

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

In the Matter of Southwestern Bell Telephone,)
L.P., d/b/a AT&T Missouri's Proposed Tariff)
to Extend a Promotional Offer for)
Metropolitan Calling Area Service for)
Residential Customers.)

Case No. TO-2006-0334
Tracking No. JI-2006-0641

**STAFF'S RESPONSE IN OPPOSITION TO
AT&T MISSOURI'S APPLICATION FOR REHEARING AND
MOTION FOR EXPEDITED APPROVAL OF TARIFF**

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

1. At 3:44 p.m. on February 22, 2006, Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, filed 1st Revised Sheet 1.0344 to its Local Exchange Tariff, P.S.C. Mo. – No. 24. The revised sheet proposed an effective date of February 23, 2006. The tariff was assigned Tracking No. JI-2006-0641. The tariff filing is attached hereto as Appendix A.

2. The revised sheet extends from March 7, 2006, to September 8, 2006, the end of the period for customers to subscribe to an existing promotion.

3. Section 392.200.2 RSMo Supp. 2005 provides: "Promotional programs for telecommunications services may be offered by telecommunications companies for periods of time so long as the offer is otherwise consistent with the provisions of this chapter and approved by the commission."

4. Section 392.220.2 RSMo 2000 requires thirty days' notice to the Commission on tariff filings, unless the Commission otherwise orders.

5. The Commission has shortened the notice period for promotions. Commission regulation 4 CSR 240-3.545 (19) provides:

(19) Promotions are those service offerings that provide a reduction or waiver of a tariffed rate for a limited period of time. Promotions are allowed to go into effect after seven (7) days prior notice to the commission for competitive services and after ten (10) days prior notice to the commission for noncompetitive services. Promotions must be offered under tariff, and prior notification to the commission via a tariff filing is required. Promotions must have established start and end dates and must be offered in a nondiscriminatory manner.

6. AT&T Missouri's promotion is for competitive services.

7. Because AT&T Missouri's tariff filing did not provide seven days prior notice to the Commission, the Data Center, at the request of the Telecommunications Department, rejected the tariff filing on February 22, 2006.

8. Instead of simply complying with the notice requirement, AT&T Missouri filed its Application For Rehearing And Motion For Expedited Approval of Tariff.

9. AT&T Missouri claims that immediate action is required by the Commission to review the rejection of the tariff filing. That claim is patently false. AT&T Missouri could file a revised tariff sheet that complies with Commission regulation 4 CSR 240-3.545(19) by providing seven days prior notice to the Commission, and could do so without so much as a one-day interruption in the period during which this promotion is available for subscription.

10. Staff counsel has been unable to locate a case on point to address the efficacy of a tariff filing that does not provide the Commission with the mandatory minimum notice, and will look to the filed rate doctrine for guidance.

11. The filed tariff, or filed rate, doctrine governs a utility's relationship with its customers. *Bauer v. Southwestern Bell Telephone Company*, 958 S.W. 2d 568, 570 (Mo. App. 1997). The filed tariff doctrine (more commonly known as the filed rate doctrine) forbids a regulated entity from charging rates for its services other than those "properly filed" with the appropriate [federal] regulatory authority. *Southwestern Bell Telephone Company v. Allnet*

Communications Services, Inc., 789 F. Supp. 302, 305 (E.D. Mo. 1992). The purpose of the filed rate doctrine is to: 1) preserve the regulating agency's authority to determine the reasonableness of the rates; and 2) insure that the regulated entities charge only those rates that the agency has approved or "been made aware of as the law may require." *Id.* The Staff suggests that as a corollary to the filed rate doctrine, a tariff sheet that was "not properly filed" and that the agency has "not been made aware of as the law may require" does not become part of the filed tariff and does not govern a utility's relationship with its customers; such a tariff filing is a nullity.

12. AT&T Missouri claims that this promotion is a rate decrease allowed on one day's notice by Section 392.500 (1) RSMo Supp. 2005. AT&T Missouri misreads this statute.

13. Section 392.500 (1) provides:

Except as provided in subsections 2 to 5 of section 392.200, proposed changes in rates or charges, or any classification or tariff provisions affecting rates or charges, for any competitive telecommunications service, shall be treated pursuant to this section as follows:

(1) Any proposed decrease in rates or charges, or proposed change in any classification or tariff resulting in a decrease in rates or charges, for any competitive telecommunications service shall be permitted only upon the filing of the proposed rate, charge, classification or tariff after one day's notice to the commission[.]

