

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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,)	
)	Case No.:
v.)	
)	
SOUTHWESTERN BELL TELEPHONE COMPANY)	
d/b/a AT&T MISSOURI)	
)	
Serve:)	
CT Corporation System)	
120 South Central Ave.)	
Clayton, MO 63105)	
)	
Respondent.)	

COMPLAINT

I. Identity and Location of Complainants

Barry Road Associates, Inc. d/b/a Minsky's Pizza

West location:

7007 NW Barry Road
Kansas City, Missouri 64153
Phone: 816-741-2737

East Location:

221 NE Barry Road
Kansas City, Missouri 64155
Phone: 816-436-8818

The Main Street Associates, Inc. d/b/a Minsky's Pizza
5105 Main Street
Kansas City, Missouri 64112
Phone: 816-561-5100

Harry Mark Wooldridge
404 E. Morgan Street
Boonville, MO 65233
Phone: 660-882-3448

II. Identity and Location of Respondent

Southwestern Bell Telephone Company d/b/a AT&T Missouri
One AT&T Plaza
208 South Akard Street
Dallas, Texas 75202

Represented by:

Craig S. Laird
Robert A. Kumin, P.C.
PO Box 30088
Kansas City, MO 64112
Phone: (816) 471-6877
Fax: (913)-236-7115

Stephen B. Higgins- Lead Counsel
Amanda J. Hettinger
Kimberly M. Bousquet
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
Phone: (314) 552-6000
Fax: (314) 552-7000
Email: shiggins@thompsoncoburn.com
ahettinger@thompsoncoburn.com
kbousquet@thompsoncoburn.com

Ann Ahrens
One AT&T Center, Room 3548
St. Louis, MO 63101
Phone: (314) 235-4099
Fax: (314) 247-0881

Email: ann.beck@att.com

III. Nature of the Complaint and Complainant's Interest in the Complaint

Procedural History

This Complaint is filed by undersigned counsel on behalf of the Complainants pursuant to an Order of the Honorable Anne Mesle, Judge of the Circuit Court of Jackson County, Missouri dated April 4, 2011. (Ex. A, 04/04/11 Order.) Litigation is pending before that Court with respect to the claims as described herein and, as the Court has held, the litigation is stayed pending resolution by this Commission of a discrete question of law. (*Id.*) As fully discussed below, Complainants allege that they and other Missouri customers of Respondent Southwestern Bell Telephone Company ("SBTC") were billed by SBTC for amounts voluntarily incurred by SBTC in settling its own litigation liabilities. (Ex. B, Petition; Ex. C, Memo. in Opposition to SBTC's Motion for Summary Judgment.) In the Circuit Court litigation, SBTC asserts that such settlement liabilities may properly be "passed through" to its Missouri customers pursuant to Section 17.11 of General Exchange Tariff No. 35. (Ex. D, Tariff; Ex. E, Answer of SBTC without exhibits; Ex. F, Motion and Memo. in Support of Summary Judgment without exhibits.) **The sole question before the Commission is "whether the settlement payments made by AT&T are to be passed through to AT&T customers pursuant to 17.11 General Exchange Tariff 35 or similar and related tariffs."** (Ex. A, 04/04/11 Order.)

Allegations

Complainants state and allege as follows:

Nature of the Case

1. Complainants seek to stop SBTC's unlawful practice of billing customers to recover SBTC's losses from litigation settlements. Complainants further seek reimbursement for monies paid to SBTC for such unauthorized billing.

2. SBTC is a party to settlement agreements (the "Settlements") in lawsuits wherein it was sued by Missouri municipalities for failure to pay business license or gross receipt taxes for landline telephone operations. (Ex. G, Wellston Settlement; Ex. H, St. Louis County Settlement; Ex. I, Springfield Settlement.) Pursuant to these agreements, SBTC is to pay at least \$72,000,000 to the municipalities for its wrongdoing. Without any legal authority, customer agreement, authorization, consent, or even prior notification, SBTC has passed its liability on to its customers in the form of monthly charges disguised on telephone bills as a portion of "special municipal charges." This practice is wrongful, deceptive, and extremely lucrative for SBTC, which proceeds as though it is immune from the consequences of its wrongdoing. Indeed, SBTC need not worry about the costs of its illicit practices settled in other matters; customers will simply pay the bill.

3. In November of 2008, SBTC informed the Missouri Public Service Commission that it would no longer be subject to many of the billing regulations designed to protect consumers. SBTC is now attempting to take advantage of this newly unregulated environment by imposing patently unreasonable and deceptive surcharges on customers.

Parties

4. Complainant Barry Road Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

5. Barry Road Associates, Inc. is a landline telephone customer of SBTC and has been billed by SBTC for charges attributable solely to SBTC' liability stemming from the Settlements.

6. Complainant The Main Street Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

7. The Main Street Associates, Inc. is a landline telephone customer of SBTC and has been billed by SBTC for charges attributable solely to SBTC' liability stemming from the Settlements.

8. Complainant Harry Mark Wooldridge is a citizen of the State of Missouri, residing in Boonville, Missouri.

9. Harry Mark Wooldridge is a landline telephone customer of SBTC and has been billed by SBTC for charges attributable solely to SBTC's liability stemming from the Settlements.

10. SBTC is a Missouri Corporation with its headquarters and principal place of business in the State of Texas, doing business in Missouri as "AT&T Missouri" and "AT&T."

11. SBTC provides local telephone services to Complainants as their local exchange carrier and is responsible for the bills Complainants receive. SBTC is a party to the Settlements.

Common Facts

12. Complainants Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from SBTC dated December 9, 2009 for telephone number 816-407-9000 containing a charge of \$5.32 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

13. Complainants Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from SBTC dated December 17, 2009 for telephone number 816-436-8818 containing a charge of \$17.50 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

14. Complainants Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from SBTC dated December 17, 2009 for telephone number 816-741-2737 containing a charge of \$28.00 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

15. Complainant Harry Mark Wooldridge received an invoice from SBTC dated December 17, 2010 for telephone number 660-882-6589 containing a charge of \$1.99 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

16. Each of the invoices referenced herein contains a paragraph, under the heading "News You Can Use" stating as follows:

MUNICIPAL CHARGES

Beginning November 1, 2009, you may see increases in the amount of Special Municipal Charges billed on your account. These increases will help cover payments made to municipalities to settle claims related to past gross receipts taxes they imposed, and also includes such taxes on services covered by the settlement going forward. Should you have any questions please call the toll free number on your bill. Thank you for using AT&T Missouri.

17. The “increases” referred to are not increases at all, but rather constitute new charges not previously appearing on customers’ bills. The new charges are a result of SBTC passing on its liability under the Settlements to Complainants and other customers.

18. Complainants did not authorize or agree to allow SBTC to charge them for such additional amounts alleged herein arising from losses or liabilities from any lawsuit or settlement agreement.

19. The charges at issue are not “one-time” charges. Rather, SBTC is continuing to bill customers for such unauthorized charges. Further, SBTC intends on billing its customers for such unauthorized charges for years to come.

20. SBTC failed to inform the Complainants that SBTC would bill them to recoup its losses and liabilities stemming from the Settlements before sending such bills.

21. SBTC represented on invoices to Complainants that “Special Municipal” charges were the rightful responsibility of Complainants when, in fact, the amounts billed were not legally or rightfully chargeable to customers.

