

BARRY ROAD ASSOCIATES, INC.,
d/b/a MINSKY'S PIZZA,

and

THE MAIN STREET ASSOCIATES, INC.
d/b/a MINSKY'S PIZZA,

and

HARRY MARK WOOLDRIDGE,

COMPLAINANTS,

vs.

SOUTHWESTERN BELL TELEPHONE
COMPANY, d/b/a AT&T MISSOURI,

RESPONDENT.

[illegible]

I. Introduction

Complainants' Complaint is filed pursuant to an Order (the "Order") of the Circuit Court of Jackson County, Missouri ("Circuit Court") dated April 4, 2011 (Exhibit A to the Complaint), and seeks a determination of whether back-tax surcharges billed by AT&T Missouri may be passed through to its customers. Specifically, the Court's order stayed the underlying proceeding to allow the Complainants to seek a ruling from the Missouri Public Service Commission ("PSC") to determine the sole issue of "whether the settlement payments made by AT&T [Missouri] are to be passed through to AT&T [Missouri] customers pursuant to 17.11 General Exchange Tariff 35 or similar and related tariffs." (Exhibit A to the Complaint at 8). Because the material facts in this case are uncontroverted, and because the back-tax surcharges are

mandated under a tariff approved by the PSC, the PSC should find that the back tax surcharge is required to be passed through to AT&T Missouri customers. Accordingly, summary disposition must be granted in AT&T Missouri's favor as to whether the back-tax surcharge is to be passed through to AT&T Missouri customers.

II. Statement of Uncontroverted Material Facts

1. The PSC has authority over AT&T Missouri's telephone service rates, and AT&T Missouri must include them in a filed tariff subject to the jurisdiction of the PSC. §§ 392.220, 392.245 RSMo.¹

2. In accordance with this regulatory scheme, AT&T Missouri filed its current General Exchange Tariff, P.S.C. Mo. - No. 35 (the "Tariff"), on December 29, 1983. *See* Exs. 1 and 2.²

3. Under its rate-oversight authority, the PSC approved the Tariff effective January 1, 1984. *See* 1983 Mo. PSC LEXIS 4 (Mo. PSC 1983), attached as Ex. 3.

4. For decades, AT&T Missouri's General Exchange Tariffs have contained provisions requiring municipal taxes to be passed through to subscribers. Section 17.11 of the Tariff (hereinafter § 17.11), the current pass-through tariff provision for any franchise, occupation, business, license, excise, privilege or other similar tax, fee, or charge, arose from § 25.11 of the prior General Exchange Tariff, P.S.C. Mo. – No. 22, which remained in effect from

¹ Complainants' vague allegations regarding a "newly unregulated environment," Complaint ¶ 3, do not change the controlling statutes, nor the governing General Exchange Tariff. Thus, the extent and specifics of any partial deregulation are irrelevant to the specific charges at issue here, which the governing tariff expressly requires. Nor may Complainants' allegation that no tariff "covers" the challenged tax pass-through charges be given any effect. Complaint ¶ 25. The PSC must interpret the tariff as a matter of law and ignore Complainants' allegations regarding its meaning. *See Allstates Transworld Vanlines, Inc. v. Sw. Bell Tel. Co.*, 937 S.W.2d 314, 317 (Mo. App. 1996) (interpreting tariff as a matter of law). *Cf. State ex rel. State Tax Comm'n v. Briscoe*, 451 S.W.2d 1, 3 (Mo. banc 1970) (court must "disregard[] those allegations which are nothing more than legal conclusions").

² Ex. 2 (1991 tariff) is the current tariff on file with the PSC. It is identical to the tariff approved by the PSC on January 1, 1984. *See* Ex. 1 (1983 tariff).

July 1971 until January 1, 1984 (when it was replaced in its entirety by P.S.C. Mo. – No. 35). *See* Ex. 4. The pass-through provision of the Tariff originated from provisions contained in P.S.C. Mo. – No. 16 (the General Exchange Tariff preceding P.S.C. Mo. – No. 22) that the PSC approved April 10, 1968, through Telephone Authority Order No. 558. *See* Exs. 5 and 6.

