

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 25th day of September, 2008.

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

ORDER APPROVING MERGER AND GRANTING WAIVER OF
4 CSR 240-3.525(2)(G)

Issue Date: September 25, 2008

Effective Date: October 5, 2008

On August 13, 2008, SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions (“AT&T Advanced Solutions”), and AT&T Corp. (together, “Applicants”) filed a joint application with the Missouri Public Service 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. The Applicants requested expedited consideration of their application and an order of the Commission by no later than 45 to 60 days from the filing of the application. The Applicants also suggested that Commission approval of the contemplated transaction may not be required after HB 1779 became effective, which occurred on August 28, 2008.

In a concurrently filed 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 nonswitched local exchange telecommunications service.

On August 19, 2008, the Commission issued an order directing its Staff to file a recommendation regarding the legal and factual matters involved in the merger application. Staff filed its recommendation on September 4, 2008.

The Application

SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions, is a Delaware Corporation authorized to do business in the state of Missouri with its principal office at 1010 North St. Mary's Street, San Antonio, Texas. AT&T Advanced Solutions is authorized to provide intrastate interexchange and nonswitched local exchange telecommunications services in Missouri and is classified as a competitive telecommunications company.¹

AT&T Corp. is a New York corporation authorized to do business in the state of Missouri with its principal office at One AT&T Way, Bedminster, New Jersey. AT&T Corp. provides an array of interstate and international telecommunications-related products and services, including intrastate local exchange and interexchange services in several Northeastern states. AT&T Corp. is not presently certificated by the Public Service Commission to provide service in Missouri but, as noted above, has applied in Case No. TA-2009-0045 for interexchange and nonswitched local exchange certificates of service authority.

The stock of AT&T Advanced Solutions is presently held by AT&T Inc. and AT&T Teleholdings, Inc., a wholly owned subsidiary of AT&T Inc. AT&T Corp. is a wholly owned subsidiary of AT&T Inc. Following the merger, AT&T Advanced Solutions will cease to exist and AT&T Corp. will emerge as the surviving entity.

This application is part of an initiative to merge the operations of the various AT&T "advanced services" subsidiaries now operating in several states into a single business entity, to enable a more integrated and efficient delivery of services. The Applicants submit that the merger is *pro forma*, in that it involves only an internal realigning

¹ See: *Order Approving Interexchange and Non-Switched Local Exchange Certificates of Service Authority*, Case No. TA-2000-260, issued November 8, 1999.

of operations among AT&T Inc.'s subsidiaries. Following the merger, SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions, will relinquish that fictitious name to AT&T Corp., which will provide the same services AT&T Advanced Solutions currently provides in Missouri, under the same rates, terms, and conditions as contained in AT&T Advanced Solutions' currently effective tariffs on file with the Commission. The merger transaction is intended to be seamless and wholly transparent to AT&T Advanced Solutions' customers.

The Applicants argue that the proposed merger is not detrimental to the public interest because AT&T Corp. intends to provide the same services that AT&T Advanced Solutions now provides and will adopt AT&T Advanced Solutions' tariffs. Further, the merger will have no impact on the tax revenues of any political subdivision in which any structures, facilities, or equipment of either applicant are located.

Waiver Request

Pursuant to 4 CSR 240-2.060(4), AT&T Advanced Solutions requests waiver of the customer notice requirements of 4 CSR 240-3.525(2)(G), which states that a copy of the customer notification must be supplied to the Commission which, among other things, informs the customer of "[t]he right to transfer . . . service to another provider" and "[w]here to go to locate other carriers providing service in the area." Applicants argue that the customers served by AT&T Advanced Solutions are in the enterprise markets (e.g., municipalities, large business customers) and these customers are highly knowledgeable consumers of telecommunications services well equipped to exercise their options when selecting, changing or terminating their carrier relationships. Applicants further argue that this proposed merger involves solely an internal realigning of operations intended to be as seamless and transparent to customers as possible; applying the rule could cause unnecessary confusion and frustration and would offer no customer benefit.

The Applicants would prefer to notify affected customers of the realignment in a manner they feel is most conducive to instilling confidence that business will continue as usual in every respect, and to that end included a proposed copy of such a notice with their application as Attachment 6.

Staff's Recommendation

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. Due to the internal aspect of the merger and the nature of the knowledgeable telecommunications consumers now served by SBC Advanced Solutions and to be served by AT&T Corp. upon consummation 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. Staff has no objection to the Applicants' request for expedited treatment.

Staff recommends that 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.

Staff addressed Applicants' suggestion that Commission approval of the contemplated transaction would not be required after HB 1779 became effective, which occurred on August 28, 2008. Staff disagreed with the Applicants' interpretation of HB 1779's changes to Section 392.420 and also disagreed that either of the Applicants met the definition of an alternative local exchange carrier. Staff concludes, therefore, that this merger requires Commission approval under Section 392.300.1.

Decision

The Commission has considered the arguments of the Applicants and the Staff regarding the necessity for Commission approval of this application. HB 1779 amended Section 392.420 and as pertinent to this case, reads as follows:

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.** [Emphasis added.]

AT&T Advanced Solution has certificates of interexchange and nonswitched 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 to both of these certificates. However, 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 in Case No. TA-2009-0045 for certificates of interexchange and nonswitched local exchange service authority. Under the first sentence of 392.420, AT&T Corp. could petition the Commission to suspend the

application of Section 392.300.1 in connection with the issuance of its requested certificates. AT&T Corp. did not do so.

The Applicants also refer to the second sentence of Section 392.420. That sentence applied in the case of a petition by an alternative local exchange telecommunications company providing basic local exchange service. Neither AT&T Advanced Solutions nor AT&T Corp. provides basic local telecommunications service but, rather, they provide interexchange and nonswitched local exchange service.

The standard for approval of a merger is that the transaction will not be detrimental to the public interest.² The Commission has reviewed the application and Staff's recommendations and finds that the proposed merger will have no adverse effect on the Missouri customers of the Applicants. The Commission finds that the transaction is not detrimental to the public interest and shall be approved. The Commission also determines that for purposes of this transaction, waiver of the customer notice requirements of 4 CSR 240-3.525(2)(G) is consistent with the purposes of Chapter 392, RSMo, and because of the sophisticated nature of these customers and the particular structure of these transactions, good cause exists to waive the rule for the purposes of this merger. Therefore, the Commission will grant a waiver of 4 CSR 240-3.525(2)(G).

Upon completion of the merger, the Commission will cancel the certificates of service authority and accompanying tariffs of SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions.

² *State ex rel. Fee Fee Trunk Sewer, Inc. v Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980).

IT IS ORDERED THAT:

1. The joint application of SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions, and AT&T Corp. for authority to merge is approved.
2. The request of SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions, and AT&T Corp. for a waiver of Commission rule 4 CSR 240-3.525(2)(G), regarding customer notice of the merger, is granted.
3. The Applicants shall notify the Commission within ten days of the completion of the merger transactions so that the certificates of service authority held by SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions, and the accompanying tariffs, may be canceled.
4. Prior to providing service, and following a grant of interexchange and nonswitched local exchange telecommunications service authority in Case No. TA-2009-0045, AT&T Corp. shall file appropriate adoption notices and tariff title sheets adopting the tariffs of SBC Advanced Solutions, Inc., d/b/a AT&T Advanced Solutions, currently on file with the Commission.
5. This order shall become effective on October 5, 2008.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Davis, Chm., Murray, Clayton,
and Gunn, CC., concur.
Jarrett, C., absent.

Dippell, Deputy Chief Regulatory Law Judge