

Corrected 10/15/07

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the tariff filing of)	
AT&T of the Southwest, Inc.)	Case No. <u>TO-2008-0104</u>
concerning revision in billing method)	Tariff No JX-2008-0187, -0188, -0189
for certain types of prepaid calling cards.)	

OFFICE OF THE PUBLIC COUNSEL'S
CORRECTED MOTION TO SUSPEND

The Office of the Public Counsel moves the Public Service Commission to suspend Tariffs Nos. JX-2008-0187, -0188, -0189 filed by AT&T of the Southwest, Inc to amend its tariffs to revise the method of billing customers who use certain types of prepaid calling cards issued by the Company. The billing method for the calling cards used to make intrastate toll calls in Missouri is changed so that one minute of actual use or actual calling time is no longer billed at a per minute rate, but instead is billed through a method whereby one minute of actual calling time is billed 8 units. Under this "8 for 1" scheme, a one minute call would reduce the value paid for the calling card by a monetary amount equal to 8 minutes of calling time at the base rate for each minute of actual calling time. In short, this billing method effectively makes a one-minute call charged to the calling card an 8-minute charge. This billing scheme is outrageous and only serves to discriminate against calls made within Missouri and to mislead and take advantage of customers who by choice or necessity use pre paid calling cards. It will deprive callers of access to convenient and economical way of making toll calls without incurring minimum bill charges of IXC's or entering expensive and long term wireless contracts.

Public Counsel suggests that this billing method is contrary to Commission rules, both the letter and spirit, in that the billing method where a one minute call is billed on a unit that

exceeds a minute of use is unfair, unreasonable, deceptive, confusing and lacks sufficient notice to the potential buyer and the actual calling card customer of the amount of time and the charges per minute the customer will incur for instate calls in Missouri.

AT&T's new billing method is an "8 for 1" billing method where one minute call is charged 8 minutes from the value of the card and the total available minutes. A customer would expect that a 60 minute card would cover two instate calls of 30 minutes or less. But instead at the "8 for 1" rate the 60 minute card will be used up before the customer talks 8 minutes. In the industry the typical billing unit is the minute of use, even though there may be rounding to a minute for increments less than a minute. Consumers expect that they will be charged based on minutes of use. A \$50 card that says 500 minutes is simply calculated and the cost per minute is available in an usual and typical manner that the customer expects in the marketplace. AT&T thwarts the customer's expectations by using a different billing method to change the rules of the game that provides a transparent method of increasing rates.

The Commission has rejected a billing method that used units that did not relate directly to minutes of use. The Total Calling Units used for billing had a value greater than the minutes of use. The Commission held the Companies based their marketing approach on price per minute or use. The Commission further found that the standard for customer bills for interexchange telecommunications service in Missouri includes a requirement that the minutes of use of each call be included on the face of the bill. The new billing method in the tariffs was rejected as "unnecessarily complex and confusing, and therefore unreasonable" and required that billing fully disclose minutes of use so the price per minute of use could be disclosed. *In the matter of tariff sheets of NOS Communications, Inc., designed to establish a new method for calculation of customer charges. Case no. Tr-95-331; In the matter of tariff sheets of Affinity*

Network Incorporated designed to establish a new method for calculation of customer charges, Case no. Tr-95-332; In the matter of tariff sheets of NOSVA Limited Partnership designed to establish a new method for calculation of customer charges. Case no. Tr-95-333; 4 Mo. P.S.C. 3d 285 (1996)

AT&T's proposed billing method that makes this "8 for 1" charge is the highest ratio of units charged per minutes of use in any state but North Dakota and South Dakota. Calling card customers who pay for toll calls from one location in Missouri to another (e.g., Cuba, Mo to Florida, Mo; Jefferson City to any other point within the state; Seligman to Kennett) will pay 8 times the normal per minute rate that was charged before these tariffs are effective. That customer, whether a Missouri resident or a prospective resident or business executive looking to locate in Missouri or a tourist to Branson, Lake of the Ozarks, or the Herman area wine country, will pay many times more for each call than that customer making the same instate toll call in Oklahoma, Virginia, Iowa, Illinois, Florida, or California. AT&T's discrimination against Missouri and instate calls in Missouri is unfair and unreasonable and does not promote the economic development and interest of Missouri and its communities. Rural residents that use these calling cards as a means to save on toll calls to their communities of interest will incur an increase in calling costs, thereby further expanding the gap in comparable services and comparable prices between urban, suburban and rural communities. These negative outcomes could easily result in an environment that is inconsistent (and even in direct conflict) with the goals and intent of the General Assembly as identified in Section 392.185, RSMo 2000.