5. Section 17.11 of the Tariff states in relevant part:

There **shall** be added to the customer's bill or charge, as a part of the rate for service, a surcharge equal to the pro rata share of any franchise, occupation, business, license, excise, privilege or other similar tax, fee or charge (hereafter called "tax") now or hereafter imposed upon the Telephone Company by any taxing body or authority, whether by statute, ordinance, law or otherwise and whether presently due or to hereafter become due.

On or after the effective date thereof, any subsequent increase, decrease, imposition or determination of liability for such taxes, fees or charges as described above shall be applied . . . to the customer's bill or charge on each individual billing date.

See Ex. 2 (emphasis added).

6. The Tariff governs the relationship between AT&T Missouri and its landline telephone customers, including Complainants. *Bauer v. Sw. Bell Tel. Co.*, 958 S.W.2d 568, 570 (Mo. App. 1997).

7. On March 11, 2010, Complainants Barry Road Associates, Inc., d/b/a Minsky's Pizza, The Main Street Associates, Inc. d/b/a Minsky's Pizza, and Harry Mark Wooldridge filed a first amended putative class action petition against Southwestern Bell Telephone Company, d/b/a AT&T Missouri, AT&T Corp., and AT&T Inc., for violation of the Missouri Merchandising Practices Act ("MMPA"), unjust enrichment, money had and received, breach of

the implied covenant of good faith and fair dealing, and statutory damages under § 392.350 RSMo.³ *See generally* First Am. Pet. (Exhibit B to the Complaint.)

8. The pass through of back taxes (*i.e.*, the Special Municipal Charges) upon which Complainants' underlying claims rest is rooted in three prior lawsuits filed against AT&T Missouri and related entities. *See* Ex. 7, *City of Wellston, Mo., et al. v. SBC Communications, Inc., et al.*, Case No. 044-02645 (filed December 30, 2004, St. Louis City Cir. Ct.); Ex. 8, *City of Springfield v. AT&T Missouri, et al.*, No. 04-4099-cv (filed May 14, 2004, W.D. Mo.); Ex. 9, *St. Louis County, Missouri v. AT&T Corp., et al.*, No. 08SL-CC00125 (filed Jan. 11, 2008, St. Louis County Cir. Ct.) (collectively the "Tax Litigation").

9. Each of these lawsuits was settled, and the settlement terms required that AT&T Missouri make back tax payments to eligible taxing entities. *See* Ex. 10, *Wellston Settlement Agreement* at 14, § II.A; Ex. 11, *Wellston J. & Order Approving Settlement*; Ex. 12, *S. Shashack Aff.*, at Exs. 12A at 8, § II.A and 12B at 2, ¶ 2.

10. AT&T Missouri accordingly made back tax payments to eligible taxing entities pursuant to the settlement agreements. *See* Ex. 10 at 14, § II.A; Ex. 12 at Exs. 12A at 8, § II.A and 12B at 2, ¶ 2.

11. AT&T Missouri began to pass through these back tax payments to its customers via a monthly surcharge. *See* Ex. B to the Complaint, First Am. Pet., ¶ 2.

12. These back-tax surcharges give rise to each of Complainants' asserted causes of action. *See generally* First Am. Pet. and the allegations in the Complaint.

³ Complainants voluntarily dismissed AT&T Inc. on June 3, 2010. On April 4, 2011, the Circuit Court granted AT&T Corp.'s motion for summary judgment, based on its finding that Complainants are not AT&T Corp. customers, and because AT&T Corp. never imposed the Special Municipal Charge at issue, it was not a proper party to this lawsuit.

13. On April 4, 2011, the Circuit Court issued the Order. In the Order, the Court stayed the case, and directed Complainants to seek a ruling from the PSC on the issue of whether “the settlement payments made by AT&T Missouri are tax payments which are required to be passed through to AT&T customers consistent with applicable tariffs.”⁴ In its Order, the Circuit Court rejected Complainants’ argument that AT&T Missouri should be precluded, based on the doctrine of judicial estoppel, from asserting that the settlement payments were payments of taxes. The Circuit Court found that the circumstances of the case did not bring into play the principals of judicial estoppel and that “[b]ecause AT&T did nothing more than vigorously defend its right to challenge the interpretations of law as it relates to past and future taxes, there is nothing to suggest [AT&T Missouri was] attempting to impugn the integrity of the court.” Ex. A to Complaint at 5.

