

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

In the Matter of a Proposed Amendment	)	
To 4 CSR 240-3.545, Filing Requirements	)	Case No. TX-2010-0159
For Telecommunications Company Tariffs	)	

**AT&T MISSOURI'S COMMENTS**

AT&T Missouri<sup>1</sup> respectfully submits these comments regarding the Commission's proposed amendment of various sections of the Commission's "tariff filing requirements" rule (4 CSR 240-3.545). See, 35 Mo. Reg. 209-210 (February 1, 2010). As was noted in the Missouri Register, the goal of this rulemaking is to "clarif[y] certain effective dates and other administrative procedures for proposed tariff revisions consistent with recent changes in the law." *Id.*, at 209.

**SUMMARY**

AT&T Missouri supports the goal of the proposed amendment and, for the most part, agrees with its suggested changes to the Commission's existing rules. The limited exceptions are detailed below.

One distinguishing item, however, should be highlighted. The proposed amendment would delete language in the existing rule requiring a thirty-day tariff filing to introduce or revise the terms and conditions of any competitive service made available on an individual (i.e., non-packaged) basis.

While other language in the existing rule adequately identifies the tariff filing timelines applicable to introducing or revising terms and conditions where the result is a rate *increase* (a ten-day filing applies, per subsection 16(A)), and where the result is a rate *decrease* ( a one-day filing applies, per subsection 16(B)), only the rule proposed to be deleted -- subsection 16(C) --

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<sup>1</sup> Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri").

currently addresses the applicable timeline where *neither* a rate increase nor rate decrease is involved. That gap should be filled, because the absence of filing timeline direction in this situation will create ambiguity.

AT&T Missouri submits that the tariff filing requirement applicable to introducing or revising terms and conditions of individual competitive services, where there is no resulting rate impact (i.e., neither an increase nor a decrease), should be not more than *ten* days. This tariff filing timeline would be more consistent with the governing law and more reflective of other changes made to streamline the tariff filing process for competitive services.

## **DISCUSSION**

### **Heading of Section (16)**

**Proposed Heading of 4 CSR 240-3.545(16)** -- AT&T Missouri suggests that the heading associated with section (16) be changed, from the proposed “Requirements For Tariff Filings That Change Rates For Services” to “Requirements For Tariff Filings That Change Rates, Terms and Conditions For Services.” This would be in keeping both with the fact that the rule already addresses terms and conditions, and with AT&T Missouri’s later suggestion herein that additional rule language needs to be devoted to this particular subject.

### **Rate Increases/Rate Decreases**

**Proposed 4 CSR 240-3.545(16)(A)** -- AT&T Missouri supports the first two sentences of the proposed amendment, which would require notification by means of a ten-day tariff filing in order to effectuate an *increase* in “individual rates or charges.” This requirement would be consistent with the controlling statutory language relating to price increases for individual (i.e., non-packaged) competitive telecommunications services. Section 392.500(2), RSMo, states:

Any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for any

competitive telecommunications service shall be permitted ten days after the filing of the proposed rate, charge, classification or tariff and upon notice to all potentially affected customers through a notice in each such customer's bill at least ten days prior to the date for implementation of such increase or change, or, where such customers are not billed, by an equivalent means of prior notice.

On the other hand, AT&T Missouri appreciates Staff's concern that the phrase "individual rates or charges" could generate confusion were someone to interpret the term "individual" as "a reference to an individual customer's rates" instead of "a reference to rates for individual services rather than a package of services." Staff Comments, Att. 1, p. 2. Thus, AT&T Missouri does not oppose Staff's suggestion to substitute the phrase "available on an *a la carte* basis" for the term "individual." *Id.*, *see also*, Staff Comments, Att. A, p. 1.

AT&T Missouri also agrees with Staff that the third (i.e., the last) sentence of the proposed amendment should not be adopted. Staff Comments, Att. 1, p. 2; *id.*, Att. A p. 1. That sentence would require customer notification ten days prior to the rate increase. However, as Staff accurately notes, the same requirement is already stated in Commission rules 3.545(15) (4 CSR 240-3.545(15)) and 33.040(4) (4 CSR 240-33-040(4)). *Id.* Therefore, it is unnecessary to restate it once again here.

In sum, AT&T Missouri supports the following language for adoption as new Commission rule 3.545(16)(A) (4 CSR 240-3.545(16)(A)):

(A) The commission shall be notified at least ten (10) days in advance of a proposed increase in rates or charges or a proposed change in any classification or tariff resulting in an increase in rates or charges for competitive telecommunications services available on an *a la carte* basis. Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least ten (10) days after the tariff has been filed.

