

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Tariff Filing by)	File No.	TT-2012-
SBC Long Distance, LLC d/b/a)	Tariff No.	JX-2012-0559
AT&T Long Distance)		JX-2012-0560

STAFF MOTION TO SUSPEND TARIFFS

COMES NOW the Staff of the Missouri Public Service Commission and for its Motion states:

1. Section 392.461. RSMo provides:

Notwithstanding other provisions of this chapter or chapter 386, a telecommunications company may, upon written notice to the commission, elect to be exempt from any requirement to file or maintain with the commission any tariff or schedule of rates, rentals, charges, privileges, facilities, rules, regulations, or forms of contract for telecommunications services offered or provided to residential or business retail end user customers and instead shall publish generally available retail prices for those services available to the public by posting such prices on a publicly accessible website.

2. Although this new provision of law, which went into effect on August 28, 2011, allows telecommunications companies to charge rates and apply terms and conditions without having them in a tariff, there is no language that relieves the companies of their obligation to offer safe and adequate service on a non-discriminatory basis at just and reasonable rates, terms and conditions.

Section 392.200.1 provides that:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

3. On March 30, SBC Long Distance d/b/a AT&T Long Distance (“AT&T” or “the Company”) made a filing in which it sought to “detariff” the service offerings in two of its existing tariffs; on and after May 1, 2012, those retail services be offered through the Company’s web site. The filing resulted in the partial deletion of the two tariffs.

4. As more fully discussed in the attached Staff Memorandum, the Staff opposes the filings. The tariff filings remove the rates and some terms, but retain provisions concerning the obligations of customers and limitations on the Company’s liability. The Staff questions whether it should permit the continuation of those limitations, in light of the Commission’s present examination of such provisions in File No. AO-2012-0173. Moreover, under the filed-rate doctrine, if the web site provisions (or negotiated contract provisions) were different from the tariff provisions, the tariff provisions would always prevail. Finally, the tariffs retain specific language pertaining to local taxes. Although the Staff’s position is that detariffing should occur by service (so that when the rates for the service are removed, then all other provisions pertaining to that service should be removed as well), the Company desires to keep these provisions in its tariffs. In recent and pending litigation concerning such a pass-through, a court found that the Company could pass through those taxes and fees because the tariff specifically provided for it. The Company is concerned that removal of those provisions would adversely affect current and pending litigation. However, as the Staff’s interpretation requires that detariffing must cover all the rates, terms and conditions of a given service, the continued inclusion of this provision would need to be granted a variance by the Commission. For all these reasons, the Staff recommends that the two pending tariff revisions be suspended for further review.

WHEREFORE, the Staff requests that the Commission suspend for further review the six proposed tariff revisions, denominated JX-2012-0559 and JX-2012-0560, for further examination of whether the provisions thereof are just and reasonable.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of April, 2012.



MEMORANDUM

To: Missouri Public Service Commission Official Case File
SBC Long Distance, LLC d/b/a AT&T Long Distance

From: William Voight
Supervisor, Telecommunications Rates and Tariffs

Subject: Staff's Recommendation to Suspend the Effective Dates of the following
Two (2) AT&T Long Distance Tariff Filings

JX-2012-0559 SBC Long Distance, LLC d/b/a AT&T Long Distance
JX-2012-0560 SBC Long Distance, LLC d/b/a AT&T Long Distance

Date: April 12, 2012

Executive Summary: This Memorandum discusses two tariff filings of AT&T Long Distance and explains why the Staff recommends the Commission suspend those filings for further consideration. The tariff sheets have a proposed effective date of May 1, 2012. Fundamentally, the Staff has concerns that the AT&T Long Distance tariff proposals may contain liability and indemnification provisions currently being examined by the Commission in Case No. AO-2012-0173: RE: *In the Matter of an Investigation Into Tariff Provisions Governing Liabilities in Utility Operations*.

Background: Section 392.461 RSMo permits telecommunications companies to submit a letter to the Missouri Public Service Commission (Commission) electing to become exempt from tariff filing requirements for retail telecommunications services. On March 30, 2012 SBC Long Distance, LLC d/b/a AT&T Long Distance submitted two letters electing to "detariff" two such tariffs. Those two tariffs and associated tracking numbers are as follows:

JX-2012-0559	Tariff No. 3	Long Distance Service
JX-2012-0560	Tariff No. 4	Intrastate Data Service

Although AT&T Long Distance purports an election to be exempt from tariff filing requirements, the Company's notification letters to the Commission acknowledge that the tariffs are not being totally eliminated. As stated by the Company:

This Notice of Election and Withdrawal shall become effective May 1, 2012. The Company will retain those sections of the Tariff referencing special taxes and fees, which are enclosed herein, and will make available its rates, charges, terms, and conditions for its retail telecommunications services on its website at <http://www.att.com/servicepublications>

Rather than a complete elimination of the tariffs, AT&T Long Distance's proposal maintains certain liability limitations that Staff suggests would be more appropriately set forth in AT&T Long Distance's signed customer contracts.