14. The Circuit Court also rejected Complainants’ claims that the monies paid to the municipalities under the settlements were not payments for taxes. The Court found “**no ambiguity** in the *Wellston* court’s findings in the Judgment and Order Approving the Wellston Settlement, and the court specifically found that the monies paid to the municipalities was for back and future taxes.” Ex. A to the Complaint at 7 (emphasis added). The Circuit Court found that it had no authority to reverse the findings of the *Wellston* Court that the “settlement specifically involves past and future gross receipts or sales taxes.” *Id.* The Circuit Court also found that it had no authority to second guess the decision of the *Wellston* Court that the underlying settlement was for back and future taxes. *Id.*

15. Citing the *Wellston* Court, the Circuit Court also expressed its belief that the *Wellston* Court had determined that the PSC had jurisdiction to determine whether the settlement

⁴ On May 23, 2011, the Court issued an order extending the stay for an additional 90 days from the date of the original Order to permit the Complainants to file this Complaint before the PSC. The case is now stayed pending a determination by the PSC on the issue presented in the Complaint.

payments should be passed through to customers, and further that the Court had no authority to second guess the *Wellston* Court's decision. The Circuit Court also found that it was for the PSC to determine whether AT&T Missouri's actions in deregulating some of its business activities was controlling as to the applicability of the General Exchange Tariff in the Tax Litigation. Ex. A to the Complaint at 7.

III. Standard of Review

Summary disposition is appropriate when “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 the case, and the commission determines that it is in the public interest.” 4 CSR 240-2.117(1); *see also* Mo. R. Civ. P. 74.04 (summary judgment appropriate when there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law); *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 377 (Mo. banc 1993).⁵

A defendant establishes a right to summary disposition by (1) offering facts that negate one or more essential elements of the plaintiff's claim, or (2) showing that the plaintiff will be unable to produce sufficient evidence to establish one or more essential elements of the plaintiff's claim. *ITT Commercial Fin. Corp.*, 854 S.W.2d at 381. *See also Hoffman v. Union Elec. Co.*, 176 S.W.3d 706, 707 (Mo. banc 2005).

The movant bears the burden of proving that summary disposition is proper. *ITT Commercial Fin. Corp.*, 854 S.W.2d at 378. “Facts set forth by affidavit or otherwise in support of a party's motion are taken as true unless contradicted by the non-moving party's response to

⁵ Pointing to *ITT Commercial*, the PSC in *Nexus Communications, Inc. v. Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri*, Case No. No. TC-2011-0132, 2011 Mo. PSC LEXIS 109 at *6 (January 26, 2011), noted that Rule 74.04 summary judgments are “sufficiently similar” to summary proceedings at the PSC such that “cases interpreting the rule [are] helpful.”

the summary judgment motion.” *Id.* at 376. When the movant introduces facts showing a right to judgment as a matter of law, the burden then shifts to the non-movant, who must respond with countervailing evidence showing that there is a genuine dispute as to one or more of the movant’s material facts. *Id.* at 381. As a matter of both law and uncontroverted fact, AT&T Missouri is entitled to summary disposition here.

IV. Argument

A. The General Exchange Tariff Requires that the Settlement Payments be Passed Through to AT&T Missouri Customers.

Under the applicable tariff and pursuant to the Order, the PSC is the appropriate body to determine whether “the settlement payments made by AT&T Missouri are tax payments which are required to be passed through to AT&T customers consistent with applicable tariffs.” As demonstrated here, the PSC should find that the settlement payment surcharges are subject to the tariff and must be passed through to AT&T Missouri’s customers. *See id.*; *Orscheln Bros. Truck Lines, Inc. v. Ferguson Mfg., Inc.*, 793 S.W.2d 525, 530 (Mo. App. 1990).

1. Complainants’ claims focus on back-tax surcharges.

The crux of Complainants’ Complaint is that AT&T Missouri had no right to bill (or “pass through” to) its customers for back taxes paid as a result of settling the Tax Litigation. For example, Complainants assert that common issues for the putative class are whether the back-tax surcharges were “wrongful, deceptive, and extremely lucrative” for AT&T Missouri and were made “without legal authority.” Complaint ¶ 2. The contract between AT&T Missouri and its customers as it relates to tax surcharges is the Tariff. *See generally* General Exchange Tariff No. 35.