**Proposed 4 CSR 240-3.545(16)(B)** -- AT&T Missouri supports the proposed amendment, which would require notification by means of a one-day tariff filing in order to effectuate a *decrease* in "individual rates or charges." This requirement would be consistent

with the controlling statutory language relating to price decreases for individual (i.e., non-packaged) competitive telecommunications services. Section 392.500(1), RSMo, states:

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.

AT&T Missouri also agrees with Staff that the amendment should delete the reference to the term “individual,” for “the same reasons cited for subsection (A).” Staff Comments, Att. 1, p.

3. However, if the Commission decides to do so, it should add an explicit reference to the phrase “available on an *a la carte* basis,” as Staff recommended in connection with subsection (A). This addition would help limit, with respect to subsection (B), the same potential for confusion Staff had noted with respect to subsection (A). The addition would also be helpful in interpreting subsections (A) and (B) as a whole (i.e., with both clearly applying to rates for *a la carte* services). Finally, as in the case of subsection (A), the addition of the phrase to subsection (B) would reduce any potential for confusion with subsection (C), which applies to any “package of services.”

In sum, AT&T Missouri supports the following language for adoption as new Commission rule 3.545(16)(B) (4 CSR 240-3.545(16)(B)):

(B) The commission shall be notified at least one (1) day in advance of a proposed decrease in rates or charges or a proposed change in any classification or tariff resulting in a decrease in rates or charges for competitive telecommunications services available on an *a la carte* basis. Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least one (1) day after the tariff has been filed.

### **Terms and Conditions For Services**

**Proposed Elimination of the Existing “Terms and Conditions” Language in 4 CSR 240-3.545(16)(C) --** The proposed amendment would delete language in the existing rule that

requires a thirty-day tariff filing to introduce or revise the terms and conditions of any competitive service made available on an individual (i.e., non-packaged) basis. Yet, no language is offered in place of the language to be deleted. This creates a gap in the rules that needs to be filled.

While other language in the existing rule adequately identifies the tariff filing timelines applicable to introducing or revising terms and conditions where the result is a rate *increase* (a ten-day filing applies, per subsection 16(A)), and where the result is a rate *decrease* (a one-day filing applies, per subsection 16(B)), only the rule proposed to be deleted -- subsection 16(C) -- currently addresses the applicable timeline where *neither* a rate increase nor rate decrease is involved. Thus, the deletion of that rule will leave a gap in this instance. That gap should be filled, because the absence of filing timeline direction in this situation will create ambiguity.

AT&T Missouri submits that the tariff filing requirement applicable to introducing or revising terms and conditions of individual competitive services, where there is no resulting rate impact (i.e., neither an increase nor a decrease), should be not more than *ten* days. Any longer tariff filing timeline would be inconsistent with this proceeding's stated goal of changing the rules "consistent with recent changes in the law" (35 Mo. Reg. 209), all of which have shortened tariff filing timelines. Filling the gap in the fashion recommended by AT&T Missouri will also provide clear administrative and procedural guidance to both the industry and the Commission.<sup>2</sup>

The Missouri legislature has shortened several tariff filing timelines to just ten days -- sometimes to just one day. For example, as a result of the 2005 passage of SB 237, (a) the tariff

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<sup>2</sup> On the other hand, the portion of existing 4 CSR 240-3.545(16)(C) requiring a thirty day tariff filing to eliminate any package of services is proposed to, and properly should, be withdrawn, because the proposed rule amendment would add language elsewhere correctly stating that "[t]he commission shall be notified at least ten (10) days in advance of the elimination of a package of services." See, Section 392.200.12, RSMo ("Any tariff to eliminate an existing package shall be filed, on an informational basis, with the commission at least ten days prior to the elimination of the package.")

filing timeline for increases in rates or charges was shortened to ten days (Section 392.500(2), RSMo), and (b) the tariff filing timeline for decreases in rates or charges was shortened to one day. (Section 392.500(1), RSMo).

