

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

In the Matter of Southwestern Bell Telephone)	
Company's IntraLATA Long Distance Dialing)	Case No. TO-99-535
Parity Plan)	

**AT&T MISSOURI'S MOTION FOR COMMISSION
APPROVAL OF ITS MODIFIED INTRALATA TOLL DIALING
PLAN AND MOTION FOR EXPEDITED TREATMENT**

AT&T Missouri¹ respectfully moves the Commission for an order approving the elimination of the Equal Access scripting requirement from AT&T Missouri's intraLATA toll dialing parity plan, so that the plan will remain consistent with the FCC's recent elimination of the interLATA Equal Access scripting requirement. AT&T Missouri respectfully requests expedited treatment of its Motion, pursuant to 4 CSR 240-2.080(16), due to customer frustration that may arise by the disparate requirements that now exist.

SUMMARY

The post-divestiture (post-1984) era sought to spur competition and consumer choice in the long distance market by mandating "equal access." Equal access allows end users to access their interexchange carrier ("IXC") of choice by dialing "1+." Because equal access was a new concept at the time, the FCC also imposed an equal access "scripting requirement" (or, "EA scripting requirement"), under which incumbent local exchange carriers ("ILECs") were required, first, to inform customers who call to order new local exchange service that they may obtain long distance service from other carriers, and second, to read the customers a list of carriers offering long distance service in their area, upon request.

Two decades have since passed and the usefulness of the EA scripting requirement has long outlived itself, as the marketplace has evolved beyond the concept of separate local and long distance markets. In the present environment, light years removed from the post-divestiture era, wireline local

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

and long distance service “bundles” have proliferated, and multitudes of alternative providers (e.g., wireless, cable) vigorously compete for consumers’ voice calling business. Customers now use wireless phones for stand-alone long distance calling or purchase “any distance” calling plans that include both local and long distance calling from different competitors (e.g., cable companies, CLECs, ILECs and wireless providers). Based on these profound changes in the marketplace, the FCC decided in its August 31, 2007 *Long Distance Order*² to eliminate the interLATA EA scripting requirement as to Bell Operating Companies (“BOCs”) like AT&T Missouri, and their independent ILEC affiliates.³ Given these real-world circumstances and the fact that the FCC has eliminated the EA scripting requirement for interLATA calling, having a continuing intraLATA scripting requirement is confusing for customers and unnecessary. Furthermore, continuing a separate intraLATA EA scripting requirement could thwart the FCC’s objectives. This Motion asks that the Commission expeditiously eliminate AT&T Missouri’s intraLATA EA scripting requirement.

The Commission’s current intraLATA EA scripting requirement applicable to AT&T Missouri, which is a part of AT&T Missouri’s Commission-approved intraLATA toll dialing parity plan (“ILDP plan”), replicates the old interLATA EA scripting requirement eliminated by the FCC on August 31. Given the FCC’s action, AT&T Missouri requests that the Commission modify AT&T Missouri’s ILDP plan to align it with the FCC’s *Long Distance Order*. Leaving the ILDP unchanged would compound the prospects of customer confusion, particularly since there are no longer any “relevant distinctions” between a BOC’s interLATA services and its intraLATA services.⁴

² In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules: Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Regulations for In-Region, Interexchange Services, WC Docket No. 02-112, CC Docket No. 00-175 and WC Docket No. 06-120, FCC 07-159, Report and Order and Memorandum Opinion and Order, rel. August 31, 2007 (“*Long Distance Order*”).

³ *Long Distance Order*, ¶¶ 177-127.

⁴ In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules, WC Docket No. 02-112 and CC Docket No. 00-175, Comments of the Public Service Commission of the State of Missouri, filed June 26, 2003, p. 5.