2. Section 17.11 mandates tax surcharges be passed through to customers, and does so to ensure non-discrimination.

Section 17.11 mandates that as part of the rate for service, AT&T Missouri bill its customers a surcharge for license tax payments such as those at issue in the Tax Litigation and their related settlements. *See* Ex. 2 at § 17.11 (“[t]here **shall be added** to the customer’s bill or charge . . . a surcharge equal to the pro rata share of any . . . tax, fee or charge”) (emphasis added). Because tariffs have the “same force and effect as a statute,” in interpreting § 17.11, the PSC must apply general rules of statutory interpretation. *Allstates Transworld Vanlines v. Sw. Bell Tel. Co.*, 937 S.W.2d 314, 317 (Mo. App. 1996) (internal citations omitted). Specifically here, “[i]f a statute, or . . . tariff, is clear and unambiguous, [a court] cannot give it another meaning.” *Id.*

Not only does § 17.11 unambiguously require AT&T Missouri to add to its customers’ bills a surcharge equal to the customer’s pro-rata share of business license tax payments or other charges imposed on AT&T Missouri, but this requirement has clear public policy underpinnings. In *State ex rel. City of West Plains v. Public Service Commission*, the Supreme Court of Missouri affirmed a PSC order approving the pass through of license taxes to utility customers. 310 S.W.2d 925 (Mo. 1958).⁶ In doing so, the Court recognized the economic reality that if the carrier did not pass these taxes through directly to the residents of the taxing entity, the carrier’s tax liability would simply become an operating expense reflected in the rates of **all** customers. *Id.* at 931. *Accord* A.J.G. Priest, PRINCIPLES OF PUBLIC UTILITY REGULATION: THEORY AND APPLICATION 51 (1969) (“The propriety of including all taxes among necessary operating expenses [in calculating rates] has been so long established as to require little attention.”).

⁶ The Supreme Court in *West Plains* also emphasized that the tax pass-through is part of the “total rate determination.” *West Plains*, 310 S.W.2d at 928. *Accord* Ex. 2 § 17.11 (describing pass-through as a “rate for service”).

Against this background, the question for the Supreme Court in *West Plains* became not **whether** subscribers should or should not ultimately pay license taxes, as “a utility’s subscribers will always provide the money for payment of all taxes.” *West Plains*, 310 S.W.2d at 934. Rather, “the only question is **which** subscribers should pay the tax.” *Id.* (emphasis added). The Court’s conclusion aligns squarely with the predominant view that “discrimination results when all of a utility’s customers are made to assume the burden of special taxes exacted by a particular municipality for its own purposes. And the passing along of such special taxes to local customers who are benefited by them seems patently reasonable.” A.J.G. Priest, *PRINCIPLES OF PUBLIC UTILITY REGULATION: THEORY AND APPLICATION* at 54.⁷

3. The Tariff’s pass-through provision extends to back tax payments.

Complainants’ claims—as asserted both in their Complaint and in their First Amended Petition—clearly implicate the Tariff itself, which “governs [AT&T Missouri’s] relationship with its customers” *Bauer*, 958 S.W.2d at 570. More specifically, the entire thrust of Complainants’ Complaint before the PSC amounts to a direct challenge to the mandate of § 17.11 that AT&T Missouri pass through license taxes. *See generally* Complaint.

Both the language and the purpose of the pass-through provision in § 17.11 confirm that it applies equally to back tax payments and prospective tax payments. Under § 17.11, “any

⁷ Courts nearly universally subscribe to this policy. *See, e.g., City of Montrose v. Pub. Utils. Comm’n of Colo.*, 732 P.2d 1181, 1189 (Colo. 1987) (“[A] municipality could place an increasingly greater burden on customers outside its boundaries to support the municipality. [The pass-through], however, provides a disincentive for municipalities to negotiate inflated franchise fees since whatever fee a municipality is able to obtain from a utility will be paid for, in the end, by the municipality’s own residents.”); *City of Houston v. Pub. Util. Comm’n of Tex.*, 656 S.W.2d 107, 110 (Tex. App. 1983) (“The surcharge thus eliminates a discrimination that would result from distributing the cost of a municipality’s gross receipts charge among all the ratepayers in the State.”); *City of Spartanburg v. Pub. Serv. Comm’n of S.C.*, 314 S.E.2d 599, 600 (S.C. 1984) (“[T]o charge customers outside the city exchange or across the state for a city license tax would be unjust discrimination.”); *City of Newport News v. Chesapeake & Potomac Tel. Co. of Va.*, 96 S.E.2d 145, 148 (Va. 1957) (“If a locality can levy taxes that are paid mostly by people who do not live and vote there, self-interest will persuade it to rely on such taxes for the support of local government.”). *Cf. Conn. Office of Consumer Counsel v. FCC*, 915 F.2d 75, 79 (2d Cir. 1990) (“Absent a [pass-through], a gross receipts tax is a political and financial windfall to states imposing it because a state’s coffers can be filled largely at the expense of persons in other states.”).