22. SBTC represented on invoices to Complainants that the “Special Municipal” charges were “one-time” charges, when, in fact, they were recurring.

23. SBTC failed to inform Complainants that the “Special Municipal” charges appearing on their bills were SBTC’s own liabilities and not those of Complainants.

24. SBTC collected and accepted amounts from Complainants for liabilities for which SBTC alone was responsible.

25. SBTC has filed no schedule, rate, or tariff with the Missouri Public Service Commission that indicates that a fee, surcharge, or pass-through stemming from their payments

to settle litigation may appear on customer invoices, and no tariff presently on file covers such charges.

26. SBTC failed to give notice to Complainants and the Class of the “special municipal charge,” as required under 4 C.S.R. 240-33.040(4).

27. SBTC failed to file tariff pages disclosing their waivers by December 6, 2008, as ordered by the Missouri Public Service Commission on November 10, 2008.

SBTC’s Tariff is Inapplicable

28. Section 17.11 of General Exchange Tariff 35 (the “Tariff,” Ex. D) states, in part, as follows:

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.

29. No portion of the Special Municipal Charges appearing on Claimants’ bills constitutes a pro rata share of any franchise, occupation, business, license, excise, privilege or other similar tax, fee or charge.

30. No portion of the Special Municipal Charges appearing on Claimants’ bills was imposed upon SBTC.

31. No portion of the Special Municipal Charges appearing on Claimants’ bills was imposed upon SBTC by any taxing body or authority, whether by statute, ordinance, law or otherwise.

32. In the *Wellston* and *St. Louis County* settlement agreements, the term “Back Tax Payment” is specifically defined, and therefore cannot be given its common meaning, or any other meaning than that indicated in the agreements. Ex. G at 12; Ex. H at 6, 8-9.

33. The definition of “Back Tax Payment” included in the *Wellston* and *St. Louis County* settlement agreements relates to sums paid according to the agreements themselves; the definition does not include actual taxes. Ex. G at 12; Ex. H at 6, 8-9.

34. In the *Springfield* settlement agreement, the term “Back Tack Payment” is undefined but, in context, clearly has the same meaning as that attributed to it in the *Wellston* and *St. Louis County* settlement agreements. Ex. I at 2.

35. The Settlements make clear that the payments being made by SBTC are not tax payments, but rather are voluntarily made in consideration for the Plaintiffs’ dismissal of the lawsuits and release of claims; in fact, in all three agreements SBTC unequivocally denies that it is agreeing to pay taxes. Ex. G at 3 (“Defendants have denied and continue to deny any and all liability with respect to the allegations raised against them in the various lawsuits involving the applicability of Plaintiffs’ and other Municipalities’ respective Business License Tax ordinances to Defendants’ products and services.”); Ex. G at 37 (stating that the agreement was entered into “[i]n order to effectuate the Parties’ desire to fully, finally and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation.”); Ex. G at 43 (“Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiation or proceedings is or shall be construed as deemed to be legal evidence of an admission by Defendants with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by any of the Class members in the

Action, or the liability of Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Aside from the obligation to pay Business License Taxes going forward. . . **this settlement agreement is not intended to, and shall not be construed as imposing any other obligation on Defendants under the Class member's respective ordinances**, including without limitation any rate regulation or customer service requirements.) (Emphasis added); Ex. H at 3, 20-21, 23 (same); Ex. I at 1 (“**AT&T denies any and all liability for taxes** and will continue to defend itself in litigation and otherwise absent execution of this Agreement.”) (Emphasis added.); Ex. I at 2, ¶1 (expressly agreeing that there was no determination on the merits of the municipalities’ claims); Ex. I at 4, ¶11.

36. Merely calling the payments “back taxes” does not make them actual taxes.

37. As a direct result of SBTC’ violation of the law and Commission order, Complainants have incurred and continue to incur damages.

IV. Relief Requested

Pursuant to the Order of the Circuit Court of Jackson County, Missouri dated April 4, 2011, and pursuant to Section 392.350, RSMo. and Section 17.11 of Southwestern Bell Telephone Company’s General Exchange Tariff No. 35, Complainants respectfully request a determination that the settlement payments made by AT&T as described herein are not to be passed through to AT&T customers including Claimants, and such other relief as the Commission deems lawful and proper.

V. Statement Regarding Prior Contact with Respondent

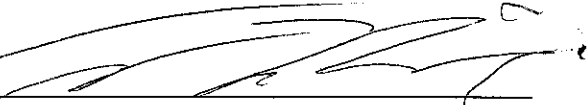
Each of the Complainants has engaged and authorized the undersigned counsel to bring both the pending Circuit Court litigation and this Complaint against SBTC, and each has had direct prior contact with SBTC or its counsel about the subject of this Complaint.

VI. The Commission's Jurisdiction

The Commission has jurisdiction over the subject matter of this Complaint pursuant to the April 4, 2011 Order of the Circuit Court of Jackson County, Missouri, (Ex. A, 04/04/11 Order), and pursuant to Sections 386.040 and 386.390, RSMo.

Respectfully Submitted,

EDGAR LAW FIRM LLC

By 

John F. Edgar MO #47128

Anthony E. LaCroix MO #60793

1032 Pennsylvania Ave.

Kansas City, MO 64105

Telephone: (816) 531-0033

Facsimile: (816) 531-3322

Email: jfe@edgarlawfirm.com

Email: tel@edgarlawfirm.com

ATTORNEYS FOR COMPLAINANTS



IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

BARRY ROAD ASSOCIATES, et al)

Plaintiffs)

v.)

SOUTHWESTERN BELL)
TELEPHONE COMPANY, et al.)

Defendants.)

CASE NO. 1016-CV02438

DIVISION 7

**ORDER DENYING AT&T MISSOURI'S MOTION FOR SUMMARY
JUDGMENT AND STAYING THESE PROCEEDINGS FOR FORTY-FIVE DAYS**

On the 3rd day of March, 2011, this matter came before the court for hearing and consideration. The parties appeared by counsel. Counsel presented oral argument. Based on consideration of the pleadings, applicable statutory, regulatory and case authority the court enters the following findings and orders:

Findings of Fact

1) On February 14, 2007, the State of Missouri, in the case of *State of Mo. ex rel City Collectors of Wellston, et al*, Cause No. 044-02645, filed its Consolidated Master Petition for Declaratory Judgment and Other Relief. The proposed class included approximately 240¹ municipalities all of whom had enacted municipal ordinances that required AT&T and related companies to pay taxes on "Gross receipts." Plaintiffs claimed that AT&T had failed to pay certain taxes as provided for in the municipal ordinances. The City of Springfield and the City of St. Louis both filed similar court actions.

¹ Approximately 270 municipalities were included in the final settlements



2) The parties entered into settlements of the disputes with the municipalities in each of the three filed actions in 2009. By the terms of the settlement agreement in *Wellston*, defendants did not admit liability for any back taxes; however, defendants did agree to pay monies to the municipalities for claimed back taxes and further agreed to pay to the municipalities, in accordance with the terms of the settlement, "future tax benefits" in excess of what defendants contended they would otherwise owe as described in the settlement agreement. They defined the term "Business License Tax" to mean:

any tax, including any fee, charge, or assessment in the nature of a tax, imposed by a Municipality on any entity which constitutes a "telephone company," "... or any similar entity or service provider for the privilege of engaging in the business of providing telephone, exchange telephone, public utility, or any other type of telecommunications service, specifically includes any such tax imposed under §§ (cites Mo. Statutes) including municipal sales tax..., right of way usage fee..., tax...for emergency services..., rent for use of municipal premises; or Any tax which would otherwise meet the definition of Business License Tax ...