In particular, AT&T Long Distance asks the Commission to approve the following tariff language:

The Customer will be responsible for the payment of all charges for Services provided under this Tariff and for the payment of all excise, sales, use, gross receipts or other taxes that may be levied by a federal, state, or local governing body or bodies applicable to the Service(s) furnished under this Tariff unless specified otherwise herein. Also see Section 2.17 of this Tariff for additional information regarding the Customer's obligations concerning taxes (Section 2.5.8; Tariffs No. 3 & 4).

The Customer is responsible for the payment of all charges for Services(s) provided under this Tariff and for the payment of all assessments, duties, fees, taxes, or similar liabilities whether charged to or against the Company or Customer. This includes but is not limited to amounts the Company is required by governmental, quasi-governmental, or other entities to collect and/or to pay to designated entities. The Company may adjust its rates and charges or impose additional rates and charges on its Customer in order to recover these amounts. Unless specified otherwise herein, if an entity other than the Company (e.g., another carrier or supplier) imposes charges on the Company in connection with a Customer's Service, that entity's charges may be passed through to the Customer. The Customer is responsible for the payment of all such charges (Section 2.5.15; Tariff No. 3 & Section 2.15.12; Tariff No. 4).

Customer will be responsible for the payment for all Services provided by the Company and for the payment of all excise, sales, use, gross receipts, or other taxes and surcharges. Federal excise tax, and state and local sales, use, and similar taxes and surcharges shall be billed separately from charges for Services. The Company may also impose surcharges on Customer to recover amounts it is required by governmental or quasi-governmental authorities to collect from, or to pay to, others in support of statutory or regulatory programs (e.g. universal service funds). The Company will not provide advance notice of changes to taxes and surcharges, except as required by law (Section 2.17.1 Tariff No.4).

The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided terminal equipment with Company-designated facilities. The Customer will ensure that the signals emitted into the long distance network do not damage Company-Provided equipment, injure personnel, or degrade Service to other Customers or other users of the long

distance network. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. The Customer is responsible for taking all necessary legal steps for interconnecting the Customer-provided terminal equipment with Local Access. In addition, the Customer shall comply with applicable Local Access Provider's signal power limitations and requirements (Section 2.5.7; Tariff No. 4).

Staff's preference would be for AT&T Long Distance to offer its services either over the Internet, or to offer them via a tariff. The Staff does not support AT&T Long Distance's attempt to use both the Internet and a Commission-approved tariff to govern terms and conditions of service. Staff suggests a better approach would be for AT&T Long Distance to set forth all rates, terms and conditions in customer contracts and avoid the use of tariffs altogether. Staff further suggests such an approach is made all the more relevant in light of the sophisticated nature of customers subscribing to intrastate data services formally found in Tariff No.4.

The Staff has examined AT&T Long Distance's proposals and recommends they be suspended for further consideration. Staff has concerns that the tariff proposals may contain liability and indemnification provisions currently being examined by the Commission in Case No. AO-2012-0173: RE: *In the Matter of an Investigation Into Tariff Provisions Governing Liabilities in Utility Operations*.

The Staff is aware of other detariffing filings by AT&T Communications of the Southwest (AT&T/SW) and AT&T Missouri that are currently pending before the Commission, and for which the Staff is filing other recommendations to suspend. Lastly, Staff is aware of other telecommunications companies who have elected to detariff; for example, MCI Metro d/b/a Verizon Access Transmission Services has detariffed its retail local and long distance services in File No.'s JL-2012-0224 and JX-2012-0223. However, unlike AT&T Long Distance who proposes to only partially detariff, Verizon's proposals called for detariffing of all rates, terms, and conditions.

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OF THE STATE OF MISSOURI**

SBC Long Distance, LLC d/b/a AT&T
Long Distance

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Tracking No. JX-2012-0559
JX-2012-0560

AFFIDAVIT OF WILLIAM M. VOIGHT

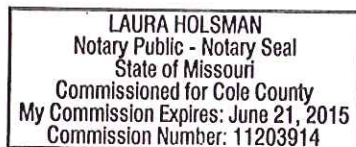
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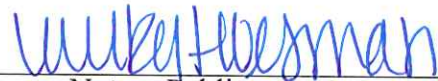
William M. Voight, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



William M. Voight

Subscribed and sworn to before me this 12th day of April, 2012.





Notary Public