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August 31, 1999

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65101

Re: Case No. <sup>TA</sup>~~TO~~-2000-33  
Case No. TO-2000-35

**FILED<sup>2</sup>**  
AUG 31 1999  
Missouri Public  
Service Commission

Dear Judge Roberts:

Attached for filing with the Commission is the original and fifteen (15) copies of AT&T Communications of the Southwest Inc's Motion to Suspend and Reply to Grand River Communications, Inc.'s and Staff's Response to AT&T's Application to Intervene and Motion to Consolidate in the above referenced matters.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

LATHROP & GAGE, L.C.

By: Paul S. DeFord  
Paul S. DeFord

Attachment

cc: All parties of record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

AUG 31 1999

Missouri Public  
Service Commission

In the Matter of the application of )  
Grand River Communications, Inc. d/b/a Grand River )  
Long Distance for a certificate of service )  
authority to provide interexchange and )  
local exchange telecommunications services. )

Case No. TA-2000-33

In the Matter of the application of )  
Grand River Communications, Inc. d/b/a Lathrop )  
Long Distance for a certificate of service )  
authority to provide interexchange and )  
local exchange telecommunications services. )

Case No. TA-2000-35

MOTION TO SUSPEND AND  
REPLY TO GRAND RIVER COMMUNICATIONS, INC.'S AND  
STAFF'S RESPONSE TO AT&T'S APPLICATION TO  
INTERVENE AND MOTION TO CONSOLIDATE

COMES NOW AT&T Communications of the Southwest, Inc. ("AT&T") and for its  
Motion to Suspend and Reply to Grand River Communications, Inc.'s and Staff's Response to  
AT&T's Application to Intervene and Motion to Consolidate states as follows:

1. On August 6, 1999, AT&T filed Applications to Intervene in Grand River Communications, Inc.'s Applications for Certificates of Service Authority and its attendant tariff filings. Therein AT&T pointed out that Grand River Communications, Inc.'s filings would put in place a rate structure identical to that proposed by AT&T's "intraLATA overlay plan" tariff which has been suspended by the Commission. In that pleading, AT&T stated it did not oppose Grand River Communications, Inc.'s Applications and tariffs but requested that these related cases be consolidated for processing.

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2. On August 16, 1999, Grand River Communications, Inc. filed responses to AT&T's Applications to Intervene. On August 17, 1999, the Commission Staff ("Staff") filed responses to AT&T's Applications to Intervene. Grand River and Staff have attempted to distinguish Grand River's Applications and tariffs from AT&T's proposed overlay tariff. Grand River denies that its proposed filing constitutes geographic deaveraging. Grand River has also attempted to challenge AT&T's standing to intervene in these proceedings. Staff's response merely states that the Commission has previously allowed the same company to operate under multiple fictitious names. Staff's response is silent on the issue of rate deaveraging and does not attempt to refute AT&T's allegations about rate deaveraging.

3. Grand River Communications, Inc. alleges that it seeks certificates of service authority in two separate and distinct service areas under two separate and distinct fictitious names. It further alleges that it does not purport to serve the entire state of Missouri. A cursory review of the Grand River Communications, Inc.'s Applications reveals that the only accurate part of these allegations are that Grand River Communications, Inc. has requested the issuance of two certificates of service authority under two different fictitious names. Each Application clearly requests authority to provide interexchange service on a statewide basis.

4. A more detailed review reveals that in Case No. TA-2000-33, Grand River Communications, Inc. d/b/a Grand River Long Distance seeks a Certificate of Service Authority to provide interexchange and local exchange telecommunications throughout the entire state of Missouri. In this case, Grand River Communications, Inc. seeks to limit the availability of its services to the ILEC exchanges of Grand River Mutual Telephone Company via its proposed tariff. According to the proposed tariff, "The Company's service will initially be offered only to the local

exchange customers of its affiliate, Grand River Mutual, in the exchanges of Graham, Barnard, Conception Junction, Ravenwood, Parnell, Sheridan, Gentry, Bethany, Denver Darlington, New Hampton, Washington Center, Eagleville, Cainsville, Ridgeway, Mount Mariah, Gilman City, Brimson, Jamesport, Spickard, Princeton, Mercer, Powersville, Lucerne, Newton, Galt, Laredo, Chula, Meadvill, Linneus, Purden, and Browning”.<sup>1</sup>

Also according to the proposed tariff, Grand River Communications, Inc. d/b/a Lathrop Long Distance will offer an “Option 1” toll calling plan that provides intraLATA and interLATA toll for 15¢ per minute in both peak and off-peak periods.

5. Similarly in Case No. TA-2000-35, Grand River Communications, Inc. d/b/a Lathrop Long Distance seeks a Certificate of Service Authority to provide interexchange and local exchange telecommunications throughout the entire state of Missouri. In this case, Grand River Communications, Inc. seeks to limit the availability of its services to the ILEC exchanges of Lathrop Telephone Company via its tariff. According to the proposed tariff, “The Company’s service will initially be offered only to the local exchange customers of its affiliate, Lathrop Telephone Company, in the exchanges of Lathrop.”<sup>2</sup>

Also according to the proposed tariff, Grand River Communications, Inc. d/b/a Lathrop Long Distance will offer an “Option 1” toll calling plan that provides intraLATA and interLATA toll for 15¢ per minute in both peak and off-peak periods.