3) On November 9, 2009, the Honorable Judge Edward Sweeney approved the settlement agreement in the court's Judgment and Order Approving Settlement, and Attorneys' Fees for Class Counsel, and Dismissing Case in Accordance with Terms of Settlement. In determining if the settlement was fair, the court considered among other factors: whether there was fraud or collusion; the complexity, expense, and likely duration of the litigation; the nature and extent of the discovery process; the probability of the plaintiff's success on the merits; the range of possible recovery; and the opinions of class counsel, citing *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 (Mo. App. 1997).

4) Judge Sweeney's Judgment and Order specifically held that the "Settlement includes an agreement by Defendants to increase the services on which Defendants will pay taxes to the municipalities in the Settlement Class, which will result in a substantial increase of tax revenues."

5) On or about December 9, 2009, customers received bills assessing charges attributed to "Special Municipal Charge to cover settlement entered into with municipalities for gross receipts taxes imposed as follows:

MUNICIPAL CHARGES

Beginning November 1, 2009, you may see increases in the amount of Special Municipal Charges billed on your account. *These increases will help cover payments made to municipalities to settle claims related to past gross receipts taxes they imposed, and also includes such taxes on services covered by the settlement going forward....*"

6) On January 15, 2010, plaintiffs filed their Class Action Petition for Damages. Thereafter, on March 11, 2010, plaintiffs filed their First Amended Class Action Petition alleging three counts:

Count I. Violation of the Missouri Merchandising Practices Act R.S.Mo 417.010, 407.025;

Count II. Unjust Enrichment by collecting moneys from the Special Municipal Charges; and

Count III. Action for Money had and Received for receipt and retention of money belonging to plaintiffs.

7) On October 22, 2010, AT&T Missouri filed its Motion for Summary Judgment asserting that the back-tax surcharge at issue is mandated under tariff approved by the Missouri Public Service Commission and that pursuant to Rule 74.04, Mo Rules of Civ. Pro, where a tariff is "filed with the appropriate regulatory agency it is sanctioned by the government and cannot be the subject of legal action." *Bauer v. SW Bell Tel Co.*, 958 S.W.2d 568, 570 (Mo. App 1970).

Applicable Legal Authority

§ 17.11 of General Exchange Tariff 35 (the "Tariff") states in pertinent 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") or hereafter imposed upon the Telephone Company by taxing body or authority, whether by statute, ordinance, law or otherwise and whether presently due or to hereafter become due.

R.S.Mo § 392.350 states:

In case any telecommunications company shall do or cause to be done...any act...required to be done by this chapter or by any order or decision of the commission, such telecommunications company shall be liable to the person or corporation affected thereby for all loss, damage or injury...if the court shall find

that such an act or omission was willful, it may, in its discretion, fix a reasonable counsel or attorney's fee...

R.S.Mo §407.020.1 states:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce...is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce... is declared to be an unlawful practice. ...

Discussion and Legal Analysis

The issues before the court include, but are not limited to, the following:

- a) Are defendants liable to the class and sub-class for violations of the MMPA R.S.Mo § 407.010, et seq?
- b) Were the Special Municipal charges billed to customers unauthorized, unlawful and/or illegal?
- c) Were defendants unjustly enriched through unlawful, unauthorized and/or inequitable billing practices?
- d) Did Defendants actions cause injury to the class and subclass and should defendants be enjoined from further injurious practices?
- e) Are the class and sub-class entitled to damages?
- f) Does the Missouri Public Service Commission pursuant 17.11 General Exchange Tariff 35 or another similar and related tariff require the pass through of applicable settlement payments to customers?

Plaintiffs claim that defendants should be precluded, based on the doctrine of judicial estoppel, from asserting that the settlement payments were payments of taxes. The doctrine of judicial estoppel exists to prevent parties from playing "fast and loose" with the court. *State ex rel. KelCor, Inc. v. Nooney Realty Trust, Inc.*, 966 S.W.2d 399, 404 (Mo. App.1998). The circumstances of this case do not bring into play the principles of judicial estoppel because not all inconsistent positions justify judicial estoppel. See *Egan v. Craig*, 967 S.W.2d 120, 126-27 (Mo. App. 1998) (citations omitted). There is no question defendants consistently denied that they owed additional taxes to the

municipalities in the Wellston litigation, and the judgment of Judge Sweeney acknowledged that whether additional taxes were due was dependent on matters as to which "Missouri law is unsettled." *Wellston* Judgment at p.12. This court knows of no law that denies a party the right to deny liability as a part of a settlement, and especially as to an area about which the law is unsettled. Because AT&T did nothing more than vigorously defend its right to challenge interpretations of law as it relates to past and future taxes, there is nothing to suggest defendants were attempting to impugn the integrity of the court.

A significant issue in this case is whether a settlement of a dispute between AT&T companies and approximately 270 municipalities concerning claims of underpaid gross receipts taxes can, pursuant to applicable tariffs, be passed on to AT&T's customers, or whether AT&T and the municipalities are precluded from settlement and must instead complete the entirety of the litigation and trial procedure. This court is aware of no statutory or other legal authority that would force AT&T to go through the burdensome discovery, trial and appeals processes in order to claim the applicability of § 17.11 of General Exchange Tariff 35. In fact, the Missouri Supreme Court, in *Roxanne Kerperien v. Lumberman's Mutual Casualty Company*, 100 S.W.3d 778 (Mo. 2003), acknowledged the recognized public policy in Missouri favoring settlement of litigation. There was 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. On page 18 of the *Wellston* Judgment, the court found with regard to past taxes that:

"FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that Defendants shall make Back Tax Payments to Class Members which have submitted approved claims as provided in the Settlement Agreement..."

On page 14 of the *Wellston* Judgment, the court stated with regard to future taxes that:

"...the Settlement includes an agreement by Defendants to increase the services on which Defendants will pay taxes to the municipalities in the Settlement Class, which will result in a substantial increase of tax revenues received from Defendants..."

In this litigation, the plaintiffs are essentially requesting that this court ignore the above findings and orders of another circuit court on the nature of the settlement, in regards to whether the payments are actually for taxes, past and future, or to "reverse" these critical findings and the orders entered by the court in *Wellston*. This court does not have that authority. In the case of *Richard E. Standridge v. Jacqueline M. Adams*, 636 S.W.2d 680, 683 (Mo. App.1982), the appellate court considered the matter of the authority of one circuit court judge to review decisions of another circuit court judge and held that "the second judge is invested with no review authority." *Id.*

The significance of these limitations on circuit court judges is particularly pertinent in a case of this nature, where it is a specific court decision that is the subject of the plaintiffs' claims. Here, the prior court ruled on a number of issues that are challenged in these proceedings. Among these are the following:

- a) Whether the settlement specifically involves past and future gross receipts or sales taxes. *See* discussion above.
- b) Whether the settlement payments can be passed through to AT&T customers. The court in *Wellston* did not rule as to whether the taxes paid by defendants to the municipalities could be included in the Defendants' billing to consumers. Instead, it determined that the pass through of tax payments to customers was a matter determined by the Public Service Commission.