The legislature also shortened the tariff filing timeline applicable to introducing or revising rate-impacting terms and conditions of existing competitive services. Thus, a ten-day tariff filing timeline applies to “any classification or tariff resulting in an increase in rates or charges.” Section 392.500(2), RSMo (emphasis added). Similarly, the one-day tariff filing timeline applies to “any classification or tariff resulting in a decrease in rates or charges.” Section 392.500(1), RSMo (emphasis added). Consequently, introduction or revision of any term or condition (i.e., any “classification or tariff” applicable to a service) that would “result[] in” an increase or decrease in that service’s rates or charges must be governed by the same tariff-filing timeline as would govern in the case of a straightforward change in the dollars and cents rate or charge applicable to that service (i.e., ten days where the change would “result[] in” an increase; one day where the change would “result[] in” a decrease).

Similarly, in 2008, HB 1779 was passed, thereby amending Section 392.200.12, RSMo. The amendment instituted (a) a one-day “informational” filing requirement to “introduce a new package or to make any change to an existing package,” and (b) a ten-day “informational” filing requirement “to eliminate an existing package.”

Finally, while the Commission’s own rules currently provide for a seven-day tariff filing to introduce promotions for competitive services (4 CSR 240-3.545(19)), the proposed amendment here would allow “[n]ew promotions or changes to existing promotions . . . to go into effect after one (1) day prior notice to the commission [via a tariff filing].” See, 35 Mo. Reg. 209 (referencing proposed 4 CSR 240-3.545(16)(D)).

The foregoing filing timelines well support the ten-day timeline suggested by AT&T Missouri. Given that, under current law, a ten-day filing is sufficient to increase rates for individual services, to institute or change terms and conditions resulting in rate increases and entirely eliminate entire packages of services, there is no reasonable basis on which to maintain a longer filing interval with respect to mere changes in terms and conditions in individual services, especially where they have no rate impact at all.

Moreover, utilizing a ten-day tariff filing timeline would present far less potential for disagreement between Staff and a filing company than would a thirty-day filing timeline where an issue arises as to whether the change to a term or condition actually results in a change in rates. As a preliminary matter, no tension results where the term or condition potentially increases a rate, because any tariff filing resulting in an increase in rates is also filed on ten-day notice. However, to the extent that the change to a term or condition potentially decreases a rate, there will be less tension if the debate becomes whether a one-day tariff filing is appropriate (if it is clear that the change in term or condition results in a decrease in rates) or a ten-day tariff filing is appropriate (if it is less clear that the change in term or condition results in a decrease in rates). On the other hand, greater tension would result where there is a risk that a change may require thirty-day notice. For example, Staff may disagree with a company that its proposed change to a term or condition will result in a decrease in rates. In such a case, even though the company may believe a one-day tariff filing is appropriate, it would be much more likely to accede to a ten-day tariff filing interval than to agree that the tariff should be delayed for a full 30 days.

In short, while it is clear that the proposed amendment here appropriately eliminates the existing thirty-day filing requirement in such instances, an affirmative requirement of ten days should be substituted in its place rather than leaving the matter entirely unaddressed. Filling the

gap in this fashion, even if not expressly mandated by the existing statutes, is clearly consistent with the legislature's recent amendments to Chapter 392<sup>3</sup> and would remove any ambiguity in the rules that the Commission ultimately adopts.

AT&T Missouri disagrees with Staff's reasoning in support of its suggestion that the matter of terms and conditions be left unaddressed. Staff states: "Maintaining a requirement within section (16) regarding terms and conditions doesn't make sense if the Commission changes the heading for this section so that it attempts to only identify requirements for tariff filings changing rates for services." Staff Comments, Att. 1, p. 3. The gap-filling approach AT&T Missouri advances here could easily be accompanied by a simple heading change, from the proposed "Requirements For Tariff Filings That Change Rates For Services" to "Requirements For Tariff Filings That Change Rates, Terms and Conditions For Services." Moreover, the heading change is appropriate in any case, because it is plain from the foregoing discussion that section (16) *already* addresses terms and conditions, and that additional rule language needs to be devoted to this particular subject. It should also be noted that, even apart from the present rule's existing treatment of terms and conditions, the proposed rule would speak to the complete *elimination* of packages, a matter entirely separate from rates.

In sum, AT&T Missouri supports the following language for adoption as new Commission rule 3.545(16)(C) (4 CSR 240-3.545(16)(C)):

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<sup>3</sup> See also, Section 392.220.2, RS Mo, provides, in pertinent part: "Unless the commission otherwise orders, and except for the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission other than the rates for exchange access service, no change shall be made in any rate, charge or rental, or joint rate, charge or rental which shall have been filed by a telecommunications company in compliance with the requirements of sections 392.190 to 392.530, except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, charge or rental shall go into effect; and all proposed changes shall be shown by filing new schedules or shall be plainly indicated upon the schedules filed and in force at the time and kept open to public inspection. The commission for good cause shown may allow changes in rates, charges or rentals without requiring the thirty days' notice, under such conditions as it may prescribe." (emphasis added).



