

In the Matter of a New Proposed Rule 4 CSR 240-33.045 ) **Case No. TX-2005-0258**  
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<sup>2</sup> The FCC chose to issue broad principles rather than detailed rules because it recognized that “carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers.” 1999 Order, ¶15.

about, or contest charges, on the bill.”<sup>3</sup> The FCC, on March 18, 2005, in CC Docket No. 98-170, released its Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking (“2005 Order”). This order reasserted that “the truth-in-billing rules require that charges contained on telephone bills be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered.”<sup>4</sup> In addition, it denied “NASUCA’s request for a Declaratory Ruling prohibiting telecommunications carriers from imposing any line items or charges that have not been authorized or mandated by the government.”<sup>5</sup> The FCC found that there was no basis to conclude that if carriers chose to recover cost in the form of line item charges, that such practice is unreasonable. “The provision of accurate and non-misleading information on a telephone bill may be useful information to the consumer in better understanding the charges associated with their service and making informed cost comparisons between carriers.”<sup>6</sup>

The FCC’s 2005 Order also seeks comments from interested parties on a host of issues including “billing of government mandated and non-mandated charges,”<sup>7</sup> how to “define the distinction between mandated and non-mandated charges for truth-in-billing purposes,”<sup>8</sup> whether a separate section should be placed on the bill for government mandated charges,<sup>9</sup> “preemption of inconsistent State regulation,”<sup>10</sup> and “point of sale

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<sup>3</sup> 1999 Order, ¶5.

<sup>4</sup> 2005 Order, ¶23.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 2005 Order ¶38

<sup>8</sup> *Id.*, ¶40.

<sup>9</sup> *Id.*, ¶43

<sup>10</sup> *Id.*, ¶49

disclosure.”<sup>11</sup> All of these issues are touched upon in the Missouri Commission’s current proposed rule.

The stated purpose of 4 CSR 240-33.045 is “to clarify items that may be separately identified on customers bills, provide guidance for labeling such items and require clear disclosure to customers of the total anticipated service charges for new services for which they contract.” AT&T would urge the Commission to not move forward on this rulemaking but instead to participate in the current FCC rulemaking on truth-in-billing practices.

The proposed Missouri rule, as currently drafted, goes way beyond the stated intent of the Commission in its August 16, 2004 Press Release where it stated that the Commission intended to “move forward in drafting a proposed rulemaking in Missouri that would outline the requirements for applying monthly charges and taxes for **in-state** telecommunications services.” (emphasis added) The current proposed rule is not limited to “in-state” telecommunications services. It is written much broader and includes both in-state and out-of-state telecommunications services.

In addition to the concern that this rule reaches beyond the Commission’s jurisdiction, AT&T is also concerned that the Commission is attempting to invalidate currently effective tariffs by rule. Proposed rule 4 CSR 240-33.045(4) states “the presence of a charge in a currently effective tariff is not evidence, in and of itself, that the charge is authorized or mandated by the Commission.” If a tariff is effective in the state of Missouri it was either approved by the Commission or allowed to go into effect by operation of law – either way the tariff is effective and is authorized. The Commission can not and should not attempt to invalidate a currently effective tariff by rule. If the

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<sup>11</sup> *Id.*, ¶55

Commission has concerns over a currently effective tariff, then the Commission should file a complaint against the company whose tariff is of concern and proceed to give each party an opportunity to be heard on this issue.

Of equal concern to AT&T is proposed rule 4 CSR 240-33.045(5) which states “based on a complaint, the Commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the Commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other companies.” The Commission may not order a change or modification to a tariff based on a complaint, only after notice and hearing, may the Commission determine an existing tariff is unlawful. The Commission may not adopt a rule that takes away the judicial rights of any party. This rule purports to do just that – to take away a parties ability to defend itself against a complaint.

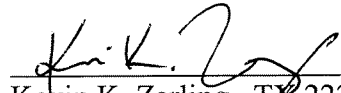
The last sentence of proposed rule 4 CSR 240-33.045(5) is arbitrary and capricious. AT&T admits that the Commission has been given the authority to review tariffs for lawfulness, however if the Commission approves a tariff for one company then a similar tariffs for another company should also be approved unless the Commission can demonstrate why such a tariff is not lawful. The Commission may not by rule give itself broader authority than provided under current Missouri statutes.

### **CONCLUSION**

AT&T is opposed to the current draft rule in this proceeding. This rule reaches beyond the Commission’s jurisdiction, attempts to invalidate a currently effective tariff by rule, attempts to modify existing tariffs without allowing a party the right to be heard and attempts to allow the Commission to be arbitrary and capricious when reviewing

tariff filings. These rules, if adopted will harm Missouri consumers and cause confusion. AT&T recommends that the Commission not adopt the proposed rules and that instead the Commission turn its attention to the current FCC rulemaking on truth-in-billing and participate fully in that proceeding. If, after the FCC adopts rules in its truth-in-billing rulemaking and there are still problems or concerns that need to be dealt with in Missouri, then would be the time for the Commission to revisit any issues and adopt a Missouri specific rule on line items.

Respectfully Submitted,



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