"[w]hether or not any tax paid by Defendants to the municipalities can be included in the Defendants' billing to consumers who are their customers is determined by the Public Service Commission. It is this Court's understanding, based on the presentations of counsel at the November 2, 2009, hearing, and the supporting documents...that: 1.) 'The governing tariff [of the PSC] authorizes AT&T Missouri to pass through to its customers the amounts it pays in the form of taxes, fees, or charges imposed by any taxing body, including municipal business license taxes imposed by municipalities.'" *Wellston* Judgment.

- c) Whether there were other payments than taxes that were passed through to customers:

"AT&T is not surcharging its retail customers any amounts paid as attorneys' fees in connection with the settlement..." *Wellston* Judgment.

- d) Whether there was a fraud against AT&T customers in the settlement of the *Wellston* litigation. The court discussed the complexity of the litigation, and that:

"[The] issues presented by this case are in some part matters in which Missouri law is unsettled, neither Plaintiffs nor Defendants can be confident that a trial would result in judgment in their favor" *Wellston* Judgment.

Public utility tariffs that have been approved by the Missouri Public Service Commission become Missouri law and have the same force and effect as a statute enacted by legislature. *Bauer v. Southwestern Bell Telephone Company*, 958 S.W.2d 568, 570 (Mo. App. 1997) citing *Southwestern Bell Telephone Co. v. Metro-Link Telecom, Inc.*, 937 S.W.2d 314, 317 (Mo. App. 1996). When analyzing a tariff, if the tariff is clear and unambiguous, the court cannot give it another meaning. *Id.* at 570. The court in *Bauer* further stated:

"The filed tariff, or filed rate doctrine governs a utility's relationship with its customers... The filed tariff doctrine conclusively presumes that both a utility and its customers know the contents and effect of the published tariffs." *Id.*

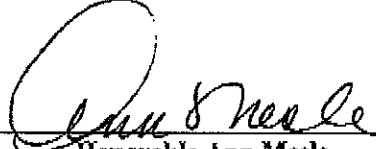
Plaintiffs claim that defendants cannot seek the protection of the Missouri Public Service Commission because AT&T has opted out of certain regulatory tariffs. It is unclear to this court whether that action does or does not have any impact on the authority of the court to act in this matter. However, because, as set forth above, the court believes that Judge Sweeney determined that the Missouri Public Service Commission had jurisdiction to determine whether these payments should be passed through to customers, this court believes it has no authority to second guess that decision.

This court finds and believes that it has no authority to second guess the decision of Judge Sweeney that the underlying settlement was for back and future tax payments. The Court also finds and believes that it has no authority to second guess the decision of Judge Sweeney that it is the Missouri Public Service Commission that must determine whether these tax payments should be passed through to customers and further to determine whether AT&T's actions in deregulating some of its business activities is controlling as to the applicability of the General Exchange tariffs to this litigation. This court therefore believes it is appropriate to stay these proceedings to allow plaintiffs 45 days to seek a ruling from the Missouri Public Service Commission concerning 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.

WHEREFORE, IT IS ORDERED THAT further proceedings in this case are stayed for 45 days to allow plaintiffs to seek ruling from the Missouri Public Service Commission as to whether the settlement payments made by AT&T are to be passed through to AT&T customers pursuant to 17.11 General Exchange Tariff 35 or similar and related tariffs.

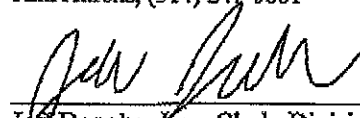
IT IS SO ORDERED.

April 4, 2011
Date


Honorable Ann Mesle
Circuit Court Judge

I certify that copies were faxed/mailed on
this 4th day of April, 2011 to:

Anthony LaCroix, (816) 531-3322
Stephen Higgins, (314) 552-7000
Ann Ahrens, (314) 247-0881


Jeff Donoho, Law Clerk, Division 7 /
Paula Gandara, Judicial Administrative Assistant

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

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,

Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

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

Serve: CT Corporation System
120 South Central Ave.
Clayton, MO 63105

and

AT&T, INC.,

Serve: The Corporation Company, Inc.
120 South Central Ave.
Clayton, MO 63105

and

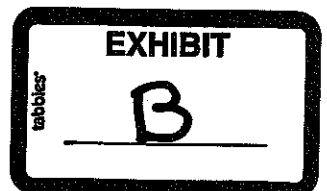
AT&T CORP.,

Serve: The Corporation Company, Inc.
120 South Central Ave.
Clayton, MO 63105

Case No.:

Division No.:

FILED-CIRCUIT COURT
JACKSON CO MO-KC
2010 JAN 15 PM 12:10



Defendants.)

CLASS ACTION PETITION FOR DAMAGES
(TI)

COME NOW Plaintiffs, individually and on behalf of all others similarly situated, and for their Class Action Petition state and allege as follows:

Nature of Case

1. Plaintiffs bring this Class Action Petition against Defendants seeking to stop Defendants' unlawful practice of billing customers to recover their losses from litigation settlements. Plaintiffs further seek reimbursement for monies paid to Defendants for such unauthorized billing.
2. Defendants are parties to a settlement agreement in a lawsuit wherein they were sued by a class of Missouri municipalities for failure to pay business license taxes for landline telephone operations. Pursuant to the agreement, Defendants are to pay up to \$65,000,000 to the municipalities for their wrongdoing. Without any legal authority, customer agreement, authorization, consent, or even prior notification, Defendants have boldly passed their liability on to their customers in the form of monthly charges disguised on telephone bills as "special municipal charges." This practice is wrongful, deceptive, and extremely lucrative for Defendants, who proceed as though they are immune from the consequences of their wrongdoing. Indeed, they need not worry about the costs of their illicit practices settled in other matters; their customers will simply pay the bill.
3. Plaintiffs seek to represent a class of Missouri consumers consisting of all persons, businesses, or entities that have received a bill/invoice from Defendants containing a "special municipal charge" or other charges stemming directly from the settlement agreement in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645, filed on June 26, 2009 in the Circuit

Court of St. Louis, Missouri (the "Settlement"). Plaintiffs seek also to represent a sub-class of (non-business) consumers who have been similarly injured by Defendants and are entitled to recovery under the Missouri Merchandising Practices Act. The liabilities stemming from the Settlement are Defendants' liabilities, not the Plaintiffs. Plaintiffs and the class are justifiably outraged at being stuck with the bill for Defendants' illegal conduct.

4. Plaintiffs, individually and on behalf of all others similarly situated, seek damages for the injuries caused by Defendants' tortious and deceptive actions. Plaintiffs also seek disgorgement of all monies Defendants gained through the unlawful practices described herein, including all interest accrued thereon. Plaintiffs and the class further seek an injunction preventing Defendants from further passing their liabilities on to Plaintiffs and the class.

Parties

5. Plaintiff Barry Road Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

6. Barry Road Associates, Inc. is a landline telephone customer of Defendants and has been billed by Defendants for charges attributable solely to Defendants' liability stemming from the Settlement.