(C) The commission shall be notified at least ten (10) days in advance of a proposed introduction or revision of any classification or tariff resulting in neither an increase nor decrease in rates or charges for competitive telecommunications services available on an *a la carte* basis. Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least ten (10) days after the tariff has been filed.

### **Packages of Services**

**Proposed 4 CSR 240-3.545(16)(C)** -- The proposed amendment would replace all the requirements of existing subsection (C) so as to address, for the first time, packages of services. AT&T Missouri supports the amendment, since its requirements would be consistent with the controlling statutory language relating to packages. In pertinent part, Section 392.200.12, RSMo, states:

Any tariff to introduce a new package or to make any change to an existing package, except for the elimination of a package, shall be filed, on an informational basis, with the commission at least one day prior to the introduction of such new package or implementation of such change. Any tariff to eliminate an existing package shall be filed, on an informational basis, with the commission at least ten days prior to the elimination of the package.

However, since AT&T Missouri has recommended above that treatment of terms and conditions be retained in existing subsection (C), this particular subsection should be renumbered and identified as subsection (D).

In sum, AT&T Missouri supports the following language for adoption as newly renumbered Commission rule 3.545(16)(D) (4 CSR 240-3.545(16)(D)):

(D) The commission shall be notified at least one (1) day in advance of either the introduction of a new package of services (as that term is used in section 392.200.12 RSMo Supp. 2009) or a change to an existing package of services. The commission shall be notified at least ten (10) days in advance of the elimination of a package of services. Commission notice shall be in the form of a tariff filing with a proposed effective date consistent with required commission notice.

## **Promotions**

**Proposed 4 CSR 240-3.545(16)(D)** -- The proposed amendment would address the matter of promotions. AT&T Missouri generally supports this aspect of the amendment, since its requirements would be consistent with the controlling statutory language relating to promotions. Section 392.200.11, RSMo, states:

Notwithstanding any other provision of this section, every telecommunications company is authorized to offer discounted rates or special promotions on any of its telecommunications services to any existing, new, and/or former customers.

However, the phrase stating that promotions “must be offered in a nondiscriminatory manner” should be deleted, for three reasons. First, the provisions of Section 392.200.3, RSMo, which generally prohibits “any undue or unreasonable” discrimination, are expressly negated and made inapplicable by the very first words of the promotions statute -- “Notwithstanding any other provision of this section....”). Second, the plain language of the promotions statute expressly authorizes different treatment, in the context of both services and various classes of customers -- “[E]very telecommunications company is authorized to offer discounted rates or special promotions on any of its telecommunications services to any existing, new, and/or former customers.” (emphasis added). Indeed, it is hard to imagine that any broader language could possibly be crafted to expressly remove promotions from any potential discrimination analysis. Third, as a prudential matter, this proceeding is no occasion for the Commission to consider whether the promotions statute is subject to anti-discrimination analysis. That issue can await another day if necessary, aided by a concrete set of facts reflecting a specific practice impacting either (or both) specific types of services or specific classes of customers (as reflected in a company’s filed promotional tariff). Not addressing the issue here will not foreclose that opportunity, if presented.

In sum, AT&T Missouri supports the following language for adoption as newly renumbered Commission rule 3.545(16)(E) (4 CSR 240-3.545(16)(E)):

(E) Promotions are those service offerings that provide a reduction or waiver of a tariffed rate for a limited period of time. New promotions or changes to existing promotions are allowed to go into effect after one (1) day prior notice to the commission. 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.

### **Miscellaneous**

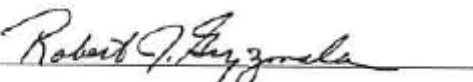
AT&T Missouri does not oppose the miscellaneous renumbering and formatting changes indicated in the proposed amendment. However, it would point out that, consistent with the renumbering suggestions made above, the portion of the proposed amendment relating to subsection (E) (regarding banded rates) should be newly renumbered as subsection (F).

### **CONCLUSION**

WHEREFORE, AT&T Missouri respectfully submits the foregoing comments to the proposed amendment, and requests that the Commission implement each of them.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

Copies of this document were served on all counsel of record by e-mail on March 3, 2010.

  
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