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<sup>1</sup> Grand River Communications, Inc. d/b/a Grand River Long Distance, Intrastate Long Distance Message Telecommunications Service, P.S.C. Mo. No. 3, Original Sheet 6.

<sup>2</sup> Grand River Corporation d/b/a/ Lathrop Long Distance, Intrastate Long Distance Message Telecommunications Service, P.S.C. Mo. No. 3, Original Sheet 6.

6. It is readily apparent that, if granted, these two applications would give one corporation, Grand River Communications, Inc., a total of three statewide certificates of service authority to provide interexchange services. Under the proposed tariffs, the same corporation, Grand River Communications, Inc., will have the ability to charge at different rates for 1+ intraLATA and interLATA interexchange service in different geographic areas defined by the service area of the respective ILEC. This obviously creates a situation where the company may engage in geographic deaveraging and raises the same issues that are before the Commission in Case No. TT-2000-22, AT&T's "intraLATA overlay plan."

7. Grand River Communications, Inc.'s attempt to distinguish its Applications and tariffs based upon the fact that two separate fictitious names will be utilized to offer interexchange service at different rates in different geographic areas is ludicrous. Grand River Communications, Inc. d/b/a Grand River Long Distance and Grand River Communications, Inc. d/b/a Lathrop Long Distance is clearly the same company; Grand River Communications, Inc. Each application filed by Grand River Communications, Inc. relies on the same articles of incorporation filed with the Secretary of State to support its application. It is without question that the use, by a corporation, of the designation "d/b/a" which means "doing business as" is merely descriptive of a corporation doing business under another name and does not create an entity distinct from the corporation operating the business or relieve it of liability for all of its obligations. Duval v. Midwest Auto City, Inc. 425 F.Supp 1381, (Neb. 19 ), *aff'd*, 528 F.2d 721 (8th Cir. 1978 ). Thus the use of fictitious names does nothing to shield Grand River from the application of the relevant statutes.

8. Grand River Communications, Inc. alleges that its filing does not constitute geographic deaveraging because it will charge the same rate in both tariffs regardless of its proposed

rate structure. In both Case No. TA-2000-33 and Case No. TA-2000-35, Grand River Communications, Inc. seeks competitive classification and minimal regulation. If granted this classification, Grand River Communications, Inc. will be able to change rates without evidence or Commission approval by filing a proposed tariff with a seven or ten-day effective date. The rate structure proposed by Grand River Communications, Inc. is similar, if not identical, to the rate structure proposed by AT&T in Case No. TR-96-29<sup>3</sup>. In that case, AT&T proposed three separate but identical rate schedules. The Commission rejected these proposed tariff sheets on the grounds that the company could change rates without evidence and therefore, deaverage toll rates without evidence as the Commission determined was required by Section 392.200.4 RSMo<sup>4</sup>. The only difference between Grand River Communications, Inc.'s proposed tariffs and those proposed by AT&T in Case No. TR-96-29 is that Grand River Communications, Inc. is proposing to use different fictitious names. Irrespective of that fiction, the result is the same; a single corporate entity, Grand River Communications, Inc., will have the ability to change rates and to offer toll services at different rates in different geographic areas without evidence as the Commission previously determined was contrary to Section 392.200.4 RSMo.

9. Grand River Communications, Inc.'s proposed applications and tariffs also raise issues identical to those raised in Case No. TO-2000-22. In that case, the intervenors, including Grand River Mutual Telephone, alleged that AT&T's proposed tariff violates numerous sections of Chapter 392, RSMo. While AT&T does not agree with these allegations, each matter of law raised by the intervenors in that case is applicable to Grand River Communications, Inc.'s two

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3. It is worth noting that in Case No. TR-96-26, both the STCG and MMG opposed AT&T's proposed tariff sheets which created a rate structure identical to the one Grand River is now proposing.

4. Case No. TR-96-29, In the matter of AT&T's tariff sheets designed to introduce MTS rates schedules

applications and pending tariffs. Each of the numerous sections of Chapter 392, RSMo that AT&T's proposed tariff filing allegedly violated applies to a "telecommunications company". It is without question that Grand River Communications, Inc. is a single telecommunications company regardless of how many certificates and how many fictitious names it operates under. If the proposed tariffs are approved or allowed to go into effect, this single telecommunications company, Grand River Communications, Inc., will have rate structure identical to the rate structure proposed by AT&T in Case No. TR-96-29 and this single company will have the ability to deaverage toll rates in a fashion identical to that proposed by AT&T in Case No. TO-2000-22.<sup>5</sup>

10. AT&T does not oppose the Applications or the proposed tariffs. However, AT&T does oppose approval of the proposed tariffs because the effect of the proposed tariffs is to put in place the ability for Grand River Communications, Inc. to immediately and without evidence create rate structure identical to that proposed to AT&T's "intraLATA overlay plan" tariff which has been suspended by the Commission. It is AT&T's position that these cases must be treated and processed in the same manner by the Commission. For this reason, AT&T requests that Grand River Communications, Inc.'s proposed tariffs be suspended pending the outcome of Case No. TO-2000-22.<sup>6</sup>

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which allow separate rates for different local exchange companies service areas, Order Rejecting Tariff, page 5.