subsequent increase, decrease, **imposition or determination of liability** for such taxes, fees or charges as described above shall be applied . . . to the customer's bill.” Ex. 2 (applying to taxes “now or hereafter imposed”) (emphasis added). If the rule were otherwise, then the policy enunciated in *West Plains* to avoid a state-wide rate increase for all customers based on taxes paid to a single taxing entity would be undercut. *Accord Village of Roselle v. Commonwealth Edison Co.*, 859 N.E.2d 1, 11 (Ill. App. Ct. 2006) (analyzing provision in tariff authorizing pass-through of taxes to apply to back taxes paid as a result of an accounting claim because “underlying the . . . claim is the idea that [the utility] owes unpaid . . . tax”). *Cf. Farmland Indus. v. Kan. Corp. Comm’n*, 37 P.3d 640 (Kan. Ct. App. 2001) (tariff’s tax pass-through provision applied to refunds of already-paid taxes, not just prospective taxes).

It is for this reason that the *Wellston* Court found, and the Circuit Court agreed, that the settlement payments were for back tax and future tax payments. To accept Complainants’ arguments that AT&T Missouri cannot pass through a payment made to settle a tax dispute would lead to the illogical result of AT&T Missouri being penalized for settling a tax dispute despite the fact that by doing so, AT&T Missouri paid far less than it would have if it paid—and subsequently passed through—these license taxes all along. And the amount AT&T Missouri paid in settlement was significantly less than the amount it may have owed in a back-tax judgment if it had proceeded to trial against the municipalities. *Compare, e.g.*, Ex. 7 at ¶ 23, Ex. 8 at ¶ 34, & Ex. 9 at ¶ 17 (seeking tax payments on interstate revenues) *with* Ex. 10 at 15, Ex. 12 at Exs. 12A at 9-10 & 12B at 2 (excluding interstate revenues from the tax). Such an illogical result is contradicted by the plain meaning of the pass-through provision.

4. The Tariff's pass-through provision extends to back tax payments paid pursuant to settlement agreements.

Complainants' Complaint focuses on the fact that AT&T Missouri made the tax payments at issue to settle claims for back taxes made by a number of Missouri taxing entities. But this fact does not change the fundamental nature of these payments as taxes subject to the mandates of § 17.11. Indeed, the settlement agreements themselves characterized these payments as "back tax payments" and specifically foresaw that, as a result, the payments would be passed through to customers. *See* Ex. 10 at 14, § II.A ("AT&T Missouri and SBC Long Distance, LLC shall collectively make a Back Tax Payment"); Ex. 12 at Exs. 12A at 8, § II.A and 12B at 2, ¶ 2.⁸ *See also County of Suffolk v. Alcorn*, 266 F.3d 131, 139 (2d Cir. 2001) (in a lawsuit over utility's settlement affecting its gross receipt taxes, which were passed-through to consumers, court noted that "all competent lawyers . . . take tax consequences into account before specifying a settlement amount"). Moreover, the taxing entities bound by the Tax Litigation settlements released their claims for back taxes against AT&T Missouri as part of the settlement. *See* Ex. 10 at 37, § VI.A; Ex. 12 at Exs. 12A at 20, § IV.A and 12B at 3, ¶ 6. The settlement payments were clearly payments made to the municipalities for claims by them for certain back tax and future tax payments and these payments most clearly fall within the pass-through provision of § 17.11, which mandates that the carrier bill its customers for any "tax, fee or charge . . . imposed upon the Telephone Company by any taxing body or authority, whether by statute, ordinance, law or otherwise." Ex. 2.