7. Plaintiff The Main Street Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

8. The Main Street Associates, Inc. is a landline telephone customer of Defendants and has been billed by Defendants for charges attributable solely to Defendants' liability stemming from the Settlement.

9. Plaintiff Harry Mark Wooldridge is a citizen of the State of Missouri, residing in Boonville, Missouri.

10. Harry Mark Wooldridge is a landline telephone customer of Defendants and has been billed by Defendants for charges attributable solely to Defendants' liability stemming from the Settlement.

11. Defendant Southwestern Bell Telephone Company ("SBTC") is a Missouri Corporation with its headquarters and principal place of business in the State of Texas, doing business in Missouri as "AT&T Missouri" and "AT&T."

12. SBTC provides local telephone services to Plaintiffs and the class as their local exchange carrier and is responsible for the bills Plaintiffs and the class receive. SBTC is a party to the Settlement.

13. Defendant AT&T, Inc. is a Delaware corporation with its headquarters and principal place of business in the State of Texas, and doing business in the State of Missouri as "AT&T." AT&T, Inc. is responsible for the bills Plaintiffs and the class receive and is a party to the Settlement.

14. Defendant AT&T Corp. is a New York corporation with its headquarters and principle place of business in the State of Texas. AT&T Corp is authorized to do business in the State of Missouri, and is doing business in Missouri as "AT&T." AT&T Corp. is responsible for the bills Plaintiffs and the class receive and is a party to the Settlement.

Jurisdiction and Venue

15. Jurisdiction is proper in this Court because Defendants transacted business within the State of Missouri and committed tortious activity within the State of Missouri out of which the causes of action alleged herein arose. In addition, Defendant Southwestern Bell Telephone Company is a Missouri Corporation.

16. Venue is proper in this Court because Plaintiffs' causes of action accrued in Jackson County, Missouri, Defendants transacted business in Jackson County, Missouri, and such transactions gave rise to Plaintiffs' causes of action.

General Allegations

17. All allegations in this Class Action Petition are based on information and belief and/or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

18. Whenever reference in this Class Action Petition is made to any act or transaction of Defendants, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Defendants committed, knew of, performed, authorized, ratified and/or directed such act or transaction on behalf of Defendants while actively engaged in the scope of their duties.

Common Facts

19. Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from Defendants dated December 9, 2009 for telephone number 816-407-9000 containing a charge of \$5.32 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

20. Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from Defendants dated December 17, 2009 for telephone number 816-436-8818 containing a charge of \$17.50 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

21. Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from Defendants dated December 17, 2009 for telephone number 816-741-2737 containing a charge of \$28.00 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

22. Plaintiff Harry Mark Wooldridge received an invoice from Defendants dated December 17, 2010 for telephone number 660-882-6589 containing a charge of \$1.99 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

23. Each of the invoices referenced herein contains a paragraph, under the heading "News You Can Use" stating as follows:

MUNICIPAL CHARGES

Beginning November 1, 2009, you may see increases in the amount of Special Municipal Charges billed on your account. These increases will help cover payments made to municipalities to settle claims related to past gross receipts taxes they imposed, and also includes such taxes on services covered by the settlement going forward. Should you have any questions please call the toll free number on your bill. Thank you for using AT&T Missouri.

24. The "increases" referred to are not increases at all, but rather constitute new charges

not previously appearing on customers' bills. The new charges are a result of Defendants passing on their liability under the Settlement to Plaintiffs and the class members.

25. Plaintiffs and class members did not authorize or agree for Defendants to charge them for such additional amounts alleged herein arising from losses or liabilities from any lawsuit or settlement agreement.

26. The charges at issue are not "one-time" charges. Rather, Defendants are continuing to bill customers for such unauthorized charges. Further, it appears as though Defendants intend on billing its customers for such unauthorized charges for years to come.

Class Action Allegations

27. Pursuant to Count II (Unjust Enrichment) and Count III (Action for Money Had And Received) of this Petition, Plaintiffs bring this class action lawsuit on behalf of themselves and the following class (the "Class"):

All individuals, businesses and entities in the state of Missouri who have received local exchange carrier telephone services through "Southwestern Bell Telephone Company," "AT&T Missouri" or "AT&T," have been billed for such services, and have received a charge on a bill attributable to the settlement agreement in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645. Excluded from the class are Defendants; officers, directors, and employees of Defendants; any entity in which any Defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Defendants; any federal, state, or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

28. Pursuant to Count I (Missouri Merchandising Practices Act) of this Petition, Plaintiffs bring this class action lawsuit on behalf of themselves and the following sub-class (the "Sub-Class"):

All individuals in the state of Missouri who have received local exchange carrier telephone services for personal, family, or household purposes through "Southwestern Bell Telephone Company," "AT&T Missouri" or "AT&T," have been billed for such services, and have received a charge on a bill attributable to the settlement agreement in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645. Excluded from the Sub-Class are: Defendants; officers, directors, and employees of Defendants; any entity in which any Defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Defendants; any federal, state, or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

29. Plaintiffs bring this action as a class action pursuant to Missouri Rule of Civil Procedure 52.08.

30. The members of the Class and Sub-Class are so numerous that joinder of all members would be impracticable. Plaintiffs reasonably estimate that there are thousands of Defendants' Missouri customers who have been billed for the unauthorized charges described herein.

31. There are questions of law and fact that are common to the members of the Class and Sub-Class that predominate over any questions affecting only individual members, including, but not limited to the following:

- a. Whether Defendants are liable to the Class and Sub-Class for violations of the Missouri Merchandising Practices Act, section 407.010, RSMo; et seq. for unlawful practices associated with passing on its settlement liabilities to customers,
- b. Whether the "Special Municipal charge(s)" billed to customers are unauthorized, unlawful, and/or illegal,
- c. Whether Defendants have been unjustly enriched through unlawful, unauthorized and/or inequitable billing practices,

d. Whether Defendants' actions have caused injury to the Class and Sub-Class,
and whether Defendants should be enjoined from further injurious practices;

and

e. Whether the Class and Sub-Class are entitled to damages.

32. Plaintiffs' claims are typical of the claims of the other members of the Class.

Plaintiffs have no interests antagonistic to those of the Class and Sub-Class and are not subject to any unique defenses.

33. Plaintiffs will fairly and adequately protect the interests of all members of the Class and Sub-Class and have retained attorneys experienced in class action and complex litigation.

34. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, inter alia, the following reasons:

- a. It is economically impractical for members of the Class and Sub-Class to prosecute individual actions;
- b. The Class and Sub-Class is readily definable;
- c. Prosecution of this matter as a class action will eliminate the possibility of repetitious litigation; and
- d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

35. Plaintiffs do not anticipate any difficulty in the management of this litigation.

All jurisdictional prerequisites to suit have been satisfied.

COUNT I

(Violation of the Missouri Merchandising Practices Act, RSMo § 417.010 *et seq*)

36. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Petition.