Expedited treatment of this Motion is thus necessary to eliminate any potential for customer confusion that would be difficult for AT&T Missouri personnel to resolve when speaking to these prospective customers.⁵ Moreover, any confusion during this initial contact between prospective customers and AT&T Missouri may impact the customer's decision as to whether or not to buy AT&T Missouri services. To be clear, this scripting requirement applies to prospective "new connect" customers. These customers have often moved to a new residence or business, and have probably weathered the familiar series of logistics required when moving: establishing new services for electricity, water, gas, cable television, insurance, etc. Therefore, avoiding customer confusion by eliminating a disparity between interLATA and intraLATA equal access requirements is especially important for new customers.

AT&T Missouri emphasizes that the intraLATA relief requested from the Commission is limited to the EA scripting requirement applicable to customers ordering new telephone service. The relief requested here is no greater than the interLATA relief already received from the FCC. This motion will not impact any customer's choice of long distance provider. Customers will continue to have the right to obtain long distance, for both intraLATA and interLATA service, from the provider of their choice, and AT&T Missouri will continue to honor those choices.

BACKGROUND

The 1984 divestiture of the Bell system, combined with public policy, created a clear distinction between the local and long distance markets. At that time, competition in the long distance market was in its early stages. The post-divestiture era sought to spur competition and consumer choice in the long distance market by mandating "equal access." Equal access "allows end users to

⁵ For the reasons further explained herein, AT&T Missouri also requests that the Commission clarify that interLATA equal access presubscription and processes shall be conducted in accordance with the FCC's requirements (which would encompass the FCC's *Long Distance Order*). See, 4 CSR 240-32.100(4). This clarification will ensure consistency with Section 386.020(4)(g), RS Mo., which provides that basic local telecommunications service includes: "Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission[.]"

access facilities of a designated [IXC] by dialing ‘1’ only.”⁶ As a part of equal access, the FCC imposed the EA scripting requirement.⁷ ILECs were required first, to inform new local exchange customers that they could obtain stand-alone long distance service from other carriers, and second, to read the customers a list of carriers offering long distance service in their area if requested by the customer. The EA scripting requirement helped ensure that customers understood that they had a choice of interLATA long distance service providers, and that their choice was an informed one.⁸

The Commission later began implementing intraLATA toll dialing parity (“ILDLP”).⁹ The Commission approved AT&T Missouri’s (then, Southwestern Bell Telephone Company’s) ILDP plan in June, 1999.¹⁰ That plan states the following EA scripting requirement:

After implementation, new customers that contact SWBT to establish local service will be asked to select an intraLATA long distance provider. SWBT will inform the customer that they have a choice of companies that can provide intraLATA toll service and that a list of participating providers can be presented to them. If requested, the list of intraLATA long distance providers will be provided in a random, continuously rotating order. Once the customer understands that a choice is available, SWBT representatives will then recommend SWBT as the intraLATA long distance provider.¹¹

This motion requests approval to eliminate the above-quoted scripting requirement from AT&T Missouri’s ILDP plan. The dramatic changes in the competitive landscape, which both this Commission and the FCC have recognized, have long since eclipsed the scripting requirement’s usefulness. For example, AT&T Missouri’s intraLATA toll services are classified as competitive in all

⁶ In the Matter of Investigation of Access and Divestiture Related tariffs, Memorandum Opinion and Order, 101 FCC 2d 911 (1985), ¶ 1.

⁷ *United States v. Western Elec. Co., Inc.*, 578 F. Supp. 668, 670 (D.D.C. 1983) (equal access requirements were meant to abolish a “substantial disparity in dialing convenience” caused by end-users having to dial a multiple-digit access code to access interexchange carriers other than AT&T); *see also*, *Long Distance Order*, ¶ 117 & n. 338, *citing*, Equal Access Allocation Tariff Order, 101 FCC 2d 935 (1985), ¶ 40. The EA scripting requirement was preserved by section 251(g) of the Act. *Long Distance Order*, ¶ 117 & n. 338.

⁸ In the Matter of Investigation of Access and Divestiture Related tariffs, Memorandum Opinion and Order, 101 FCC 2d 911 (1985), ¶ 6.

⁹ In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Opinion, 14 FCC Rcd 5263 (1999).

