**BEFORE THE PUBLIC SERVICE COMMISSION**

**STATE OF MISSOURI**

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| Northeast Missouri Rural Telephone Company | ) | |
| | ) | |
| Complainant, | ) | |
| | ) | |
| v. | ) | Case No. _______________ |
| | ) | |
| AT&T Corp. | ) | |
| | ) | |
| Respondent. | ) | |

**Complaint**

Come now Northeast Missouri Rural Telephone Company, (hereinafter "Northeast"), for its Complaint against Respondent AT&T Corp. (hereinafter "AT&T"), made pursuant to § 386.390 RSMo and 4 CSR 240-2.070, and states as follows:

**Summary of Complaint**

AT&T provided "enhanced prepaid calling card" services (hereinafter "EPPC"). AT&T claimed EPPC was an information service, not a telecommunications service. AT&T did not disclose to the world that it had unilaterally, without regulatory sanction, ended the existing sanctioned regulatory practice of reporting and paying both universal service contributions and intrastate access charges for EPPC calls.

On May 15, 2003, AT&T filed a petition for declaratory ruling with the FCC seeking the FCC's determination AT&T was not responsible to pay USF contributions or intrastate access charges on EPPC calls. By Order of February 23, 2005, supplemented by a later FCC decision, and further supplemented by a later Court decision, the FCC denied AT&T's petition. The FCC adjudicated that intrastate access charges *did* apply to EPPC calls that originate and terminate within the same state, and adjudicated that AT&T was liable to local exchange carriers for intrastate traffic misreported by AT&T as being interstate in jurisdiction.

In SEC filings, AT&T estimated that through the third quarter of 2004 it had failed to pay $340,000,000.00 in originating and terminating intrastate access charges (to Northeast and other carriers) and had failed to pay $160,000,000.00 in universal service contributions.

This Complaint is brought to enforce the FCC's adjudication that AT&T is responsible to pay Northeast for intrastate calls misreported as interstate, to ascertain the volume of unpaid intrastate access traffic AT&T has not paid to Northeast, to ascertain the dollar amounts of unpaid intrastate access traffic owed by AT&T to Northeast, together with interest on those sums, and attorneys fees pursuant to tariff.

**Allegations**

**Parties, Counsel, Notice, and Service of Process Information**

1. Complainant Northeast is an incumbent local exchange company properly certificated and doing business in Missouri. The name of its principal contact for this case, and its address and contact information is as follows:

Gary Godfrey
General Manager
Northeast Missouri Rural Telephone Company
P.O. Box 98, 718 South West Street
Green City, Missouri 63545

2. Copies of all pleadings, orders, and other filings in this docket should be served upon the following counsel for Northeast:

Craig S. Johnson, Atty.
Mo Bar # 28179
1648-A East Elm St.
Jefferson City, MO 65101
(573) 632-1900
(573) 634-6018 (fax)
craig@csjohnsonlaw.com

3. Respondent AT&T is a New York Corporation authorized to do business in Missouri. Its registered agent for service of process is:

The Corporation Company
120 South Central Avenue
Clayton, Missouri 63105

Service of process can be made upon AT&T by serving a copy of this complaint upon this registered agent by certified mail, postage prepaid, in accordance with 4 CSR 240.2.070.

**Underlying Facts**

4. At some date, the precise date which is unknown to Northeast, AT&T began offering EPPC. EPPC was sold in the form of prepaid calling cards by AT&T, and by major consumer retailers such as Wal Mart Stores, Inc.

5. EPPC calls were made by the customer dialing a number to reach a centralized switching platform, which requested a personal identification number associated with the customer's card. When prompted by the platform, the customer dialed the destination number of the called party, and the call was completed.

6. AT&T configured its EPPC service so that all EPPC calls made appeared as two separate calls: one from the calling to the EPPC "platform"; and the second from the "platform" to the called party.

7. AT&T improperly, without justification, manipulated traffic reports, call records, and intercarrier compensation billing records so that all EPPC calls were made to appear as if each EPPC call originated and terminated in different states, even though in many instances the EPPC calling party and called party were both located within the state of Missouri.

8. This manipulation resulted in the under-billing of both originating and terminating intrastate Missouri exchange access charges by Northeast to AT&T.

9. AT&T did not disclose to Northeast that it was under-reporting EPPC intrastate minutes of originating and terminating exchange access use.

10. Northeast was not aware of AT&T's misclassification, under-reporting, and under-payment for intrastate exchange access service until it learned of the existence of AT&T's Petition for Declaratory Ruling, and the FCC's Order with respect to that petition.

11. On May 15, 2003, AT&T filed with the Federal Communications Commission ("FCC") a petition requesting a declaratory ruling from the FCC that, among other things, its EPPC was information service and not telecommunications service, and that if it was determined to be telecommunications service that all calls made pursuant to the prepaid calling service was interstate, not intrastate, in jurisdiction.

