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March 4, 2005

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FILED

MAR 04 2005

Missouri Public
Service Commission

Re: Case No. TT-2002-0129

Dear Judge Roberts:

Please find enclosed for filing in the above-referenced matter the original and five copies of an Entry of Appearance along with AT&T Communications of the Southwest, Inc.'s Proposed Remand Schedule.

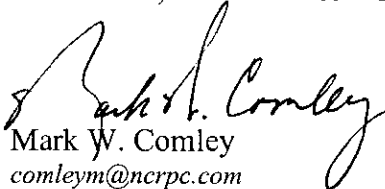
Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab
Enclosure

cc: Office of Public Counsel
General Counsel's Office
Kevin Zarling
Carl Lumley
Kenneth A. Schiffman
Brett Leopold

FILED

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION MAR 04 2005

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

)
) **Missouri Public**
Service Commission
) Case No. TT-2002-129
)

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S
PROPOSED REMAND SCHEDULE**

AT&T Communications of the Southwest, Inc. ("AT&T") respectfully submits the following proposal for the procedure and schedule to address the remand of the Missouri Court of Appeals:¹

1. By way of context, the subject AT&T long distance tariff (and related charge imposed therein) has been in effect for slightly over 2 years. The long distance market in Missouri has been considered fully competitive for well over a decade, and has become even more competitive since AT&T's tariff went into effect and SBC established its presence in the long distance market. There is no dispute that end user customers have been notified of the subject charge. The ability of a consumer to "vote with his feet" in response to any long distance charge a consumer finds objectionable is well established. AT&T continues to experience extraordinarily high intrastate access costs as it continues to serve its existing Missouri customer base, and this tariffed charge continues to help AT&T recover its access costs, as the charge did back in 2002. Moreover, years have gone by with this charge on customer's bills, and AT&T is no longer marketing its consumer long distance service (neither in Missouri nor anywhere else). Against this backdrop, the Commission must decide whether to expend resources to reopen the record and take "additional" evidence that is not likely to differ much, if at all, from what is already in the record, or whether to simply craft a new order with additional findings of fact and

¹ *State ex rel. Coffman v. Pub. Serv. Comm'n*, 150 S.W. 3d 92 (Mo.App.2004).

conclusions of law in response to the clear guidance from the Court of Appeals. The Court of Appeals gave the Commission the option of proceeding in either fashion,² however, with no suggestion that the existing record is inadequate nor that the Commission's original decision on the merits is in error. These tariffs of AT&T, MCI, and Sprint are in effect, Public Counsel's motions to suspend have been appropriately rejected on multiple occasions, and AT&T believes that it is time to conclude this case and this dispute, and to once and for all simply let the indisputably competitive long distance marketplace dictate the outcome.

2. Accordingly, AT&T proposes that the Commission issue a revised decision with new findings of fact and conclusions of law addressing the points in the Court's decision.³ AT&T proposes that the parties file proposed findings of fact and conclusions of law based on the existing record and the current tariffs. The Commission should take judicial notice of the existing tariffs (AT&T's tariff has been slightly revised since 2002; the charge was increased). The most current versions of the various companies' tariffs are what should be the subject of review at this time, even though the material aspects of the original tariffs, as complained of by Public Counsel, have not changed. Furthermore, in its original order approving the AT&T tariff the Commission noted that under RS Mo. §§ 392.500 and 392.230.3 the tariff sheets themselves "may be an adequate record for review." This statement by the Commission was noted by the Court of Appeals⁴ and, although not part of the Court's holding, the Court expressed no disapproval of the Commission's statement interpreting the procedural requirements for reviewing competitive long distance tariffs. The only fault the Court found was with the thoroughness of Commission's final order.

3. AT&T proposes that the parties file proposed findings of fact and conclusions of

² *Id.*, at 102.

³ *Id.*

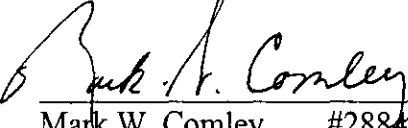
⁴ *Id.*, at 96.

law 45 days after the issuance of an order approving of this process.⁵ (Counsel for AT&T has a conflict from June 6 – 17 when he will be out of the country, and so would request that any filing deadline not occur within, nor just after, that timeframe.) The Commission may then craft a new order that once again rejects the Public Counsel's opposition.

WHEREFORE, AT&T respectfully requests that the Commission adopt the procedure and schedule proposed above, and grant AT&T any further relief to which it may be entitled.

Respectfully submitted,

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SOUTHWEST, INC.

⁵ AT&T does not believe that replies to findings and conclusions are absolutely necessary, and assumes that such replies would take the form of objections; however, AT&T does not oppose including replies in the schedule. Such replies should be filed 30 days after findings and conclusions are filed.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 4th day of March, 2005, to General Counsel's Office at gencounsel@psc.state.mo.us; Office of Public Counsel at opcservice@ded.state.mo.us; clumley@lawfirmemail.com; Kenneth A. Schiffman at Kenneth.schiffman@mail.sprint.com. and Brett Leopold, Sprint, 6450 Sprint Parkway, MS: KSOPHN0212-2A353, Overland Park, KS 66251.

A handwritten signature in black ink, appearing to read "Brett Leopold", is written over a horizontal line.