¹⁰ In the Matter of Southwestern Bell Telephone Company’s IntraLATA Long Distance Dialing Parity Plan, Case No. 99-535, Report and Order, June 10, 1999. The Commission approved AT&T Missouri’s ILDP with certain modifications not relevant here.

¹¹ Case No. 99-254, et al., Direct Testimony of Craig A. Unruh, Schedule 1.

of its Missouri exchanges.¹² Indeed, the Commission has found not only that “robust competition exists for AT&T Missouri’s intraLATA toll services[,]”¹³ it has also found that competition in the intraLATA toll market has existed for over 20 years.¹⁴ The Commission has also determined that this competition takes both traditional forms, including competition from CLECs and IXC’s, as well as non-traditional forms, including competition from wireless service, prepaid telephone cards, and the Internet.¹⁵

As described in greater detail below, the FCC has definitively concluded that the interLATA EA scripting requirement is no longer justified in today’s competitive environment. For similar reasons, the Commission should approve AT&T Missouri’s planned modification of its ILDP plan so as to remain consistent with the FCC’s order and to otherwise serve the public interest. The public interest served by eliminating the EA scripting requirement applies equally at both the federal and state levels.

THE FCC’S AUGUST 31, 2007 *LONG DISTANCE ORDER*

Like this Commission, the FCC has observed the rapid and pervasive development of competition in the telecommunications services market. Customers are well aware today that they have choices for their telecommunications services, and that there are multiple providers of those telecommunications services.

On August 31, 2007, the FCC found that dominant carrier regulation of the BOCs was no longer warranted, and that the current structural safeguards should be replaced with a new framework to govern the provision of in-region, long distance services by BOCs and their independent incumbent local exchange carrier affiliates. This new framework, stated the FCC, “replaces unnecessarily

¹² In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order on Remand, January 26, 1997 (“Effective Competition Order”), Ordering Clause 4, p. 32.

¹³ Effective Competition Order, p. 15.

¹⁴ Effective Competition Order, p. 14.

¹⁵ Effective Competition Order, p. 14.

burdensome regulation with less intrusive measures that protect important customer interests while allowing the BOCs . . . to respond to marketplace demands efficiently and effectively.”¹⁶

In the same August 31, 2007 Order, the FCC also decided to eliminate the interLATA EA scripting requirement, which it observed requires incumbent LECs to inform customers who call to obtain new local exchange service that they may obtain long distance service from other carriers, and to read the customers a list of carriers offering long distance service in their area upon request. The FCC granted AT&T Inc.’s “petition for forbearance” from the requirement, finding that forbearance from the application of the interLATA EA scripting requirement to the BOCs and their independent ILEC affiliates was warranted.¹⁷ In doing so, the FCC concluded that such action served the public interest for several reasons.

First, the FCC observed that the EA scripting requirement was originally designed “to foster fair competition in the provision of stand-alone long distance service at a time when competition in the provision of stand-alone long distance services was nascent and there was little, if any, competition in the provision of local exchange service.”¹⁸ Over the years, competition in the telecommunications market has grown by leaps and bounds, and the nature of that competition has changed significantly. In particular, the FCC found that “the stand-alone long distance competition that the EA [s]cripting [r]equirement was designed to protect has largely given way to competition between service bundles that include both local exchange and long distance service or ‘any distance’ minutes that can be used

¹⁶ *Long Distance Order*, ¶ 1.

¹⁷ Federal law requires forbearance from a regulation or a provision of the Communications Act of 1934, as amended, if the FCC determines that: (1) enforcement of the provision or regulation is not necessary to ensure the telecommunications carriers’ charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. 47 U.S.C. § 160(a)(1)-(3). In making such determinations, the FCC also must consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.” 47 U.S.C. § 160(b).

