

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

Duke Manufacturing Co.,)	
)	
Complainant,)	
)	Case No. TC-2008-0191
v.)	
)	
McLeodUSA)	
Telecommunications Services, Inc.)	
)	
Respondent.)	

**DUKE MANUFACTURING CO.'S REPLY TO
AT&T MISSOURI'S RESPONSE TO STAFF'S MOTION TO JOIN
AT&T MISSOURI AS A PARTY**

Comes now Complainant Duke Manufacturing Co. ("Duke Manufacturing") and provides its Reply to AT&T Missouri's ("AT&T's") February 11, 2008 Response to the Commission Staff's ("Staff's") February 1, 2008 Motion to Join AT&T Missouri as a Party to this Case ("AT&T's Response"). Complainant Duke Manufacturing, Respondent McLeodUSA, and the Office of the Public Counsel have all stated support for Staff's Motion. Duke Manufacturing contends that as a legal matter, and as a practical matter, joinder of AT&T Missouri is necessary.

AT&T Missouri objects to joinder in this matter, suggesting that pursuant to contractual legal theories, AT&T Missouri has no privity of contract with Duke Manufacturing and thus cannot be affected by this action. AT&T's Response, p. 2, Paragraph 4. AT&T characterizes the nature of this case as a "contract case",

describing it as “a breach of contract action”. AT&T’s Response, p. 3, Paragraph 7. Duke Manufacturing believes that this is a fundamental mischaracterization of the nature of this case.

This is *not* a breach of contract case. This is a complaint case filed pursuant to Public Service Commission law, alleging a serious failure to provide adequate service under Sections 386.200 RSMo. Duke Manufacturing is not seeking contractual remedies or monetary damages of any kind. Duke Manufacturing is not necessarily seeking that fines or other penalties be pursued at this time. Quite simply, Duke Manufacturing is seeking the opportunity to receive adequate telephone service.

Duke Manufacturing seeks an end to the numerous service problems that have been well documented and which have seriously disrupted Duke Manufacturing’s ability to conduct its business operations. Preliminary investigations suggest that these problems involve technical issues that are not likely to be fixed unless AT&T Missouri is also joined as a party. These investigations suggest that the source of the problem may involve the inadequate performance of facilities owned by AT&T Missouri and that, *no matter who Duke Manufacturing chooses as its telecommunications provider*, its telephone service must flow through these facilities. Even though AT&T Missouri is not Duke Manufacturing’s direct telecommunications provider, Duke Manufacturing believes that it has no reasonably practicable option for telephone service that would not involve the use of these AT&T Missouri facilities. Therefore, the service problems at issue are likely to persist unless AT&T Missouri is made a party to this service complaint and is formally required to participate in the search for a solution.

There is no dispute that the Public Service Commission has jurisdiction over AT&T and over the adequacy of AT&T's facilities pursuant to Sections 386.250 and 392.200 RSMo. AT&T's Response does not address its basic obligation under this law. The obligation to "furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable" as stated in Section 392.200 RSMo does not include a limitation or qualification based on "privity of contract" nor bilateral relationships. The Commission has broad authority over the telecommunications companies that it regulates for the purpose of enforcing the Section 392.200 obligation to provide adequate facilities generally in order to protect the consuming public.

Pursuant to Missouri Rule of Civil Procedure 52.04, the joinder of AT&T Missouri is legally permissible and would promote the efficient administration of justice because complete relief may not otherwise be possible among the current parties. As stated above, the interest of AT&T may be essential to a resolution of the ongoing service problems. It does not appear that this interest is "theoretical or remote" as is suggested by footnote 3 on page 3 of AT&T's Response. Moreover, an ultimate determination of the source of the problems may require AT&T's status as a full party for the purposes of discovery.

Duke Manufacturing contends that the public interest would be best promoted by granting Staff's Motion and by further ordering all parties to participate in a prehearing conference and/or technical conference for the purpose of jointly discussing the cause of Duke Manufacturing's pervasive service problems along with possible technical solutions to those problems.

WHEREFORE, Complainant Duke Manufacturing Company respectfully requests that the Missouri Public Service Commission issue an order granting Staff's Motion to Join AT&T Missouri as a Party, and further scheduling a prehearing/technical conference to allow the parties to discuss a potential resolution to the service problems that are the basis of the Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been sent by U.S. Mail or electronic mail this 4th day of March, 2008, to:

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