37. Defendant participated in and/or aided and abetted in committing violations of the Missouri Merchandising Practices Act, RSMo. § 407.020; and/or did business in the State of Missouri, made contracts to be performed in whole or in part in Missouri, and/or directed their agents, employees, and persons under a contractual relationship with Defendants to perform acts or omissions falling under the Act; and/or offered for sale, advertised, supplied, marketed, promoted, made representations concerning, or placed in the stream of commerce merchandise, or, in the course of business, materially participated with others in the same. This conduct caused Plaintiffs and the Sub-Class to suffer an ascertainable loss of money and property by being landline telephone customers of Defendants and receiving and paying invoices for such services, and violates the Missouri Merchandising Practices Act, RSMo. Chapter 407.

38. Defendants intentionally omitted, concealed, and/or misrepresented material facts upon which the Plaintiffs and Sub-Class members' claims in this Petition are based, including, but not limited to:

- a. failing to inform the Plaintiffs and Sub-Class that Defendants would bill them to recoup their losses and liabilities stemming from the Settlement before sending such bills;
- b. representing on invoices to Plaintiffs and the Sub-Class that "Special Municipal" charges were the rightful responsibility of Plaintiffs and Sub-Class members, when, in fact, the amounts billed were not legally or rightfully chargeable to customers;

- c. representing on invoices to Plaintiffs and the Sub-Class that the "Special Municipal" charges were "one-time" charges, when, in fact, they were recurring;
- d. failing to inform Plaintiffs and members of the Sub-Class that the "Special Municipal" charges appearing on their bills were Defendants' own liabilities and not those of Plaintiffs or Sub-Class members;
- e. collecting and accepting amounts from Plaintiffs and Sub-Class members for liabilities for which Defendants alone were responsible.

39. Defendants promoted, marketed, advertised and disseminated information regarding their local, long distance, and other telecommunications services, to be utilized by Missouri consumers.

40. Defendants have published or caused to be published advertising and/or materials regarding the Defendants' Services in the State of Missouri.

41. Defendants used or employed misleading statements, fraud, false pretenses, false promises, misrepresentations, deception, unfair practices and/or the concealment, suppression and/or omission of material facts in connection with the sale, promotion, marketing and advertisement of its telecommunications services, in violation of RSMo. § 407.020. Such use or employment occurred before, during, and after the sale, advertisement, and solicitation of Defendants' services.

42. The Plaintiffs, Sub-Class representatives, and consumers of Defendants' services have suffered an ascertainable money loss as a result of Defendant's unlawful acts in violation of RSMo. Chapter 407.

43. Pursuant to RSMo. § 407.025, the Court may award actual damages to all ascertainable persons who received bills from Defendants containing the unlawful charges.

44. RSMo. § 407.025 further provides that the Court, in its discretion, may impose punitive damages and may award to the prevailing party attorneys fees based on the amount of time reasonably expended.

45. RSMo. § 407.025 further provides that the Court may impose equitable relief if it deems it proper.

46. Defendants have intentionally engaged in behavior that harms Missouri consumers with respect to its unlawfully passing on of its own liabilities to consumers, by intentionally and willfully misleading and misinforming Missouri consumers of said liabilities, as stated herein. The actions of Defendants at all times herein were reckless or in conscious disregard of the interests of Missouri consumers and outrageous because of Defendants' evil motives or reckless indifference to the rights of others, and merit the imposition of punitive damages in an amount sufficient to punish the wrongful conduct and deter future wrongful conduct.

47. The members of the Sub-Class, all of whom enlisted for and were billed for Defendant's telecommunications services, are entitled to restitution of the money in which they were deprived, and which Defendants have accumulated.

48. Defendants are aware of the total number of transactions, the amount of money accumulated, and the total amount of their liability from the Settlement they have passed on and intend to pass on to customers.

49. Plaintiffs have engaged counsel and those counsel are entitled to their reasonable attorney fees in prosecuting this action.

50. Defendants' practices, alone or collectively, resulted in an ascertainable loss of money to any Missouri person who enlisted for and was billed for Defendants' services.

WHEREFORE Plaintiffs request that judgment be granted against Defendants in an amount that is fair and reasonable, together with prejudgment interest as provided by law, and that Plaintiffs receive such other relief as the Court deems proper and just under the circumstances, including punitive damages, payment of costs and expenses incurred in filing this suit, and reasonable attorney's fees.

COUNT II

(Unjust Enrichment)

51. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Petition.

52. Defendants offer local exchange carrier and other telephone-related services to customers in the State of Missouri.

53. Plaintiffs and the Class selected Defendants as their local exchange carrier and telecommunications service provider.

54. Defendants accepted money and agreed to serve as local exchange carrier and telecommunications provider for Plaintiffs and the Class, for which Defendants sent monthly bills.

55. Monthly bills sent to Plaintiffs and the Class contained charges, passed on to them from Defendants, attributable to Defendants' liabilities stemming from the Settlement, although Plaintiffs and Class members are not parties to the Settlement and Defendants had no legal basis for billing customers for these charges.

56. Defendants collected a significant sum of money from Plaintiffs and the Class through its "Special Municipal" charges.

57. The "Special Municipal" charges were unlawful, inequitable, and unauthorized by Plaintiffs and the Class.

58. As a direct result of the misconduct alleged herein, Defendants have been unjustly enriched and have obtained a substantial monetary benefit which, in fairness and equity, Defendants were not entitled to receive or retain.

59. It would be unfair and inequitable to allow Defendants to retain the benefits derived from the "Special Municipal" charges collected from Plaintiffs and the Class and, therefore, Plaintiffs and Class members are entitled to be paid and to receive those benefits.

WHEREFORE Plaintiffs request that judgment be granted against Defendants in an amount that is fair and reasonable, together with prejudgment interest as provided by law, and that Plaintiffs receive such other relief as the Court deems proper and just under the circumstances, including punitive damages, payment of costs and expenses incurred in filing this suit, and reasonable attorney's fees.

COUNT III

(Action For Money Had And Received)

60. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Petition.

61. Defendants received and obtained possession of money belonging to Plaintiffs and the Class by billing such customers for unauthorized "Special Municipal" charges and collecting payment thereon.

62. Through collection of payment on its invoices containing "Special Municipal" charges, Defendants appreciated a substantial monetary benefit.

63. Defendants acceptance and retention of the money collected and attributed to its liability stemming from the Settlement was unjust and, in equity and good conscience, should be paid over to Plaintiffs and the Class members.

WHEREFORE Plaintiffs request that judgment be granted against Defendant in an amount that is fair and reasonable, together with prejudgment interest as provided by law, and that Plaintiffs receive such other relief as the Court deems proper and just under the circumstances, including punitive damages, payment of costs and expenses incurred in filing this suit, and reasonable attorney's fees.

Prayer for Relief

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for:

- A. An order certifying this matter as a class action and appointing Plaintiffs and their counsel to represent the Class and Sub-Class;
- B. Restitution and disgorgement to the extent permitted by applicable law, together with interest thereon, to victims of such violations;
- C. Actual damages for injuries suffered by Plaintiffs, and the Class and Sub-Class;
- D. Civil penalties to the extent permitted by applicable law;
- E. An appropriate award of punitive damages;
- F. Reasonable attorney's fees and costs of prosecuting this action;
- G. Statutory pre-judgment interest; and
- H. Such other relief as the Court may deem just and proper.

