

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

In the Matter of Southwestern Bell	)	
Telephone Company, d/b/a	)	
AT&T Missouri's and AT&T Corp.'s	)	Case No. _____
Application for a Waiver of	)	
Commission Rule 4 CSR 240-33.150.	)	

**JOINT APPLICATION FOR WAIVER  
AND MOTION FOR EXPEDITED TREATMENT**

COME NOW Southwestern Bell Telephone Company, d/b/a AT&T Missouri ("AT&T Missouri") and AT&T Corp. ("AT&T Corp."), collectively referred to herein as "the AT&T Companies," and pursuant to 4 CSR 240-2.060(4), respectfully submit this Joint Application for a Waiver of 4 CSR 240-33.150. The AT&T Companies also respectfully request that the Commission grant their Application, on an expedited basis, by September 30, 2011.

In support of their Application and Motion, the AT&T Companies state:

**INTRODUCTION AND SUMMARY**

1. AT&T Corp. currently provides to Missouri business customers certain advanced services known as PremierSERV™ Asynchronous Transfer Mode Service, PremierSERV™ Frame Relay Service and Frame Relay Digital Service ("ATM/Frame Relay Services"). Effective October 31, 2011, the assets which enable the provision of these services to customers will be transferred to AT&T Missouri, AT&T Corp.'s affiliate. At that point, while AT&T Corp. will no longer provide these services to Missouri customers, AT&T Missouri intends to provide the same services to these customers until the services are ultimately discontinued in late 2015.<sup>1</sup> Consequently, this inter-affiliate transfer of assets and customers will have no impact on

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<sup>1</sup> On July 1, 2011, all existing customers of the ATM/Frame Relay Services provided by AT&T Corp. were notified that, effective September 30, 2011, ATM/Frame Relay Services would no longer be available to new customers, and that on December 31, 2015, the services would be discontinued.

customer service. By this Application, which requests that the Commission waive its “anti-slamming” rule, the AT&T Companies further seek to ensure that this transfer of operations is as seamless and transparent to customers as possible. As explained herein, a waiver is appropriate given the nature of the sophisticated services and customers involved, the solely internal realignment involved, the fact that AT&T Missouri is already billing for these services on its own billing statements today, and other considerations.

2. AT&T Missouri is prepared to file appropriate adoption notices reflecting that AT&T Missouri concurs in and adopts the tariffs of AT&T Corp. presently filed with the Commission, in substantially the form attached hereto as Attachment 1. AT&T Missouri is prepared to file such notices within any time frame as the Commission may direct, or in any event, by not later than October 1, 2011, so that the notices may bear an effective date of October 31, 2011.

3. While the Commission has jurisdiction over transfers of certain assets,<sup>2</sup> the Commission has waived the Missouri statutes requiring Commission approval of mergers, consolidations, reorganizations and asset transfers, both for AT&T Missouri (*see* Case No. IE-2009-0082, Order Concerning Election of Waivers, November 10, 2008) and for AT&T Corp. (*See*, Case No. TE-2009-0169, Order Granting Waivers, December 11, 2008). Thus, no prior Commission approval is required for this transfer.

### **JOINT APPLICATION FOR WAIVER**

4. AT&T Missouri is a Missouri corporation with its principal Missouri office at One AT&T Center, Room 3520, St. Louis, Missouri 63101. It may be contacted at the regular

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<sup>2</sup> In the Matter of the Application of Craw-Kan Telephone Cooperative, Inc. and Craw-Kan Communications Systems, Inc. for Waiver of Commission Rule 4 CSR 240-33.150(4), Order Granting Waiver, Transfer of Certificate and Adoption of Tariff, December 17, 2010, at 2.

and electronic mail addresses and telephone and facsimile numbers of its attorneys, as set out under the signature block of this Application. AT&T Missouri is authorized to do business in Missouri<sup>3</sup> and its fictitious name is duly registered with the Missouri Secretary of State.<sup>4</sup> AT&T Missouri is duly authorized to provide telecommunications service within the State of Missouri.

5. AT&T Corp. is a New York corporation with its principal office at One AT&T Way, Bedminster, New Jersey, 07921. It may be contacted at the electronic mail address, facsimile and telephone numbers of its attorneys, as set out under the signature block of this Application. AT&T Corp. is authorized to do business in Missouri<sup>5</sup> and its fictitious name is duly registered with the Missouri Secretary of State.<sup>6</sup> AT&T Corp. is duly authorized to provide telecommunications service within the State of Missouri.<sup>7</sup>

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

Jeffrey E. Lewis  
Leo J. Bub  
Robert J. Gryzmala  
Attorneys for Southwestern Bell Telephone Company  
d/b/a AT&T Missouri  
and AT&T Corp.  
One AT&T Center, Room 3516  
St. Louis, Missouri 63101

7. AT&T Missouri and AT&T Corp. have no final unsatisfied judgments or decisions against it from any state or federal agency or court which involve retail customer

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<sup>3</sup> A copy of Southwestern Bell Telephone Company's Certificate of Good Standing from the Missouri Secretary of State was filed with the Commission on August 15, 2007, in Case No. IK-2008-0044.

