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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 11th
day of September, 1997.

In the Matter of AT&T Communications of the)
Southwest, Inc.'s Tariff Filing to Introduce Two) Case No. TT-98-89
Inward Calling IntraLATA Rate Plans.)
)

**ORDER APPROVING TARIFF SHEETS
AND DENYING MOTION TO CONSOLIDATE**

AT&T Communications of the Southwest, Inc. (AT&T) submitted a tariff filing (File No. 9800095) to the Commission for approval on July 31, 1997, with an effective date of August 30. The company later submitted substitute sheets and extended the effective date to September 15. AT&T is proposing to introduce two inward calling intraLATA rate plans as promotional add-ons to the interstate service. The proposed IntraLATA Plan A and IntraLATA Plan B are part of AT&T CustomNet (CustomNet) service, an umbrella service with customized calling packages.

The Staff of the Commission (Staff) filed a Motion to Suspend on August 28, stating that the tariff filing would violate Section 392.200.2, RSMo 1994, which prohibits rate discrimination, i.e., the charging of differing rates for the same service. Staff argues that the intrastate portions of CustomNet, i.e., plans A and B, result in AT&T charging differing rates for identical services. Staff stated that AT&T's position is that the plans are differentiated at the interstate level and that intrastate service is only a portion of a total calling rate package that includes a federally tariffed monthly recurring charge. Staff's position

is that, because the plans are indistinguishable at the intrastate level, AT&T's proposal would result in discriminatory pricing.

Staff points out that the Commission has the discretion to waive the application of certain statutory provisions and Commission rules, but asserts that the prohibition against discriminatory pricing is not among those provisions that can be waived. Staff argues that the tariff sheets should be suspended. Staff also filed, on August 28, a Motion to Consolidate this case with numerous other tariff filings to which the Staff has similar objections.

The Commission has reviewed AT&T's tariff filing and Staff's motions to suspend and consolidate. The Commission finds that the Motion to Consolidate this case with other tariff cases is inappropriate in that, although Staff makes the same objections to all the proposed tariffs, the tariffs have been submitted by various companies and differ in substance. Consolidation of this case with TT-98-87 and TT-98-88, based on similar AT&T tariff filings, would be appropriate if the Commission intended to suspend the tariff sheets and conduct a contested case proceeding. Since the Commission does not intend to suspend the tariff sheets, each case will be considered on its own merits.

The Commission has considered the provisions of AT&T's proposed CustomNet promotional offerings and finds no violation of the prohibition against discriminatory pricing. The concept of discriminatory pricing is relevant only as applied to customers. The Commission must ask whether a proposed calling plan would result in similarly situated customers being forced to pay differing rates for the same services. See State of Missouri, ex rel. DePaul Hospital School of Nursing v. Missouri Public Service Commission, 464 S.W.2d 737, 740 (Mo. App. 1970). Although the

intrastate portions of the CustomNet IntraLATA Plans A and B may not differ from one another or from AT&T's other intrastate services, the plans must be considered as a whole. Taken as a whole, the terms of these plans constitute a variation from a simple offering of intrastate services. Customers are free to choose the package most appropriate to their calling patterns. AT&T's proposal is a valid promotional discount. Accordingly, the Commission finds that AT&T's proposed tariff sheets are just, reasonable, and nondiscriminatory and they shall be approved.

IT IS THEREFORE ORDERED:

1. That the following tariff sheets submitted by AT&T Communications of the Southwest, Inc. on July 31, 1997, are approved to become effective on September 15, 1997:

P.S.C. Mo. No. 14, Section 17

4th Revised Sheet 6.1, Replacing 3rd Revised Sheet 6.1
1st Revised Sheet 6.2, Replacing Original Sheet 6.2
2nd Revised Sheet 6.3, Replacing 1st Revised Sheet 6.3
1st Revised Sheet 6.4, Replacing Original Sheet 6.4

2. That this order shall become effective on September 15, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Lumpe, Ch., Crumpton,
Drainer and Murray, CC.,
concur.

ALJ: Wickliffe