¹⁸ *Long Distance Order*, ¶120.

for both local exchange and long distance calling.”¹⁹ It also noted that “[w]ireless telephone subscribers also regularly use their ‘any distance’ minutes for long distance calling.”²⁰ Moreover, the minority of customers that still take stand-alone long distance services now have additional options available for making long distance calls, including mobile wireless services and prepaid calling cards.²¹

Second, the FCC found that the EA scripting requirement undermined consumer awareness of competitive alternatives to presubscribed wireline long distance providers. In particular, it found that the EA scripting requirement inappropriately focuses solely on alternative presubscribed wireline long distance providers, despite the development of competitive alternatives such as wireless services and prepaid calling cards. Such alternatives have likewise been recognized by this Commission.²² Thus, stated the FCC, “[i]nstead of increasing consumer awareness of competitive alternatives, we find that the artificially narrow focus of the EA [s]cripting [r]equirement may, in fact, confuse or mislead consumers and cause them not to investigate alternative means of making long distance calls.”²³ For this reason, the FCC further found that “competition for stand-alone long distance services would function better absent the potential market-place distorting effects of the current EA scripting requirement.”²⁴

Accordingly, the FCC granted forbearance from continued application of these rules effective August 31, 2007, the same day on which it released its order.²⁵

¹⁹ *Long Distance Order*, ¶ 121. (noting that “service bundles are increasingly available from cable operators and interconnected VoIP providers” and that “[w]ireless telephone subscribers also regularly use their ‘any distance’ minutes for long distance calling”).

²⁰ *Long Distance Order*, ¶121.

²¹ *Long Distance Order*, ¶122.

²² *Compare, Long Distance Order*, ¶122, with, *Effective Competition Order*, p. 14 (referring to wireless service, prepaid telephone cards, and the Internet).

²³ *Long Distance Order*, ¶122.

²⁴ *Long Distance Order*, ¶122; see also, *Long Distance Order*, ¶¶ 123-24 (“current EA [s]cripting [r]equirement is likely to distort competition” and “harm consumers”).

²⁵ *Long Distance Order*, ¶127.

AT&T MISSOURI'S REQUEST FOR EXPEDITED RELIEF

AT&T Missouri requests that the Commission expeditiously approve -- and in all events by not later than October 31, 2007 -- the modification of AT&T Missouri's ILDP plan to eliminate the plan's intraLATA EA scripting requirement.

As explained below, there is no logical basis for continuing to enforce any longer the EA scripting requirement for intraLATA long distance service, given the FCC's already having eliminated the same requirement for interLATA long distance services. Moreover, continuation of the intraLATA EA scripting requirement would lead to customer confusion and would undercut the FCC's determination to eliminate the interLATA EA scripting requirement.

The FCC's reasoning in its *Long Distance Order* is plainly applicable to both intraLATA and interLATA services. The FCC's cost-benefit analysis made no distinction between them,²⁶ and this Commission has likewise found that, given the intensity of toll competition in Missouri, there are no longer any relevant distinctions between AT&T Missouri's intraLATA and interLATA services. As the Commission stated in its comments to the FCC regarding the potential sunset of Section 272 requirements:

Should the [FCC] decide the basic local market will not be impaired by a sunset of Section 272, [sic] requirements, paragraph 13 of the NPRM seeks comment on whether there are any relevant distinctions between a BOC's in-region, interstate, InterLATA services and its in-region, intraLATA services offered post-sunset. The MoPSC sees no reasonable basis for such distinction, as it has observed trends in the marketplace that seem to move toward blurring the distinction between local minutes and those minutes traditionally considered long distance and/or toll.²⁷

²⁶ For example, when deciding to forbear from applying the EA scripting requirement, the FCC was careful to refer generally to "stand-alone long distance services." It never once suggested that its analysis was limited to stand-alone interLATA services. E.g., *Long Distance Order*, ¶122. Furthermore, the FCC recognized that one of the most important developments since the establishment of the equal access scripting requirement has been the rise in competition for service bundles that include both local exchange and long distance service or "any distance" minutes. *Long Distance Order*, ¶121. Such minutes are available not only for local and interLATA long distance calling but also for intraLATA long distance calling.

