

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

In the Matter of the Application of SBC)
Advanced Solutions, Inc. for Approval of) **Case No. TM-2009-0044**
Merger into AT&T Corp.)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its recommendation states:

1. On August 13, 2008, SBC Advanced Solutions, Inc. d/b/a/ AT&T Advanced Solutions, and AT&T Corp. (“Applicants”) filed a joint application with the Missouri Public Service Commission (the “Commission”) for authority to merge and for a waiver of Commission rule 4 CSR 240-3.525(2)(G) regarding customer notice of the merger.

2. In the concurrent application assigned Case No. TA-2009-0045, AT&T Corp., the surviving entity of the proposed merger, has requested a certificate of service authority to provide intrastate interexchange and non-switched local exchange telecommunications service.

3. In an Order Directing Filing, issued August 19, 2008, the Commission ordered Staff to file a recommendation regarding the legal and factual matters involved in the merger application no later than September 5, 2008.

4. On August 21, 2008, Staff filed a Motion for Extension of Time. On September 3, 2008, the Commission issued its Order Granting Motion for Extension of Time, ordering Staff to file a recommendation no later than October 3, 2008.

5. Subsection 1 of 392.300 RSMo generally provides that no telecommunications company shall sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or

system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the Commission an order authorizing it so to do.

6. In footnote 1 of their Joint Application, Applicants suggest that Commission approval of the transaction would not be required after HB 1779 becomes effective. HB 1779 became effective on August 28, 2008. HB 1779 amended Section 392.420, and as pertinent to this discussion, reads as follows:

392.420. The commission is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange service authority or the modification of a certificate of public convenience and necessity for interexchange or local exchange telecommunications service, to entertain a petition [under section 392.361 and in accordance with the procedures set out in section 392.361,] to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 391.520 and the purposes of this chapter. **In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392,210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340.**

AT&T Advanced Solution has a certificate of interexchange service authority and certificate of (non-switched) local exchange service authority. Under the first sentence of 392.420, AT&T Advanced Solutions could petition the Commission to suspend the application of section 392.300.1 both to its certificate of interexchange service authority and to its certificate of local exchange service authority. AT&T Advanced Solutions did not petition the Commission to suspend the application of this statute in connection with the modification of its certificates.

AT&T Corp has applied to the Commission for a certificate of interexchange service authority and for a certificate of (non-switched) local exchange authority in Case No. TA-2009-0045. Under the first sentence of section 392.420, AT&T Corp could petition the Commission to suspend the application of section 392.300.1 both to its certificate of interexchange service authority and to its certificate of local exchange service authority. AT&T Corp. did not petition the Commission to suspend the application of this statute in connection with the issuance of its requested certificates.

The Applicants point to the second sentence of section 392.420. This sentence, which directs the Commission to waive certain statutes, including section 392.300 (as well as certain types of rules) in certain cases, does not apply here. The second sentence applies in the case of a petition by an alternative local exchange telecommunications company providing basic local telecommunications. Neither AT&T Advanced Solutions nor AT&T Corp. provide basic local telecommunications service.

In conclusion, this merger requires Commission approval under section 392.300.1, because the Joint Applicants have not petitioned for and received a waiver of RSMo section 392.300.1.

7. The standard for approval of a merger is the same as for the sale of assets: that the transaction will not be detrimental to the public interest. See, *In the Matter of the Application of Computer Network Technology Corporation for Authority to Enter into a Merger and Transfer of Control Transaction with Condor Acquisition, Inc., and McDATA Corporation, and Their Respective Shareholders*, Order Approving Merger And Directing Filing, Case XM-2005-0283 (March 29, 2005) (citing *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980)).

8. In the attached Memorandum, labeled as Appendix A, the Staff states its opinion that the mergers of these competitively classified companies will not be detrimental to the public interest.

9. As stated above, Applicants have also moved for a waiver of Commission Rule 4 CSR 240-3.525(G) regarding customer notice requirements.

10. Due to the nature of the internal aspect of the merger and nature of the knowledgeable telecommunications consumers now served by SBC Advanced Solutions and to be served by AT&T Corp. upon effect of the merger, Staff is of the opinion that the Applicants have shown good cause for the requested waiver pursuant to 4 CSR 240-2.060(4) and that such a waiver is appropriate.

11. Staff has no objection to the Applicants' request for expedited treatment of this matter

WHEREFORE, the Staff recommends that the Commission find that the merger will not be detrimental to the public interest, approve the merger, and grant a waiver of the customer notice requirement. Staff further recommends that the surviving entity AT&T Corp. be ordered to submit adoption notices and revised tariff title sheets, and to seek formal cancellation of the certificate of service authority currently held by SBC Advanced Solutions.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
Assistant General Counsel
Pursuant to Missouri Rule 13

/s/ William K. Haas

William K. Haas
Deputy General Counsel
Missouri Bar No. 28701

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4th day of September, 2008.

