

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 26th day  
of October, 2006.

In the Matter of the Investigation of the State of	)	
Competition in the Exchanges of Southwestern Bell	)	<b><u>Case No. TO-2001-467</u></b>
Telephone Company.	)	

**ORDER DENYING MOTION TO DISMISS AND DIRECTING FILING OF  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Issue Date: October 26, 2006

Effective Date: October 26, 2006

The Commission has had pending before it for some time the Motion to Dismiss of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri. This case is before the Commission on remand from the Court of Appeals following that Court's determination that the Commission misinterpreted the law when it declared certain services of AT&T which had been transitionally competitive to be competitive by operation of law.

Since the Commission's decision was issued, AT&T operated under the assumption that the services were competitive and therefore filed tariffs increasing the rates for those services as if they had been competitive services. Also, since the original case was decided by the Commission, the statute regarding competitive services has been altered by the legislature<sup>1</sup> and the services of AT&T, with the exception of exchange

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<sup>1</sup> Section 392.245, RSMo, as amended by S.B. 237, effective August 28, 2005.

access, have been declared to be competitive in many of its exchanges.<sup>2</sup> The issue before the Commission now is whether there is sufficient evidence in the record that the services which the Commission incorrectly determined as competitive by operation of law are competitive.

AT&T filed a motion to dismiss this case, stating that because of the passage of S.B. 237 and the issuance of the decisions by the Commission approving competitive classification for business and residential services for the vast majority of AT&T's access lines, this case should be dismissed. The intervenors in this case, NuVox Communications of Missouri, Inc., XO Communications Services, Inc., MCImetro Access Transmission Services, LLC, and MCI Communications Services, Inc., and the Office of the Public Counsel object to the motion to dismiss on the grounds that not all of the services were declared competitive in all of the exchanges. The intervenors and Public Counsel argue that not only should those services be determined to not be competitive, but AT&T should also have to recalculate its rates as if they had never been determined to be competitive.

The Commission determines that AT&T's motion to dismiss should be denied. The Court has directed the Commission to make a determination based on the facts as to whether AT&T's services that were previously determined to be transitionally competitive are indeed competitive. Even AT&T states that the services have since only "substantially" been declared competitive. Thus, the Commission must comply with the mandate of the Court and determine the competitive status of the previously determined transitionally competitive services which have not yet been designated as competitive.

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<sup>2</sup> Case No. TO-2006-0093 and Case No. TO-2006-0102.

Because the parties argue that sufficient evidence already exists in the record for the Commission to make this determination, the Commission will direct the parties to provide it with proposed findings of fact and conclusions of law which cite to that evidence. The proposed findings shall also set out which services in which exchanges have now been designated as competitive under the new law, and which ones remain to be determined. In addition, the parties shall brief the Commission on the issue of which law the Commission must apply, whether any rates of AT&T should be adjusted, and the appropriate process for making that adjustment.

**IT IS ORDERED THAT:**

1. The motion to dismiss of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, is denied.
2. The parties shall file proposed findings of fact and conclusions of law no later than November 27, 2006.
3. The parties shall file briefs as set out above no later than November 27, 2006.
4. This order shall become effective on October 26, 2006.

( S E A L )

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge