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January 21, 2010

Mr. Steven C. Reed  
Secretary of the Commission  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

Re: Proposed *Ex Parte* Rules  
Commission Case No. AX-2010-0128

Dear Mr. Reed:

AT&T Missouri<sup>1</sup> appreciates the opportunity to offer comments to the Missouri Public Service Commission ("Commission") on its Proposed *Ex Parte* Rules.

While AT&T Missouri believes that the *Ex Parte* Rules set out in Section 386.210 RSMo (2007 C. Supp), which were updated in 2003 by the Legislature, should be sufficient to govern communications between public utilities and the Commission, AT&T Missouri does not oppose the adoption of specific rules to provide further guidance to parties that practice before the Commission.

The proposed rules clearly reflect a considerable amount of hard work and diligence to ensure that the proposed rules hew to the requirements prescribed by the Legislature in Section 386.210. AT&T Missouri, however, questions whether the proposed rules eliminate a certain type of Commission contact specifically permitted by statute.

Under Section 386.210.3, the Legislature has deemed it appropriate to allow certain types of communications between the Commission and "members of the public" or "any public utility" concerning substantive or procedural matters of a case in which no evidentiary hearing has been scheduled, provided certain safeguards are met. Consistent with the statute, the proposed rule allows such communications when made during a public agenda meeting or a forum where the affected utility, OPC and other parties are represented. See proposed Rule 4.020(4)(E) and (F). But the Legislature also deemed it appropriate to allow such communications "outside such agenda meeting or forum." Specifically Section 386.210.3, in pertinent part, states:

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<sup>1</sup> Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as "AT&T Missouri."

The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of the public, any public utility . . . on any matter relating to the performance of its duties.

\* \* \*

3. Such communications may also address substantive or procedural matters that are the subject of a pending filing or case in which no evidentiary hearing has been scheduled, provided that the communication:

\* \* \*

(3) If made outside such agenda meeting or forum, is subsequently disclosed to the public utility, the office of the public counsel, and any other party to the case in accordance with the following procedure:

(a) If the communication is written, the person or party making the communication shall no later than the next business day following the communication file a copy of the written communication in the official case file of the pending filing or case and serve it upon all parties of record;

(b) If the communication is oral, the party making the oral communication shall no later than the next business day following the communication file a memorandum in the official case file of the pending case disclosing the communication and serve such memorandum on all parties of record. The memorandum must contain a summary of the substance of the communication and not merely a listing of the subjects covered. (emphasis added)

The proposed rules make no provision for such a Commission contact. AT&T Missouri believes that the proposed rules must conform to Section 386.210 and make provision for each of the enumerated types of communications, under a permit but disclose method, as envisioned by the Legislature.

AT&T Missouri also believes the proposed rules are unclear on who has the duty to provide the required notice during the course of a contested case of an extra record communication concerning a matter unrelated to the case when the communication is initiated by a Commissioner, the presiding judge, or advisory staff (e.g., questions about an interruption or loss of service or damage to a utility's facilities occurring during a tariff proceeding). The rules are clear that when such communication is initiated by a utility company employee, the utility, as the "person who initiates an extra-record communication," must file the disclosure in the contested case file. But in situations where the utility does not initiate the communication, it is unclear under the rules who has the duty to make the anticipated notice filing.

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We appreciate your bringing these comments to the Commission's attention and their taking them into consideration during their deliberations.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Leo M.", is positioned below the closing phrase.

Leo J. Bub

cc: MoPSC General Counsel  
Public Counsel