<sup>4</sup> A copy of the registration of the fictitious name "AT&T Missouri" was filed with the Commission on July 17, 2007, in Case No. TO-2002-185.

<sup>5</sup> A copy of AT&T Corp.'s Certificate of Good Standing from the Missouri Secretary of State was filed with the Commission on August 13, 2008, in Case No. TA-2009-0045.

<sup>6</sup> A copy of the registration of the fictitious name "AT&T Advanced Solutions" was filed with the Commission on November 26, 2008, in Case No. TA-2009-0045.

<sup>7</sup> On September 25, 2008, the Commission granted AT&T Corp. a certificate of service authority to provide interexchange and nonswitched local exchange telecommunications services in Case No. TA-2009-0045.

service or rates, which action, judgment or decision has occurred within three (3) years of the date of this Application. AT&T Missouri has one pending action against it, brought by end-user customers, which involves retail customer service or rates.<sup>8</sup>

8. AT&T Missouri and AT&T Corp. do not have any annual report or assessment fees that are overdue in Missouri.

9. For the reasons explained below, good cause exists to grant this Joint Application, and no public utility other than the Applicants would be affected by such grant.

10. In separate proceedings in 2008, the Commission approved the merger of SBC Advanced Solutions, Inc. into AT&T Corp. and granted AT&T Corp. a certificate of service authority. *See*, Case No. TM-2009-0044; Case No. TA-2009-0045. These approvals allowed AT&T Corp. to offer and provide to Missouri business customers the ATM/Frame Relay Services which are the subject of the instant Application. In both proceedings, the Commission waived applicable rules that would have required customer notice of the matter.<sup>9</sup> The same considerations warranting the Commission's 2008 waivers likewise warrant the Commission's waiver of 4 CSR 240-33.150 in this case.

11. First, the same services are involved. As the Commission then observed (and which remains true today), "these services are high-speed, high-volume, packet switching-based services that large customers use primarily to transmit large volumes of data among multiple

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<sup>8</sup> Barry Road Associates, Inc. d/b/a Minsky's Pizza, et al. v. Southwestern Bell Telephone Company, d/b/a AT&T Missouri, et al., Case No. 1016CV02438, Jackson County Circuit Court.

<sup>9</sup> *See*, Case No. TM-2009-0044, Order Approving Merger and Granting Waiver of 4 CSR 240-3.525(2)(G), September 25, 2008, at 3 (noting that the requested waiver applied to "the customer notice requirements of 4 CSR 240-3.525(2)(G), which states that a copy of the customer notification must be supplied to the Commission which, among other things, informs the customer of '[t]he right to transfer . . . service to another provider' and '[w]here to go to locate other carriers providing service in the area.'"); *see also*, Case No. TA-2009-0045, Order Approving Interexchange and Nonswitched Local Exchange Certificate of Service Authority and Granting Waiver of 4 CSR 240-33.150(4)(B) and (C), September 25, 2008, at 3 (noting that "[t]he purpose of 4 CSR 240-33.150 is to prevent 'slamming' (the unauthorized change of a customer's telecommunications carrier without the customer's knowledge)").

locations.”<sup>10</sup> Second, the same class of sophisticated customers is involved. As the Commission then observed (and which remains true today), these customers “are in the enterprise markets (e.g., municipalities, large business customers) and these customers are highly knowledgeable consumers of telecommunications services well equipped to exercise their options when selecting, changing or terminating their carrier relationships.”<sup>11</sup> Finally, as was the case in 2008, the transaction here “involves solely an internal realigning of operations intended to be as seamless and transparent to customers as possible” and “applying the rule could cause unnecessary confusion and frustration and would offer no customer benefit.”<sup>12</sup> This last consideration is particularly applicable here, given that AT&T Missouri customers who also subscribe to AT&T Corp.’s ATM/Frame Relay Services are already billed for those services on AT&T Missouri’s own bill rendered to these customers, and the same billing arrangement will continue after AT&T Missouri begins to provide these services itself.

12. Finally, the fact that this Application is precipitated by a transfer of assets likewise militates in favor of a waiver of 4 CSR 240-33.150. Although no Commission approval is required for this transaction (as a result of HB 1779, enacted in 2008), the Commission’s anti-slamming rule nevertheless still contains language which would appear to require approval. That is, section (4) of the rule, applicable to changes in carrier selections due to asset transfers, contains language in subsection (A) that would excuse the authorization and verification requirements of the rule where the change “is the result of . . . the sale, assignment, lease or transfer of assets *approved by the [C]ommission.*” (emphasis added). Unfortunately, as the Staff

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<sup>10</sup> Case No. TA-2009-0045, Order Approving Interexchange and Nonswitched Local Exchange Certificate of Service Authority and Granting Waiver of 4 CSR 240-33.150(4)(B) and (C), September 25, 2008, at 2.

<sup>11</sup> Case No. TM-2009-0044, Order Approving Merger and Granting Waiver of 4 CSR 240-3.525(2)(G), September 25, 2008, at 3.