²⁷ In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, Comments of the Public Service Commission of the State of Missouri, filed June 26, 2003, p. 5.

Given this absence of any relevant distinction, absent expedited relief, continued application of the scripting requirement for intraLATA long distance service, while removing it for interLATA service, will greatly confuse and frustrate the many customers who for the most part choose to “bundle” their services and no longer focus on stand-alone long distance services apart from local service. Moreover, continued application of the scripting requirement at a state level, like that at the federal level, artificially focuses on one set of competitive alternatives (i.e., wireline presubscribed services) at the expense of other available options (e.g., wireless services; wireline prepaid services).

Expedited relief is thus necessary because, like the former interLATA EA scripting requirement, the intraLATA EA scripting requirement can “confuse or mislead consumers and cause them not to investigate alternative means of making long distance calls.”²⁸ It could be misleading to inform customers that they have a choice of carriers for the provision of intraLATA long distance service (and then, if requested, to read them names of alternative wireline long distance carriers), while saying nothing about the choice of carriers they have for interLATA long distance service. A customer might infer from such silence that he or she has no choice with respect to interLATA long distance service, but that would clearly be incorrect. Alternatively, in order to avoid such an implication, AT&T Missouri might be compelled to inform the customer that he or she does have a choice with respect to interLATA long distance service, and that would defeat the FCC’s policy to do away with the scripting requirement.²⁹

²⁸ *Long Distance Order*, ¶122.

²⁹ A continuing requirement to read from an intraLATA EA script would stand “as an obstacle to the accomplishment and execution of the important means-related federal objectives” that are central to the FCC’s deregulatory federal policy. *Geier v. American Honda Motor Co.*, 529 U.S. 861, 872, 881-82 (2000), *quoting*, *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The appropriate inquiry remains whether the purposes and objectives of federal law, including the intent to establish a workable, uniform system, are consistent with concurrent state regulation. *United States v. Locke*, 529 U.S. 89, 115 (2000). In this case, the FCC has established that current federal policy is to eliminate the interLATA EA scripting requirement; and “concurrent state regulation” continuing to impose a scripting requirement for intraLATA long distance providers is inconsistent with that federal policy.

In addition, AT&T Missouri should be afforded the opportunity, without delay, to market and sell its long distance offerings in the same manner as other long distance providers.³⁰ The “marketplace-distorting effects”³¹ of the current intraLATA EA scripting requirement are no less harmful to competition than those eliminated by the FCC’s *Long Distance Order*.

In sum, both the harms to be avoided and the benefits that would accrue from expedited relief are real. Especially important, too, is that they are imminent, given that the FCC’s action became effective on August 31, 2007, the same day it issued its *Long Distance Order*. Nothing will be gained but much will be lost if the removal of the EA scripting requirement for interLATA long distance service is not accompanied by removal of the requirement for intraLATA long distance service. Finally, AT&T Missouri has moved promptly, by filing this motion as soon as reasonably practicable following the issuance and study of the FCC’s *Long Distance Order* issued just a few weeks ago.

The Commission can be assured that expedited relief will in no way impact consumers’ equal access rights, because “[e]ven without the EA Scripting Requirement, the BOCs’ local customers will retain the right to obtain long distance service from a long distance carrier other than the BOC. In cases in which customers ask whether they can obtain long distance service from another carrier or select a stand-alone long distance service, the BOCs remain subject to nondiscrimination obligations and must allow customers to exercise their rights under the remaining equal access obligations.”³² AT&T Missouri will also continue complying with the Commission’s rules governing verification of orders to change telecommunications service providers. 4 CSR 240-33.150.

³¹ Long Distance Order, ¶122.

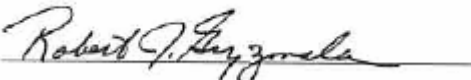
³² *Long Distance Order*, ¶124.

CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully requests that the Commission expeditiously issue its order approving the modification of AT&T Missouri's intraLATA toll dialing parity plan to eliminate the equal access scripting requirement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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