

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

In the Matter of an Investigation of Voice)
Over Internet Protocol and Virtual NXX)
Telephony in the State of Missouri)

Case No. TO-2004-0172

**RESPONSE OF
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.
IN OPPOSITON TO STAFF'S MOTION TO OPEN CASE**

COMES NOW, AT&T Communications of the Southwest, Inc. and files this response to Staff's Motion to Open Case. AT&T is opposed to Staff's Motion because many of the issues raised by Staff have already been decided by the Commission in other dockets or are currently pending before the FCC and various courts across the country. In addition, Staff's proposal suffers from procedural infirmities as it contemplates a full contested case, including an evidentiary hearing and cross-examination, while not seeking any Commission decision on any issue. AT&T believes that opening such a case at this time to address these issues would be largely an academic exercise with no defined outcome and be an inefficient use of resources.

1. AT&T is a competitive local and interexchange telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware, authorized to do business in the State of Missouri as a foreign corporation. AT&T's principal Missouri offices are located at 101 W. McCarty, Ste. 216, Jefferson City, MO 65101. AT&T has been granted authority to provide local exchange service and basic local exchange service in portions of Missouri, as well as intrastate, interexchange telecommunications services in Missouri under authority granted and tariffs

approved by the Commission. AT&T is also an authorized provider of interstate interexchange telecommunications services under the jurisdiction of the Federal Communications Commission.

2. All correspondence, pleadings, orders, decision and communications regarding this proceeding should be sent to:

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3. Staff's Motion to Open Case seeks to open a generic investigation to address two primary issues; Virtual NXX service and Voice over IP (VoIP) service. Staff's Motion does not cite any specific reason to open an investigation into Virtual NXX service. Staff's Motion does suggest that an investigation into VoIP is appropriate because the FCC is expected to act and other states have begun looking at this issue. Additionally, Staff's Motion cites to a pending arbitration seeking resolution of certain issues concerning ISP-bound traffic.

4. Staff defines Virtual NXX service as "a central office code that corresponds with one geographic area but is assigned to a customer located in a different geographic area."¹ Virtual NXX service or Virtual Foreign Exchange Service ("VFX") is generally provided by local exchange carriers and is a service that competes with traditional Foreign Exchange (FX) service historically

¹ *Notice of Proposed Rulemaking In the Matter of Developing a Unified Inter-carrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, fn 188, released April 27, 2001.

offered by incumbent local exchange carriers.

5. AT&T believes there is no need to examine issues surrounding VNXX service as many of the questions posed in Staff's motion have already been addressed by the Commission. For example, the Interconnection Agreement between AT&T and SBC Missouri, Inc. contains provisions that address FX traffic, including VFX traffic. That interconnection agreement, which resulted from arbitration between AT&T, TCG St. Louis, Inc. and TCG Kansas City, Inc. and SBC Missouri, Inc., was approved by the Commission on September 13, 2001.²

6. In addition to previously addressing carrier-to-carrier issues, companies are currently offering FX service to Missouri customers in tariffs approved by the Commission. Staff's Motion implicitly acknowledges this in posing the question of "What is the potential financial impact of allowing VNXX arrangements to continue unchanged?" While Staff suggests the Commission hear testimony on this question, Staff cites no reason that would warrant an investigation into a service that is currently being offered to retail customers pursuant to approved tariffs. Staff offers no basis to suggest that the Commission acted improperly or unreasonably in approving those tariffs.

7. However, to the extent the Commission wishes to further examine issues surrounding VNXX service, AT&T believes the investigation should be extended to look at issues surrounding all FX-type services. It would be inappropriate, incomplete and discriminatory to VNXX and not conduct a similar review of the other services that compete with VNXX service and involve similar issues.

8. The second issue raised in Staff's motion relates to Voice over Internet Protocol (VoIP). In support of its Motion, Staff cites to an October 1, 2003 statement made by Federal

² *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for arbitration of unresolved interconnection issues with Southwestern Bell Telephone Company*, Case No. TO-2001-455, Order Denying Intervention, Approving Interconnection Agreement, and Closing Case. September 13, 2001.

Communications Commission (FCC) Chairman Powell indicating the FCC was preparing a major examination of the regulation of VOIP services (Staff Motion, Para. 4). Staff also indicates that 10 other states are at various stages of examining VoIP issues (Staff Motion, Para 5). Staff provides no other legitimate basis for this Commission to initiate an investigation of VoIP.