The tariffs fail to provide the Commission with information on how the customers who purchase these cards will be informed of the significant change in the billing method. A card with the same price as before without adequate and prominate notice of the significant reduction

in calling value if calls are made within Missouri is confusing. The tariff language substituting 8 units for the previous one minute charged for a one minute call is more than just a price increase; it is a nondisclosed price increase and a nondisclosed revision to the typical method of billing calls that the customer would typically expect based on prior use, general experience with telecommunications charges, and the standard billing practice in the industry.

Commission Rule 4 CSR 240-33.045 provides, in part, that “All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering. Such disclosure shall be provided prior to an agreement for service.” While this rule may be designed with subscribing customers in mind, the public policy and spirit underlying the rule that the company shall provide “a clear, full and meaningful disclosure” of charges and usage sensitive rates is a fundamental right of the telephone consumer.

These proposed changes in billing methods are not in the public interest because they conflict with the PSC’s rules on disclosure. It is against public policy and contrary to the interests of the ratepayer and the public interest (Sec. 392.185, RSMO) to impose a discriminatory billing method that springs into effect whenever a customer with an AT&T calling card identified in the tariffs makes an instate Missouri call.

The proposed tariffs do not comply with the rules governing prepaid phone cards in **4 CSR 240-32.150 Qualifications for and Responsibilities of the Prepaid Calling Services**, mainly section (5) which states: “If a company uses billing increments other than per minute rates, the billing increment must be defined in the company’s Missouri tariff.”

AT&T has not provided the information that demonstrates that the tariffs meet **4 CSR 240-32.160 Customer Disclosure Requirements** and **4 CSR 240-32.170 Standards for Prepaid Calling Service**, especially subsections:

- (1) The company shall not reduce the balance on the card by more than the charges printed on the card, packaging, visible display at the point of sale and in any presale documentation.
- (2) Service may be recharged by the customer at a rate higher than the rate at initial purchase or last recharge. The higher rate and surcharges shall be no more than the rates and surcharges in the tariff and the customer shall be informed of the higher charges at the time of recharge
- (3) Increments charged to the prepaid calling card shall be expressed in minutes of use, units, dollars, or fractions thereof.

The cover letter and the tariffs fall short of providing the information necessary for the Commission to determine compliance with the prepaid calling card rules. The information and tariffs:

- (1) fail to identify how the customer will be notified of the “8 for 1” new billing method; and,
- (2) provide any description on how the billing scheme will be fully disclosed to the purchaser of a calling card; and,
- (3) state how use in Missouri will be on an “8 for 1” rate while other state instate calls will be debited at a different ratio of units to minutes
- (4) Identifies approval of this change of minutes of use to units that do not reflect or equate to actual minutes of use; and,
- (5) fail to provide copies of notices that will be displayed in retail outlets to fully disclose the billing method and Missouri instate rate; and,

- (6) fail to disclose why other AT&T calling cards have not been tariffed or revised by new tariffs

Public Counsel further asks the Commission to direct the Staff to investigate and report to the Commission on the recent changes in the billing method of other AT&T calling cards recently reported in June, 2007, to determine whether that billing method should have first been approved by the PSC. Although interexchange carriers are subject to a lesser degree of regulation in Missouri than are local exchange companies, they are required to file their rates with the Commission and obtain Commission approval before putting them into effect. Section 392.220, RSMo 2000.

Copies of the proposed tariffs are attached to this motion.

For these reasons, Public Counsel asks the PSC to suspend the tariff and hold an evidentiary hearing to determine whether the proposed tariffs are just, reasonable, and lawful and otherwise in the public interest or, in the alternative, reject the tariffs for violation of Commission rules.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Michael F. Dandino

BY: _____
Michael F. Dandino (Bar No. 24590)
Deputy Public Counsel
200 Madison Street, Suite 650
Jefferson City, MO 65102
Telephone: (573) 751-5559
Facsimile: (573) 751-5562
E-mail: mike.dandino@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this

15th day of October, 2007 to the following:

General Counsel
Missouri Public Service Commission.
P. O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

John van Eschen
P. O. Box 360
Jefferson City, MO 65102
john.vaneschen@psc.mo.gov

/s/ Michael F. Dandino
