

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

The Innsbrook Corporation,)	
)	
Complainant,)	
)	
v.)	Case No. IC-2007-0113
)	
AT&T Communications of the)	
Southwest, Inc.,)	
)	
Respondent.)	

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.’S
ANSWER AND AFFIRMATIVE DEFENSES, MOTION TO DISMISS,
AND ALTERNATIVE MOTION FOR SUMMARY DISPOSITION**

AT&T Communications of the Southwest, Inc. (“AT&T Communications”) respectfully submits this Answer and Affirmative Defenses, Motion to Dismiss and Alternative Motion for Summary Disposition of the Complaint filed by the Innsbrook Corporation:

INTRODUCTION

AT&T Communications initially sought Missouri Public Service Commission (“Commission”) sponsored mediation of this complaint. AT&T Communications, however, has withdrawn its mediation request because it has determined that the service at issue here is an interstate circuit, over which the Commission has no jurisdiction. The interstate nature of the circuit was not apparent on the face of the Innsbrook Corporation’s Complaint and AT&T Communications’ counsel just learned of this fact during the course of investigating the Complaint. As the Commission has no jurisdiction over the disputed circuit, the Commission must dismiss the Complaint.

AT&T COMMUNICATIONS' ANSWER AND
AFFIRMATIVE DEFENSES

AT&T Communications, pursuant to 4 CSR 240-2.070(8), respectfully submits the following Answer and Affirmative Defenses to the Innsbrook Corporation's Complaint:

1. AT&T Communications admits that it is a public utility subject to the jurisdiction of the Missouri Public Service Commission, but only with respect to intrastate telecommunications services.

2. AT&T Communications admits that it negotiated and signed a new written contract with the Innsbrook Corporation for telecommunications services and affirmatively states that the contract provided for the provision of an interstate T-1.5 private line circuit. AT&T Communications further admits that it disconnected the Innsbrook Corporation's T-1.5 circuit on September 15, 2006 for non payment. AT&T Communications denies all other allegations in paragraph 2.

3. AT&T Communications admits that it invoiced the Innsbrook Corporation for the interstate T-1.5 circuit at issue here; that the Innsbrook Corporation disputed the charges for the T-1.5 circuit; that AT&T Communications attempted to explain the basis for the charges for the T-1.5 circuit; and that the Innsbrook Corporation filed an informal complaint with the Commission concerning the charges for the T-1.5 circuit. AT&T Communications denies all other allegations in paragraph 3 and its subparts.

4. To the extent that AT&T Communications has neither specifically admitted nor denied any allegation contained in the Complaint, AT&T Communications specifically denies it.

5. For its Affirmative Defenses, AT&T Communications states:

- (a) the relief being requested by the Innsbrook Corporation is beyond the jurisdiction of the Commission in that the Commission has no authority to award damages, attorney fees or costs; and

- (b) the Innsbrook Corporation's Complaint is barred by the doctrine of laches in that it has delayed over two years to bring its Complaint.

MOTION TO DISMISS

For its Motion to Dismiss, AT&T Communications, pursuant to 4 CSR 240-2.070(6), states:

1. The Innsbrook Corporation has failed to state a claim upon which relief can be granted in that it has failed to allege any basis for Commission jurisdiction over this Complaint as required by 4 CSR 240-2.070(5)(F).

2. The Commission's jurisdiction, pursuant to Section 386.250(2) RSMo (2000), is limited to the regulation of intrastate telecommunications facilities and services:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

- (2) To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state. . . .

3. Here, the Innsbrook Corporation has failed to make the necessary allegation that the T-1.5 private line circuit, which is the subject of the Innsbrook Corporation's Complaint, is an intrastate service. And as shown in the attached Affidavit of Wauneta B. Browne, the Innsbrook Corporation cannot make such allegations because the T-1.5 circuit is an interstate service that carries traffic between Missouri and other states.

4. The Commission should also dismiss the Innsbrook Corporation's Complaint because it fails to allege any action of AT&T Communications that violates public service commission law, public service commission rules, or AT&T Communications' tariffs. Section 386.390.1 RSMo (2000) authorizes the Commission to determine complaints as to "any act or thing done or admitted to be done by any corporation, person or public utility . . . in violation or claimed to be in violation, of any provision of law, or any rule or order or decision of the commission[.]"

5. By its expressed terms, a complaint brought under this statutory authority necessarily must include an allegation of a violation of a law or of a Commission rule, order or decision.¹ Because the Innsbrook Corporation's Complaint does not include such an allegation, it fails to state a claim upon which relief can be granted and must be dismissed.²

6. In addition, the remedy being sought by the Innsbrook Corporation is beyond the Commission's jurisdiction, as the Commission is without authority to award money damages.³ Because the Commission lacks jurisdiction over the requested remedy, the Commission lacks subject matter jurisdiction.⁴

Accordingly, the Commission must dismiss this Complaint.