9. The reasons cited by Staff do not support opening an investigative docket. To the contrary, AT&T believes these are the very reasons that this Commission should refrain from opening a docket to examine issues surrounding VoIP. As the FCC is expected to act in the near future, there is no reason for states to conduct broad and unfocused investigations of the very same issues, especially when there are significant unresolved legal questions surrounding a state PSC's legal authority to address VoIP services. While Staff identifies other states that have started looking at issues surrounding VoIP, the Commission should be aware that those proceedings have been the subject of legal challenges. Most recently, the U.S. District Court for the District of Minnesota granted Vonage Holdings Corp.'s request to enjoin a Minnesota Public Utilities Commission decision finding that the VoIP service Vonage offers is a "telecommunications" service. This is precisely one of the issues that Staff seeks to investigate. For these reasons, AT&T believes it is not appropriate for Missouri to begin such an investigation at this time.

10. Staff's Motion also cites to a pending arbitration proceeding between CenturyTel, Inc. and KMC Telecom, Inc. as an open proceeding that will address issues for ISP-bound traffic and states that Staff is concerned that arbitration time limits and the limited number of participants would act as constraints to a thorough examination of these complex issues. While AT&T is not a participant in that proceeding, AT&T would note that in prior arbitration proceedings involving issues related to Internet bound traffic, this Commission resolved the disputed issues by deferring to

the FCC.³ AT&T suggests that such a deferral is the more appropriate way to handle this issue in the Century arbitration, rather than initiating a separate investigation.

11. AT&T would also point out that the Commission has acknowledged the FCC has primary jurisdiction over calls bound for the Internet, as those calls are primarily interstate in nature.⁴ AT&T suggests that just as the Commission deferred to the FCC on issues related to calls made to the Internet raised in another arbitration proceeding, the Commission should also refrain from interjecting itself into issues surrounding calls routed over the Internet. To do otherwise would be inconsistent with its prior ruling on calls made to the Internet and if the Commission decides to investigate issues surrounding VoIP, it should also revisit issues relating to calls placed to ISPs.

12. Finally, AT&T objects to the procedure proposed by the Staff. AT&T sees no value in having a full contested case proceeding that includes the taking of evidence and cross-examination if there are no unresolved issues for the Commission to rule upon and no final order by the Commission is contemplate. Such a procedure is extremely time and resource consuming, particularly if it is only designed to assist and inform the Staff and Commission and not lead to a formal decision. If the Commission is merely interested in hearing the positions of various entities, the Commission, on its own, could develop a list of issues or questions and establish a comment period. While AT&T believes that even this type of procedure is unnecessary at this time, AT&T suggests that the filing of

³ See *In the Matter of the Petition of Birch Telecom of Missouri, Inc. for Arbitration of the Rates, Terms, Conditions and Related Arrangements for Interconnection with Southwestern Bell Telephone Company*, Case No. TO-98-278, Arbitration Order, April 24, 1998, and Order Clarifying Arbitration Order, April 6, 1999, and *In the Matter of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular's Petition for Arbitration Pursuant to 47 U.S.C. Section 252 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. TO-99-279, Arbitration Order, April 8, 1999. The result of these arbitration decisions were incorporated into the M2A which is the generic interconnection agreement that resulted from SBC Missouri Inc.'s 271 proceeding (See Attachment 12 Compensation-MO (M2A), Section 1.0.) and is the agreement that many CLECs competing with SBC Missouri, Inc. presently operate under.

⁴ See *In the Matter of the Petition of Birch Telecom of Missouri, Inc. for Arbitration of the Rates, Terms, Conditions and Related Arrangements for Interconnection with Southwestern Bell Telephone Company*, Case No. TO-98-278, Order Clarifying Arbitration Order, April 6, 1999.

comments is certainly a better process for addressing these issues in a generic fashion than having a full contested case proceeding.

WHEREFORE, AT&T respectfully requests the Commission to deny Staff's' Motion to Open Case.

Respectfully submitted,

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ATTORNEYS FOR AT&T COMMUNICATIONS OF
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CERTIFICATE OF SERVICE
(TO-2004-0172)

I certify that copies of the Response of AT&T Communications of the Southwest, Inc. in Opposition to Staff's Motion to Open Case were served on the following by e-mail on October 16, 2003.

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