Jury Demand

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully Submitted,

EDGAR LAW FIRM LLC

By 

John F. Edgar

#47128

Anthony E. LaCroix

#60793

1032 Pennsylvania Ave.

Kansas City, MO 64105

Telephone: (816) 531-0033

Facsimile: (816) 531-3322

Email: jfe@edgarlawfirm.com

Email: tel@edgarlawfirm.com

ATTORNEYS FOR PLAINTIFFS

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

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

Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No: 1016-CV02438

Div. 7

**PLAINTIFFS' RESPONSE AND MEMORANDUM IN OPPOSITION TO AT&T
MISSOURI'S MOTION FOR SUMMARY JUDGMENT**

I. Introduction

Having repeatedly and unequivocally denied all liability for payment of "back taxes" to certain municipalities, AT&T Missouri ("AT&T") now defends this action based entirely on a contention that it paid "back taxes" to those municipalities. Plaintiffs fully understand, and do not challenge, AT&T's entitlement to recover from its customers, pursuant to a lawfully filed tariff, taxes imposed upon it by a government body acting in its taxing capacity. Such is the manifest meaning of the tariff at issue. But, there are at least two immediate reasons that the tariff is entirely inapposite here. First, nobody *imposed* anything upon AT&T. Rather, the company voluntarily paid the municipalities sums of money in order to reduce its litigation exposure; i.e. AT&T *chose* to settle the lawsuits. Second, when entering into settlement agreements with local exchange carriers, or anyone else for that matter, Missouri municipalities are plainly not acting as taxing authorities, as contemplated under the tariff. If the



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* Ex. 1 and 2.

Response: Plaintiffs object and move to strike Fact 2, as it does not state a proposition of fact, but rather a legal conclusion. *Id.*

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.

Response: Plaintiffs object and move to strike Fact 3, as it does not state a proposition of fact, but rather a legal conclusion. *Id.*

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 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 Commission approved April 10, 1968, through Telephone Authority Order No. 558. *See* Exs. 5 and 6.

Response: Plaintiffs object and move to strike Fact 4, as it does not state a proposition of fact, but rather legal conclusions. *Id.* Plaintiffs further object and move to strike to Fact 4 because it contains more than one statement of "fact," in violation of Rule 74.01(c)(1).

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).

Response: Plaintiffs object and move to strike Fact 5, as it does not state a proposition of fact, but rather a legal conclusion. *Id.* Plaintiffs further object to Fact 5 to the extent it purports to state, as uncontroverted, the "relevant part" of AT&T's tariff, which is similarly a legal conclusion.

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

Response: Plaintiffs object and move to strike Fact 6, as it does not state a proposition of fact, but rather a legal conclusion. *Id.* Plaintiffs further object and move to strike to Fact 6 because it does not contain any "specific references to the pleadings, discovery, exhibits or affidavits," as required by Rule 74.04(c)(1).

7. On March 11, 2010, Plaintiffs 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. *See generally* First Am. Pet.

Response: Fact 7 is undisputed.

8. Plaintiffs' claims arise out of and relate to charges on their telephone bills. *See* First Am. Pet. ¶ 4. Plaintiffs allege that charges attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed" are unlawful and entitle them to damages. *Id.* ¶¶ 20-22, 25, 39, 47, 56-58, 62-64, 68-69, and 72.

Response: Plaintiffs object and move to strike to Fact 8 because it contains more than one statement of "fact," in violation of Rule 74.01(c)(1). Plaintiffs dispute AT&T's incomplete characterization of the First Amended Petition, which Plaintiffs hereby cite and incorporate by reference, as if fully set forth herein.

9. Plaintiffs' proposed class includes all individuals and businesses in Missouri who:

have received local exchange carrier telephone services through "Southwestern Bell Telephone Company," "AT&T Missouri," or "AT&T," have been billed for such services, and have received a charge on a bill attributable to a settlement agreement reached in response to a lawsuit by any Missouri municipality alleging that Defendants failed to pay business license or municipal gross receipts taxes, including, but not limited to, the settlements reached in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645, filed on June 26, 2009 in the Circuit Court of St. Louis, Missouri and *City of Jefferson and City of Springfield v. Cingular Wireless LLC, et al.*, Case No. 04-CV-4099-NKL, filed on May 12, 2004 in the United States District Court for the Western District of Missouri.

Id. ¶ 29.

Response: Fact 9 is undisputed.

10. The pass through of back taxes (*i.e.*, the Special Municipal Charges) upon which Plaintiffs' 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").

Response: Fact 10 is disputed. Plaintiffs claims do not rest on the pass through of any taxes or back taxes, as set forth in response to Fact 11, below, which response is hereby incorporated by reference as if fully set forth herein.

11. 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.

Response: Plaintiffs object and move to strike Fact 11, as it does not state a proposition of fact, but rather a legal conclusion. To the extent Fact 11 states a proposition of fact, it is disputed. In the *Wellston* and *St. Louis County* settlement agreements, the term "Back Tax Payment" is specifically defined, and therefore cannot be given its common meaning, or any other meaning than that indicated in the agreements. Ex. 10² at 12; Ex. 12A at 6, 8-9. That definition relates to sums paid according to the agreements themselves; the definition does not include actual taxes. *Id.* In the *Springfield* settlement agreement, the term "Back Tack Payment" is undefined but, in context, clearly has the same meaning as that attributed to it in the *Wellston* and *St. Louis County* settlement agreements. Ex. 12B at 2. All three settlement agreements make clear that the payments being made by AT&T are not tax payments, but rather are voluntarily made in consideration for the Plaintiffs' dismissal of the lawsuits and release of claims; in fact, in all three agreements Defendants unequivocally deny that they are agreeing to pay taxes. Ex.

² All references to exhibits are to the exhibits attached to AT&T's Memorandum of Law, except where indicated.

10 at 3 (“Defendants have denied and continue to deny any and all liability with respect to the allegations raised against them in the various lawsuits involving the applicability of Plaintiffs’ and other Municipalities’ respective Business License Tax ordinances to Defendants’ products and services.”); Ex. 10 at 37 (stating that the agreement was entered into “[i]n order to effectuate the Parties’ desire to fully, finally and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation.”); Ex 10 at 43 (“Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiation or proceedings is or shall be construed as deemed to be legal evidence of an admission by Defendants with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by any of the Class members in the Action, or the liability of Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Aside from the obligation to pay Business License Taxes going forward. . . **this settlement agreement is not intended to, and shall not be construed as imposing any other obligation on Defendants under the Class member’s respective ordinances**, including without limitation any rate regulation or customer service requirements.) (Emphasis added); Ex. 12A at 3, 20-21, 23 (same); Ex. 12B at 1 (“**AT&T denies any and all liability for taxes** and will continue to defend itself in litigation and otherwise absent execution of this Agreement.”) (Emphasis added.); Ex. 12B at 2, ¶1 (expressly agreeing that there was no determination on the merits of the municipalities’ claims); ex. 12B at 4, ¶11. As the terms of the settlement agreements establish, merely calling the payments “back taxes” does not make it so.

12. 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.

Response: Plaintiffs object and move to strike Fact 12, as it does not state a proposition of fact, but rather a legal conclusion. To the extent Fact 12 states a proposition of fact, it is disputed. As set forth above, any payments made by AT&T pursuant to the settlement agreements were not tax or back tax payments. Plaintiffs incorporate their response to Fact 11 as if fully set forth herein.