ALTERNATIVE MOTION FOR SUMMARY DISPOSITION

AT&T Communications, pursuant to 4 CSR 240-2.117, respectfully moves the Commission, in the alternative, to summarily dispose of this case on the ground that the Commission lacks subject matter jurisdiction over the disputed T-1.5 private line circuit. In

¹ State ex rel. Ozark Border Electric Cooperative v. Pub. Serv. Comm'n, 924 S.W.2d 597, 599-600 (Mo. App. W.D. 1996).

² Shaffer Lombardo Shurin v. Xspedius, Case No. TC-2005-0266, 2005 MoPSC LEXIS 786, at *5 (June 2, 2005).

³ American Petroleum Exchange v. Pub. Serv. Comm'n, 172 S.W.2d 952, 955 (Mo. 1943).

⁴ Shurin v. Xspedius, 2005 MoPSC LEXIS 786, at *6.

support of this Motion, AT&T states that there is no genuine issue as to any material fact concerning the interstate nature of the disputed T-1.5 circuit:

1. AT&T Communications and the Innsbrook Corporation entered into a new written agreement for the provision of telecommunications services, effective August 13, 2004.⁵
2. Under this agreement, AT&T Communications provided a T-1.5 circuit and other telecommunications services to the Innsbrook Corporation.⁶
3. The Innsbrook Corporation disputed AT&T Communications' charges for the T-1.5 circuit.⁷
4. Under the terms of the August 13, 2004 written agreement between the parties, the price for the T-1.5 circuit was to be as set forth in the Service Guide for AT&T Business Network Service.⁸
5. The T-1.5 service purchased by the Innsbrook Corporation under the August 13, 2004, written agreement between the parties was an interstate circuit.⁹
6. AT&T Communications' rates for its interstate telecommunications services are contained in the AT&T Service Guide¹⁰.
7. AT&T Communications' rates for the intrastate services it provides in Missouri are contained in AT&T Communications' Missouri intrastate tariff.¹¹
8. Had the Innsbrook Corporation ordered an intrastate T-1.5 circuit from AT&T Communications' intrastate tariff, the rates for the circuit would have been significantly higher than the rates AT&T Communications actually billed the Innsbrook Corporation and about which the Innsbrook Corporation is now complaining.¹²
9. The circuit ID number from the Innsbrook Corporation's T-1.5 circuit, DHEC 163602, is an interstate circuit identification number.¹³

⁵ Browne Affidavit, para. 2.

⁶ Browne Affidavit, para. 2.

⁷ Browne Affidavit, para. 3

⁸ Browne Affidavit, para. 3

⁹ Browne Affidavit, para. 4.

¹⁰ Browne Affidavit, para. 4

¹¹ Browne Affidavit, para. 4

¹² Browne Affidavit, para. 4

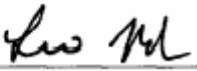
¹³ Browne Affidavit, para. 4

As there is no genuine issue as to any material fact concerning the interstate nature of the T-1.5 circuit that is the subject of Innsbrook Corporation's Complaint, the Missouri Commission has no jurisdiction. Accordingly, the Commission must, as a matter of law, summarily dismiss the case.

WHEREFORE, having fully answered, AT&T Communications requests the Commission to enter an Order dismissing the Innsbrook Corporation's Complaint.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC.

BY 

PAUL G. LANE #27011

LEO J. BUB #34326

ROBERT J. GRYZMALA #32454

Attorneys for AT&T Communications of the
Southwest, Inc.

One AT&T Center, Room 3518

St. Louis, Missouri 63101

314-235-2508 (Telephone)/314-247-0014(Facsimile)

leo.bub@att.com

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

The Innsbrook Corporation,)	
)	
Complainant,)	
)	
v.)	Case No. IC-2007-0113
)	
AT&T Communications of the)	
Southwest, Inc.,)	
)	
Respondent.)	

AFFIDAVIT OF WAUNETA B. BROWNE

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

I, Wauneta B. Browne, of lawful age, being duly sworn, depose and state:


1. My name is Wauneta B. Browne. I am Regional Vice President-Legislative and Regulatory Affairs, AT&T Communications of the Southwest, Inc. ("AT&T Communications"). My address is 11425 West 146th Street, Olathe, Kansas 66062.
2. AT&T Communications and the Innsbrook Corporation, No. 1 Aspen Circle, Innsbrook, Missouri 63390, entered into a new written agreement for the provision of telecommunications services, effective August 13, 2004. Under this agreement, AT&T Communications provided AT&T Digital Link Service, MEGACOM Service and an interstate T1.5 private line circuit.
3. It is my understanding that the Innsbrook Corporation has disputed AT&T Communications' charges for the T1.5 private line circuit. Under the terms of the August 13, 2004 written agreement between the parties, the price for the T1.5 private line circuit was to be as set forth in the Service Guide for AT&T Business Network Service.
4. The T1.5 private line service purchased by the Innsbrook Corporation under the August 13, 2004 written agreement between the parties was an interstate circuit. The interstate nature of this circuit is apparent from the parties' written agreement's reference to the AT&T Service Guide, which provides rates for