<sup>12</sup> *Id.* Notwithstanding this Application, AT&T Missouri and AT&T Corp. presently intend to inform AT&T Corp.’s ATM/Frame Relay customers of the transfer, in substantially the form of notice attached hereto as Attachment 2.

has elsewhere noted, subsection (4)(A) “appears to make the exception conditional on receiving Commission approval.”<sup>13</sup> Given this, AT&T Missouri concurs in Staff’s view that “[u]ntil such time as the rule can be amended, . . . the most appropriate Commission action would be to grant a waiver of 4 CSR 240-33.150, as the transfer of assets falls within the exception set forth in section (4) of that rule, irrespective of the Commission’s inaction in approving or denying the underlying asset transfer.”<sup>14</sup>

### **REQUEST FOR EXPEDITED TREATMENT**

13. The AT&T Companies seek expedited treatment and requests that the Commission grant their Joint Application by not later than September 30, 2011. The companies intend to implement all of the necessary operational tasks needed to accomplish the transfer of AT&T Corp.’s ATM/Frame Relay assets and customers by not later than October 31, 2011. The interim October period will be needed to fully accomplish this transition in an orderly, coordinated way, and in a manner that will ensure that customers encounter no adverse impacts to either their businesses or their businesses’ telecommunications services needs. AT&T Missouri and AT&T Corp. filed this Application and Motion for Expedited Treatment as soon as they could have after they identified and finalized all details of the transaction and determined to proceed with it.

WHEREFORE, AT&T Missouri and AT&T Corp. respectfully request that the Commission grant their Joint Application for a Waiver of 4 CSR 240-33.150 and that the Commission do so at the earliest practicable time, and in any event by no later than September 30, 2011.

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<sup>13</sup> Joint Application of Ionex Communications, Inc. dba Birch Communications, Birch Telecom of Missouri, Inc dba Birch Communications, and American Fiber Networks, Inc. for Approval to Transfer Assets and Customers, File No. TM-2011-0079, Staff Reply, October 13, 2010, at 1.

<sup>14</sup> *Id.*

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY  
AND AT&T CORP.

BY 

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### **CERTIFICATE OF SERVICE**

Copies of this document and all attachments thereto were served on the following by e-mail on September 1, 2011.

  
Robert J. Gryzmala

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Kevin Thompson  
Missouri Public Service Commission  
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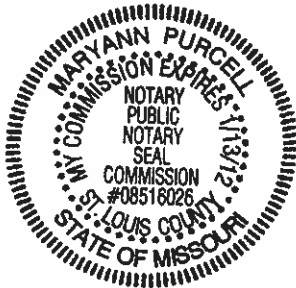
**VERIFICATION**

I, Alan G. Kern, in accordance with 4 CSR 240-2.060(1)(M), first being duly sworn upon my oath, hereby verily state that I am over the age of twenty-one years, sound of mind, and am authorized to act on behalf of Southwestern Bell Telephone Company, d/b/a AT&T Missouri and AT&T Corp. regarding the foregoing document. I have read the document to which this Verification is appended. The facts contained therein are true and correct according to best of my knowledge, information and belief.

  
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Alan G. Kern

Sworn and subscribed to before me this 1<sup>st</sup> day of September, 2011.

  
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Notary Public



**Southwestern Bell Telephone Company, d/b/a AT&T Missouri  
Adoption Notice**

Southwestern Bell Telephone Company, d/b/a AT&T Missouri, hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed by it, all schedules, rules, notices, concurrences, schedule agreements, divisions, authorities, or other instruments whatsoever filed with the Public Service Commission, State of Missouri, by AT&T Corp., d/b/a/ AT&T Advanced Solutions, and its predecessors prior to October 31, 2011. By this notice, Southwestern Bell Telephone Company, d/b/a AT&T Missouri, also adopts and ratifies all supplements or amendments to any of the above schedules, etc., which AT&T Corp., d/b/a/ AT&T Advanced Solutions, and its predecessors have heretofore filed with said Commission.

Southwestern Bell Telephone Company, d/b/a AT&T Missouri, hereby adopts this tariff.



**RE: Notice of Change of Provider for AT&T Advanced Solutions Frame Relay and ATM Services in Missouri**

Dear Valued Customer:

Thank you for using AT&T Advanced Solutions ("AT&T") for your data communications needs. We value your business, and want to be sure you are kept aware of changes being made that may affect your service.

As of November 1, 2011, certain services currently provided by AT&T Corp. under the name AT&T Advanced Solutions, including Asynchronous Transfer Mode and Frame Relay services, will no longer be provided by that entity but will instead be provided to you by AT&T Missouri. This assignment of your contract to AT&T Missouri will have no impact on your service. You will continue to receive the same service you receive today, at the same rates, terms and conditions.

Your business is important to us. Please contact your AT&T Account Manager or other member of your Sales Team if you have questions about this change, or contact AT&T Customer Service, at 800 770-2260. Thank you for choosing AT&T.

Sincerely,

Bob Schaefer  
Product Manager - AT&T Frame Relay/ATM services

**Please do not send inquiries or payments to the return address on this notice. If you have comments or questions, please contact AT&T Customer Service at the toll-free number on your bill.**

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