⁸ *See also* Ex. 10 at 28, § II.C ("The Class Members agree not to challenge the right of Defendants to pass through to their retail customers all or any part of the sums paid or to be paid to a Class Member under the Business License Tax ordinances and this Settlement Agreement."); Ex. 12 at Exs. 12A at 20, § II.C and 12B at 6, ¶ 21.

B. AT&T Missouri's Actions in Deregulating Some of its Business Activities Do Not Bar the Applicability of the Tariff.

Complainants suggest that by opting out of certain of the PSC's billing regulations, AT&T Missouri is taking "advantage of this newly unregulated environment" by imposing the surcharges on customers. On August 28, 2008, amendments to § 392.420 RSMo. became effective so as to allow an incumbent local exchange telecommunications company, such as AT&T Missouri, to waive (or opt out of) certain of the statutory and PSC rules by filing a notice of election with the PSC that specifies which waivers are to be elected. On August 28, 2008, AT&T Missouri filed notification with the PSC that it elected to waive certain PSC rules and statutory provisions pursuant to § 392.420 RSMo. *See* Ex. 13. AT&T Missouri opted out of several PSC rules including 4 CSR 240-32.070 (quality of service), 4 CSR 240-32.080 (service objectives and surveillance levels), 4 CSR 240-33.040 (1-3) and (5-10) (billing and payment standards), and 4 CSR 240-33.045 (clear identification and placement of charges on bills). *See* Ex. 13.

On November 10, 2008, the PSC issued an Order Concerning Election of Waivers where, among other things, it acknowledged as received AT&T Missouri's August 28, 2008 Notice of Election and directed AT&T Missouri to file tariff pages in compliance with the waivers by December 6, 2008, and that such tariff pages would not be approved, but will take effect by operation of law. *See* Ex. 14. On October 17, 2008, AT&T Missouri filed with the PSC its administrative tariff filings listing the elected waivers. *See* Ex. 15.

In addition, HB 338 becomes effective on August 28, 2011. Once it becomes law, this legislation allows a telecommunications company, upon written notice to the PSC, to elect to be exempt from any requirement to file or maintain with the PSC any tariff or schedule of rates, rentals, charges, privileges, facilities, rules, regulations or forms of contracts (tariffs) for

residential or business retail end user customers, and instead publish generally available retail prices for those services on a publicly accessible website.

Neither AT&T Missouri's election of waiver of certain PSC requirements (including customer billing requirements), nor the enactment of HB 338, voids or diminishes the applicability of the Tariff or AT&T Missouri's ability to pass through surcharges to customer pursuant to that Tariff. Indeed, pursuant to § 392.480 RSMo., with certain limited exceptions, all telecommunications services offered or provided by telecommunications companies shall be offered under tariffs (and classified as competitive, transitionally competitive, or non-competitive), unless and to the extent that a telecommunications company elects to opt out of certain retail tariffs pursuant to HB 338. AT&T Missouri has not opted out of any tariff filing requirements. The Tariff is currently in effect and on file with the PSC. The fact that AT&T Missouri has elected to opt-out of certain PSC rule requirements does in no way cancel, terminate, or diminish the Tariff or AT&T Missouri's right to pass through the amount of government taxes and surcharges on customers' bills.

C. The PSC has jurisdiction to determine whether the settlement payments made by AT&T Missouri are to be passed through to AT&T Missouri's customers pursuant to § 17.11.

Pursuant to § 386.390 RSMo., a complaint before the PSC may be made by any corporation or person, by petition or complaint in writing, setting forth any act or thing to be done or omitted to be done by any corporation or public utility. Section 392.350 RSMo. also provides in relevant part that if a "telecommunications company shall do . . . any act . . . declared to be unlawful . . . [it] shall be liable to the person or corporation affected thereby for all loss, damage or injury caused thereby or resulting therefrom" The PSC has the authority to

determine whether the tax payments specified in the settlement agreements must be passed through to AT&T Missouri customers pursuant to the Tariff.

V. Conclusion

Because these back-tax surcharges were mandated under a tariff duly filed and approved by the PSC, the PSC should order that the back-tax surcharges are required to be passed through to AT&T Missouri customers pursuant to § 17.11 of the General Exchange Tariff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on July 27, 2011.



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