filing of a tariff that increases rates or charges of a competitive telecommunications company is governed by Section 392.500(2). The statute requires that a proposed tariff increasing rates or charges is allowed to go into effect only after the proposed tariff has been filed with the Commission and the affected customers are given no less than ten days' notice.

The sufficiency of the record upon which the Commission bases its decision may be established by examining the tariff sheets filed by AT&T. If the Commission issues a decision approving a tariff as filed, it need not have before it evidence meeting the standard of admissibility in a court of law (i.e., more than an unverified tariff sheet). Neither does the filing of a motion to suspend a tariff require the Commission to conduct an evidentiary hearing.

Section 392.500 sets out the procedure where proposed tariffs complying with the law go into effect unless the Commission acts to suspend the rates prior to their effective date. That statute does not impose the requirement of conducting a hearing by the

Commission, although the suspension authorized in Section 392.230(3) gives discretionary power to the Commission to suspend the tariff and have a “full hearing.” The plain wording of these statutes, however, shows that the tariff sheets may themselves constitute an adequate record for review. The mere fact that some party raises a challenge should not change the minimal evidence—the filed tariff sheets—upon which the Commission may base its decision. Similarly, the issuance of a decision from the Commission approving the rates filed, rather than allowing them to go into effect by operation of law, should have no impact on the standard for the minimal record required to implement new rates. So long as they comply with the requirements of the law, tariff sheets filed by a company may be an adequate record for Commission review.

The only exception to this procedure is under Section 392.200 when: (i) a proposed tariff is not just and not reasonable; (ii) customers do not pay the same amount for the same service given to other customers; (iii) undue or unreasonable preference or advantage is given to any customer; (iv) geographic deaveraging of rates occurs; and (v) the company violates its duty to transmit without delay the messages of other telephone companies. None of the exceptions apply here.

Findings of Fact

Because AT&T's proposed rate increase of \$1.95 applies only to a competitive service, consumers are free to obtain service from an alternative provider if they object to the rate.

AT&T's proposed tariff sheets exempt low-income and low-volume users of telecommunications, which, if “discriminatory,” is “reasonable discrimination” as a matter of public policy.

AT&T's direct mail notice was clear that this charge would apply to any AT&T customer (with the noted exceptions) who had more than \$1.00 in charges billable by AT&T. The notice also informed each customer of a toll-free number and a website where customers could learn more about the charge.

Conclusions of Law

The Commission has reviewed AT&T's tariff submission, the motion to suspend, and Staff's recommendation, and finds that the motion for suspension of the proposed tariff should be denied, and, since there are no exceptions under Section 392.200, the tariff sheets should be approved.

IT IS THEREFORE ORDERED:

1. That the motion filed by the Office of the Public Counsel on September 4, 2001, to suspend the tariff filed by AT&T Communications of the Southwest, Inc., on August 14, 2001, is denied.
2. That the tariff filed by AT&T Communications of the Southwest, Inc., on August 14, 2001, is approved. The approved tariff sheets are:

P.S.C. Mo. No. 15

Section 1, 7th Revised Sheet 7; Replacing Revised Sheet 7

and

Section 1, 7th Revised Sheet 8; Replacing Revised Sheet 8

3. That this order will become effective on December 22, 2001.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., Murray and Forbis, CC., concur
Gaw, C., dissents
Lumpe, C., absent

Hopkins, Senior Regulatory Law Judge