interstate services. If the circuit was an intrastate T1.5 private line circuit, the applicable rates would have been those in AT&T Communications' Missouri intrastate tariff. Had the Innsbrook Corporation ordered an intrastate T1.5 private line circuit from AT&T Communications' intrastate tariff, the rates for the circuit would have been significantly higher than the rates AT&T Communications billed the Innsbrook Corporation and about which the Innsbrook Corporation is now complaining. In addition, the circuit ID number from the Innsbrook Corporation's T1.5 private line circuit, DHEC 163602, reflects that the circuit is an interstate circuit.

This concludes my affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on the 12th day of December, 2006.

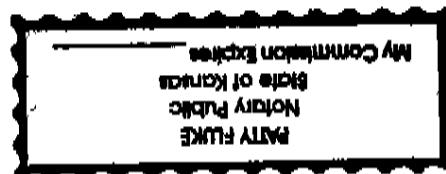

Wauneta B. Browne

State of Kansas, County of Johnson, subscribed and sworn to before me this 12th day of December, 2006.


Notary Public

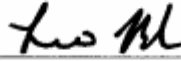
My commission expires:

9-17-07



CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on December 20, 2006.



Leo J. Bub

David Meyer
General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102
David.Meyer@psc.mo.gov
general.counsel@psc.mo.gov

Donald Kenneth Anderson, Jr.
8011 Clayton Road
St. Louis, MO 63117
anderson76@aol.com

Lewis Mills
Public Counsel
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
lewis.mills@ded.mo.gov
opcservice@ded.mo.gov

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

The Innsbrook Corporation,)	
)	
Complainant,)	
)	
v.)	Case No. IC-2007-0113
)	
AT&T Communications of the)	
Southwest, Inc.,)	
)	
Respondent.)	

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S
BRIEF IN SUPPORT OF ITS MOTION FOR
SUMMARY DISPOSITION**

AT&T Communications of the Southwest, Inc. ("AT&T Communications") respectfully submits this Brief in Support of its Alternative Motion for Summary Disposition of the Complaint filed by the Innsbrook Corporation.

1. Pursuant to 4 CSR 240-2.117(1)(E), the Commission may grant a motion for summary disposition if the pleadings, testimony, discovery, affidavits and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of a case, and the Commission determines that the granting of summary determination is in the public interest.¹

2. Here, as demonstrated in the Affidavit of Wauneta B. Browne,² there is no genuine issues as to any material fact that the T-1.5 private line circuit that is the subject of the Complaint is interstate in nature.³

3. Missouri law, however, limits the Commission's jurisdiction to the regulation of intrastate telecommunications facilities and services. Section 386.250(2) RSMo (2000) states:

¹ Staff of the Missouri Public Service Commission v. Hurricane Deck Holding Company, et al., Case No. WC-2006-0303, 2006 MoPSC LEXIS 1136 at *8 (August 31, 2006).

² The Affidavit of Wauneta B. Browne, Regional Vice President-Legislative and Regulatory Affairs, is being filed simultaneously with AT&T's Alternative Motion for Summary Disposition and this supporting Brief.

³ Browne Affidavit para. 4.

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

- (2) To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state. . . .

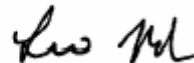
4. As there is no genuine issue as to any material fact concerning the interstate nature of the T-1.5 circuit in dispute here, Innsbrook Corporation's Complaint is not subject to the jurisdiction of the Missouri Commission. Accordingly, the Commission must, as a matter of law, summarily dismiss the case.

WHEREFORE, AT&T Communications respectfully requests the Commission to enter an Order dismissing the Innsbrook Corporation's Complaint.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC.

BY



PAUL G. LANE #27011

LEO J. BUB #34326

ROBERT J. GRYZMALA #32454

Attorneys for AT&T Communications of the
Southwest, Inc.

One AT&T Center, Room 3518

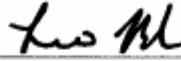
St. Louis, Missouri 63101

314-235-2508 (Telephone)/314-247-0014(Facsimile)

leo.bub@att.com

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on December 20, 2006.



Leo J. Bub

David Meyer
General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102
David.Meyer@psc.mo.gov
general.counsel@psc.mo.gov

Donald Kenneth Anderson, Jr.
8011 Clayton Road
St. Louis, MO 63117
anderson76@aol.com

Lewis Mills
Public Counsel
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
lewis.mills@ded.mo.gov
opcservice@ded.mo.gov