14. AT&T Missouri's filing is neither a proposed decrease in rates or charges nor a proposed change in any classification or tariff resulting in a decrease in rates or charges. A customer who is subscribed to AT&T Missouri's Optional MCA service, and who does nothing, will not see a rate decrease. AT&T Missouri's filing is, as the filing itself announces, a promotion. A customer must agree to new terms and conditions - - subscription to both MCA and a uSelect package for a period of 12 months -- to receive the promotional monthly rate of \$5.00 for MCA service.

15. At the February 7, 2006 Agenda, the Commission discussed a Staff suggestion to amend 4 CSR 240-3.545 to allow certain tariff filings on shorter notice periods than are currently allowed. AT&T Missouri, however, cites to no authority - - because there is none - - for its argument that the Commission was required to issue an order when it decided through “discussions at an agenda meeting” not to pursue the Staff’s informal suggestion to begin the process to amend 4 CSR 240-3.545 (19) to shorten the notice period for promotions.

16. Because AT&T Missouri’s tariff filing did not provide the required seven days notice to the Commission, it was, on its face, a nullity. Accordingly, the Data Center properly rejected the tariff filing.

WHEREFORE, the Staff requests the Commission to deny AT&T Missouri’s Application For Rehearing And Motion For Expedited Approval Of Tariff.

Respectfully submitted,

/s/ William K. Haas

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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 24th day of February 2006.

/s/ William K. Haas



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February 22, 2006

Secretary of the Commission
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102-0360

Dear Secretary of the Commission:

Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, proposes to revise P.S.C. Mo.-No. 24, Local Exchange Tariff, Sheet 1.0344.

With this tariff filing, AT&T Missouri proposes to extend a promotional offer for the Metropolitan Calling Area (MCA) service for residential customers. The promotion was scheduled to end March 7, 2006. This tariff revision proposes that the promotion be effective through September 7, 2006.

With this promotion, eligible customers will receive MCA for \$5 a month for up to 36 months. Eligible customers are existing MCA subscribers who currently do not subscribe to an AT&T Missouri uSelectSM package and elect to do so, and new MCA subscribers who subscribe to an AT&T Missouri uSelect package. Additionally, customers purchasing certain qualifying services outlined in footnote 2 on Sheets 41 and 41.01 who identify themselves as receiving a competitive offer and are considering leaving AT&T Missouri to receive service from another carrier are also eligible.

The proposed tariff changes are reflected on the attached tariff sheets with issued and effective dates of February 22, 2006, and February 23, 2006 respectively.

Please refer any questions on this matter to Jason Olson on 314-235-6922.

Very truly yours,

/s/ Jason Olson

I certify that a copy of the foregoing, including attachments, is being sent via e-mail to the Office of Public Counsel at opcservice@ded.mo.gov this 22nd day of February 2006.

Jason Olson

Attachment

No Supplement to this tariff will be issued except for the purpose of canceling this tariff.

Local Exchange Tariff
1st Revised Sheet 1.0344
Replacing Original Sheet 1.0344

LOCAL EXCHANGE

1.1 GENERAL (cont'd)

1.1.6 Promotions (cont'd)

(CT) A promotional period will be established from December 7, 2005, through September 8, 2006 for eligible residence access line customers who subscribe to Optional Metropolitan Calling Area (MCA) service. Eligible residence customers will receive a discounted monthly rate for their MCA service of \$5.00.

Eligible residence customers are defined as follows:

- Existing optional MCA subscribers without a uSelect feature package or new optional MCA subscribers, who during the promotional period choose to add one of the uSelect feature packages and who agree to subscribe to both MCA and a uSelect package for a period of 12 months.
- Existing optional MCA subscribers who are currently purchasing qualifying services as defined on Sheets 41 and 41.01, footnote (2) of this Tariff and are currently paying the discounted \$9.95 monthly rate for MCA who identify themselves as having received a competitive local service offer and are considering changing their local service to another carrier within the SBC Missouri operating territory. These customers must also agree to subscribe to both MCA and a uSelect package for a period of 12 months.

The promotional monthly rate of \$5.00 will remain in effect as long as the customer subscribes to all qualifying services up to a maximum benefit period of 36 months. After 36 months, the Optional MCA rate will revert to the \$9.95 rate.

Issued: February 22, 2006

Effective: February 23, 2006

By CINDY BRINKLEY, President-Missouri
Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri
St. Louis, Missouri