12. AT&T improperly and unethically misclassified, under-reported, and under-paid Northeast, and other carriers, intrastate access charges while it prepared, filed, and awaited a decision from the FCC.

13. The FCC docketed AT&T's petition as WC Docket No. 03-133, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*.

14. On February 23, 2005 in WC Docket No. 03-133, the FCC entered an Order which denied AT&T's requests, and which directed AT&T to rectify its unethical and improper activities. Specifically, the FCC ruled as follows:

a. EPPC was telecommunications service. (¶ 14)

b. the provision of advertising messages with EPPC did not make EPPC an information service. (¶ 15)

c. the provision of advertising messages with EPPC did not make EPPC an enhanced service. (¶ 16)

d. EPPC's making information available did not make EPPC an information service. (¶ 20)

e. EPPC's communication of an advertising message did not create a call endpoint to the EPPC switching platform. (¶¶ 23, 24, 25, 26)

f. AT&T's arguments that all EPPC calls were jurisdictionally interstate due to the construct of the service was rejected. (¶ 27)

g. AT&T conceded to the FCC that EPPC calls originated and terminated over a platform all within the same state were intrastate calls in jurisdiction. (¶ 7, footnote 10)

h. EPPC calls are jurisdictionally mixed, and EPPC calls that originate and terminate within the same state are jurisdictionally intrastate under the FCC's "end-to-end" analysis. (¶¶ 22-29)

i. EPPC calls originating and terminating in different local calling areas of the same state are subject to intrastate access charges. (¶ 28).

j. AT&T was directed to retroactively make payments to the federal universal service fund for EPPC calls going back to the beginning of 1999.

15. AT&T appealed the FCC's direction for AT&T to make retroactive contributions to the Universal Service Fund. AT&T did not appeal the FCC's determination that intrastate EPPC calls were subject to intrastate access charges. The February 23, 2005 Order was appealed by AT&T to the United States Court of Appeals for the District Court of Columbia. By decision of July 14, 2006, the United States Court of Appeals affirmed the FCC.

16. By further Order of August 2, 2006, 71 Federal Register 148, pages 43667-43673, Declaratory Ruling, Report and Order, and accompanying rulemaking in WC Docket No. 05-68, the FCC extended its February 16, 2005 Order to two newer service variants to the original EPPC offered by AT&T.

17. In addition, the FCC ruled that its February 16, 2005 Order was an adjudicatory decision, and applied on a retroactive basis to EPPC traffic. The FCC did not give retroactive adjudicative effect to the "menu-driven" variant of the EPPC service.

18. On appeal by decision dated December 4, 2007, the United States Court of Appeals for the D.C. Circuit reversed and vacated the FCC in this regard, and did impose retroactive adjudicative effect even to the menu driven variant.

19. These decisions of the FCC and courts are binding upon AT&T and the Commission by virtue of the doctrines of preemption, res adjudicata, collateral estoppel, and issue preclusion

20. At all times pertinent hereto Northeast has had in effect intrastate exchange access service tariffs which, by virtue and as a result of the foregoing, applied to intrastate EPPC calls.

21. Northeast has directly contacted and made demand upon AT&T about the substance of the dispute set forth in this complaint, and engaged in extended efforts to settle the dispute without complaint, but was unable to obtain satisfaction.

22. Northeast respectfully suggests that voluntary arbitration or mediation will not be of assistance in resolving this dispute.

**Jurisdiction of Commission**

23. Northeast provides intrastate exchange access service to interexchange carriers such as AT&T pursuant to tariff. Such exchange access service tariff and rates are approved by the Missouri Public Service Commission, and are applicable to intrastate EPPC calls misreported by AT&T as being interstate calls, the traffic in question.

24. This Commission has jurisdiction over this complaint by virtue of the statutory authority vested in it by §386.390 RSMo and by §386.400 RSMo.

**Relief Requested**

25. Northeast requests that the Commission grant or sustain this Complaint in its favor and against AT&T, and determine, order, and award to Northeast the following relief:

a. to determine that AT&T is responsible under Northeast's Missouri Missouri or intrastate exchange access tariffs to pay for intrastate EPPC calls reported as interstate by AT&T;

b. to determine the quantity of originating and terminating intrastate EPPC minutes of use reported as interstate by AT&T;

c. to determine the amount of money owed by AT&T to Northeast for such EPPC traffic;

d. to determine the liability for, and amount of, interest owed by AT&T to Northeast for under-reported and unpaid access service charges as provided by law, or by Northeast's tariffs, as late payment charges. The interest rate is believed to be 10% per annum pursuant to tariff;

e. to determine AT&T' responsibility to pay Northeast attorneys' fees, pursuant to tariff, for having to prepare and pursue this action;

f. any other relief that is necessary or appropriate to the above.

Respectfully Submitted;

__/s/______________________

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