/s/ Eric Dearmont

Memorandum

To: Missouri Public Service Commission Official Case File
Case Nos. TM-2009-0044 and TA-2009-0045

From: William Voight, Telecommunications Department
William Voight 9/2/08 William K. Haas 9/2/08
Utility Operations Division/Date General Counsel's Office/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of
Competitive Company Transaction**

Date: 9/2/08

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Approve Merger
4 CSR 240-3.525 | <input type="checkbox"/> Approve Consolidation
4 CSR 240-3.525 | <input type="checkbox"/> Approve Sale of Assets
4 CSR 240-3.520 |
| <input type="checkbox"/> Approve Name Change
4 CSR 240-3.545(20) | | |
| <input type="checkbox"/> Cancel Certificate(s) & Tariff(s)
392.410.5 RSMo | <input checked="" type="checkbox"/> Approve Certificate
4 CSR 240-3.510 | |

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- ☒ This transaction solely involves competitively classified companies.
- ☐ Customers have/will receive advance notice.
- ☒ Customers can switch to another provider.
- ☒ Customers will continue to receive service at the same rates, terms and conditions.
- ☒ Other: **Company has requested waiver of 4 CSR 240-3.525(2)(G). Staff recommends approval of the waiver because it affects only customers in the enterprise markets and this merger solely involves an internal realigning of operations.**

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
SBC Advanced Solutions, Inc. d/b/a AT&T Advanced Solutions	X		X						
AT&T Corp. d/b/a AT&T Advanced Solutions		X		X	A				

*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

☐ No

☒ Yes

☐ Customers have been notified.

☐ Customers will be notified at least 30 days prior to being switched to a different company.
(4 CSR 240-3.525)

Company Name Change Notification

☐ Company has notified its customers of the name change.

☐ Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? ☐ Yes ☒ No

If yes, a copy of the bankruptcy order is attached.

Competitive Company Transaction Review Items

Administrative:

☒ Application solely involves competitively classified companies.

☒ No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

☒ Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

☒ Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No.

Missouri corporations: A Certificate of Good Standing.

Foreign corporations: Authorization to do business in Missouri.

If business conducted under a fictitious name: A copy of registration of the fictitious name.

- ☒ No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).
☒ A statement that no annual report or assessment fees are overdue for any applicant.

Are there additional recommendations or special considerations?

☒ No

☐ Yes

If yes, explain in an attachment.

- ☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.
☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.
(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)

Attachment to Staff Recommendation

Is this transaction requesting the granting of certificates and approval of tariffs? ☐ No ☒ Yes
(If yes, see below. Attach additional sheets, if necessary.)

Applicant:

The applicant has met Staff's review of requirements for obtaining a certificate of service authority and tariff approval. Therefore, Staff recommends the applicant be granted the following certificate(s), as indicated below. The certificate shall be conditioned to become effective on the same date the tariff becomes effective; however no later than the approval date of the transaction involving the competitively classified companies.

☐ certificate to provide basic local exchange telecommunications services. Granting the certificate should be based on the following conditions:

1. The applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increases in switched access services rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.
3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

☒ certificate to provide interexchange telecommunications services.

☒ certificate to provide local exchange telecommunications services.*

*local exchange authority should be restricted to dedicated, private line services.

Staff recommends the applicant and its services receive competitive classification. In addition, Staff recommends approval of the waivers normally granted to competitively classified companies (392.210.2, 392.240.1, 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, 392.340, 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-3.550(5)(C) (this last rule only applies to companies providing basic local telecommunications service).

Certificate applications, if applicable:

- ☒ Statement of character of business performed.
- ☒ Application includes an affidavit.
- ☒ Applicant seeks waivers of rules or statutes previously granted to a competitively classified company.
- ☒ Applicant shows that grant of authority is in the public interest.

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OF THE STATE OF MISSOURI**

In the Matter of the Application of SBC)
Advanced Solutions, Inc. for Approval of)
Merger into AT&T Corp.)

Case No. TM-2009-0044

In the Matter of the Application of AT&T)
Corp. for a Certificate of Service Authority)
to Provide Intrastate Interexchange and)
Non-Switched Local Exchange)
Telecommunications Services Within the)
State of Missouri.)

Case No. TA-2009-0045

AFFIDAVIT OF WILLIAM VOIGHT

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

William Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying memorandum, and that the facts therein are true and correct to the best of his knowledge and belief.

Bill Voight

William Voight

Subscribed and affirmed before me this

3rd

day of

September 2008



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

Susan L. Sundermeyer

NOTARY PUBLIC