5 In fact, the only difference that AT&T can discern between itself and Grand Rivers Communications, Inc., where these tariffs are concerned, is that Grand Rivers Communications, Inc. is the affiliate of an ILEC.

6 Clearly, AT&T dislikes being put in the awkward position of having to oppose another carrier's application for the same type of relief that AT&T seeks. However, it is not nearly as awkward for AT&T as being in the position of having its tariff suspended while a competing carrier's application for the same relief is granted. Consequently, AT&T is compelled to try and level the playing field one way or another.

11. Also, in its response, Grand River Communications, Inc. suggests that the Commission should not suspend its proposed tariffs because that will jeopardize its ability to be able to provide interexchange service at the time the PTC plan is eliminated. Grand River Communications, Inc. further requests temporary authority in the event the tariff is suspended because it would jeopardize its ability to provide interexchange service. The only reason Grand River Communications, Inc.'s ability to provide interexchange service might be jeopardized is because Grand River Communications, Inc. made a business decision to seek to be able to deaverage its toll rates prior to entering the interexchange toll market. That is the same business decision that AT&T made when it filed its "intraLATA overlay plan" in Case No. 2000-22, and that is the same business decision that Grand River Communication Inc.'s ILEC affiliate has used to as a basis to delay AT&T's ability to offer intraLATA toll service. There is no justification to grant Grand River Communications, Inc. preferential treatment relative to AT&T. If Grand River Communications, Inc. wants to enter a competitive market as a competitor, it should do what every other competitive interexchange carrier currently operating in Missouri is forced to do at this time; average its toll rates in spite of disparate access rates.

12. In the event the Commission grants temporary authority and allows Grand River to temporarily deaverage toll rates, the Commission should also allow AT&T to offer its "intraLATA overlay plan" pending final resolution of the matter. To do otherwise would be discriminatory and prejudicial to AT&T and would grant an unfair preference to Grand River. If Grand River is allowed to proceed without a hearing, AT&T must also be allowed to proceed without the burden and delay of a hearing. To do otherwise would constitute blatant and unjust discrimination.



13. If the Commission does approve Grand River Communications, Inc.'s tariffs or allows Grand River Communications, Inc.'s proposed tariff to go into effect by operation of law, then the Commission will be sending the message that AT&T should file a similar application and tariffs under a fictitious name. AT&T will consider such an option if it is the only recourse left to it by the Commission, however, such a contrived remedy for the real problem of disparate access rates hardly seems like a solution that is both efficient and in the public interest.

11. Finally AT&T reiterates that as a provider of telecommunication services, AT&T interests are different from that of the public generally and no other party to this case can adequately protect those interests. Moreover, as Grand River Communications, Inc.'s Response admits, AT&T is currently a competitor of Grand River Communications, Inc., which is a status that differs from that of the general public. Despite Grand River Communications, Inc.'s continuation of its ILEC affiliates' campaign to mislead the Commission, AT&T is not attempting *at this time* to exit the subject markets, and Grand River Communications, Inc. can point to no facts that support those allegations levied in its Response. AT&T *is* honoring its statewide role; AT&T *is* currently honoring its interLATA carrier of last resort obligation; AT&T *is* seeking to shed itself of the statewide carrier of last resort obligation for interLATA service; AT&T *is* seeking the authority to deaverage its toll rates (as are Fiber Four and Grand River), and AT&T has chosen not to provide 1+ intraLATA service in some ILEC territories where AT&T *still* provides intraLATA dial around service. None of these actions or proposed actions is the equivalent of "seeking to exit" the subject markets. Grand River Communications, Inc.'s allegations of "sour grapes" as AT&T's motivation for intervention is nothing but sheer hypocrisy on the part of Grand River Communications, Inc., who has sought the

same relief, albeit through pure legal fiction, that its ILEC affiliates have opposed for AT&T. Finally, as if AT&T's justiciable interests in these proceedings were not patently obvious, AT&T's intervention in these proceedings is in the public interest because of its interest in enhancing competition and because of its expertise in the telecommunications industry.

WHEREFORE, AT&T respectfully requests the Commission enter its Order granting AT&T's Application to Intervene, Suspending Grand River Communications, Inc.'s proposed tariffs, and consolidating these cases with Case Nos. TT-2000-22 and TA-2000-23.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served upon the following persons by depositing a true copy thereof in the United States mail, postage prepaid, this 31<sup>st</sup> day of August, 1999.

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