13. AT&T Missouri began to pass through these back tax payments to its customers via a monthly surcharge. *See* First Am. Pet.

Response: Fact 13 is disputed. As set forth above, any charge attributed to the settlement agreements and passed through to AT&T's customers is not attributable to any tax or back tax imposed upon AT&T. Plaintiffs incorporate their response to Fact 11, as if fully set forth herein.

14. These back-tax surcharges give rise to each of Plaintiffs' asserted causes of action. *See generally* First Am. Pet.

Response: Fact 14 is disputed. The surcharges are unrelated to any tax or back tax. Plaintiffs incorporate their response to Fact 11, as if fully set forth herein.

III. Additional Disputed Material Facts

1. Neither Plaintiffs nor any member of the proposed Class are parties to the *Wellston, Springfield, and/or St. Louis County* cases or settlement agreements. Exs. 7, 8, 9, 10, 12A, 12B.

2. AT&T failed to pay business license and gross receipt taxes to Missouri municipalities, as alleged in the *Wellston, Springfield, and St. Louis County* Petitions. Exs. 7, 8, 9, 10, 12A, 12B.

3. AT&T did not fail to pay business license and gross receipt taxes to Missouri

municipalities, as alleged in the *Wellston*, *Springfield*, and *St. Louis County* Petitions. Exs. 7, 8, 9, 10, 12A, 12B.

4. AT&T's payments under the *Wellston*, *Springfield*, and *St. Louis County* settlement agreements were not imposed upon AT&T. Ex. 10 at 3, 10, 12, 37, 43; Ex. 12A at 3, 6, 8-9, 20-21, 23; Ex. 12B at 1, 2 (¶1), 4 (¶11).

IV. Argument

AT&T's Memorandum begins and ends under the incorrect assumption that this case is about taxes imposed upon it, filed rates, and case law establishing the legal effects of filed tariffs. None of the cases cited by AT&T in support of application of the filed rate doctrine touch upon the threshold question at the center of Plaintiffs' allegations, which is whether the facts of this case trigger application of the tariff in the first instance. To be sure, it is unclear whether AT&T *did not* owe unpaid taxes to the municipalities, as it stated in the settlement agreements, or whether AT&T *did* owe and pay such taxes to those municipalities, as it argues now. From Plaintiffs' perspective, Plaintiffs are either paying for AT&T's decision to violate municipal tax laws or paying for AT&T's decision to pay the municipalities to go away. What AT&T cannot adequately explain is why either of these possibilities is in accordance with the law or any recognizable public policy. There is one point on which the parties squarely agree, and it is that AT&T's duly approved and filed tariffs should be construed according to general rules of statutory interpretation. *State ex rel. Missouri Gas Energy v. Public Service Com'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006).

Section 17.11 of General Exchange Tariff 35 (the "Tariff") begins as follows:

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.

When construing statutes, “the primary rule is to consider words in their plain and ordinary meaning.” *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 902 (Mo. 2006). “A court may not add words by implication to a statute that is clear and unambiguous.” *State ex rel. Young v. Wood*, 254 S.W.3d 871, 873 (Mo. 2008). “When a statutory term is not defined, courts apply the ordinary meaning of the term as found in the dictionary.” *Great Southern Bank v. Director of Revenue*, 269 S.W.3d 22, 24-25 (Mo. 2008). Accordingly, in order for AT&T to bill a customer for a surcharge under the Tariff, such charge must be *all* of the following:

- (1) equal to the pro rata share of one of the following: franchise tax, franchise fee, franchise charge, occupation tax, occupation fee, occupation charge, business tax, business fee, business charge, license tax, license fee, license charge, excise tax, excise fee, excise charge, privilege tax, privilege fee, privilege charge, or some other, similar tax, fee or charge; and
- (2) now or hereafter imposed upon the Telephone Company; and
- (3) by any taxing body or authority, whether by statute, ordinance, law or otherwise; and
- (4) presently due or to hereafter become due.

The second element of the Tariff is dispositive of AT&T’s defense in this case. While the statute unambiguously requires that a payment be imposed upon AT&T in order for an allowable pass-through, AT&T has indisputably taken on the settlement liabilities voluntarily, not by imposition. See Fact 11 and Response, above. Of course, it may be just as apt to state that AT&T imposed the charge upon itself, in which case element 2 is met, but element 3, which requires imposition by someone else, would plainly not be met. “Impose” means “[t]o levy or exact (a tax or duty).” Black’s Law Dictionary (9th ed. 2009). Plaintiffs submit that a company’s voluntarily entering into a litigation settlement agreement is the antithesis of having a sum of

money levied or exacted from it. The shareholders of AT&T are ultimately liable for the risks the company takes and for what its Board of Directors chooses to spend. AT&T has put forth no evidence, whatsoever, that in this case such liability was lifted from the shareholders and placed upon the shoulders of customers by anyone other than AT&T itself.

Nor can AT&T establish that the first element of the Tariff has been met here. Plaintiffs presume that AT&T would rely on the term “business tax” or the “some other, similar, tax fee or charge” language of the Tariff. But, the settlement agreements reached with the municipalities completely negate the possibility that the payments could be characterized as *any* type of tax, fee, or charge. First, AT&T has expressly denied that it owed any tax, as alleged in the municipalities’ petitions. Fact 11 and Response, above. The settlement agreements were presented to, and approved by, Missouri Courts. *E.g.*, Ex. 11. AT&T should therefore be judicially estopped from taking the position it now takes in this litigation. “Judicial estoppel will lie to prevent litigants from taking a position, under oath, in one judicial proceeding, thereby obtaining benefits from that position in that instance and later, in a second proceeding, taking a contrary position in order to obtain benefits. . . at that time.” *State Bd. of Accountancy v. Integrated Financial Solutions, L.L.C.*, 256 S.W.3d 48, 54 (Mo. 2008). Moreover, the word “fee” means “[a] charge for labor or services, esp. professional services.” Black’s Law Dictionary (9th ed. 2009). AT&T’s settlement payments to the municipalities certainly do not fall within this definition, because the agreements concede that AT&T is paying to avoid litigation exposure, and not for the municipalities’ labor or services. Fact 11 and Response, above. Nor can the payments be reconciled with the definition of “charge,” which is (in this context) “[a]n encumbrance, lien, or claim.” *Id.* At base, the plain meaning of all three words—tax, fee, and charge—is that *someone else* is exacting something, as discussed above. But, even

if that were not the case, the meaning of these words does not coincide with what happened here.

Furthermore, although the municipalities are, in fact, taxing authorities, it does not follow that they act as such in all instances. The law is clear that the scope of a taxing body's right to tax is defined entirely by statute. *Excel Drug Co., Inc. v. Missouri Dept. of Revenue*, 609 S.W.2d 404, 409 (Mo. 1980). Although the municipalities' action in bringing suit against AT&T may well fall within their taxing capacities, there is no statute that imposes upon Missouri taxing authorities a duty or a right to end such tax recovery litigation and enter into a contract providing for payment of less than the full amount of tax due.³ Indeed, to allow one corporation to pay less than the full amount of tax assessed, while others similarly-situated are required to pay 100 percent of their tax liabilities, would violate the very anti-discriminatory policies upon which AT&T bases its public policy arguments in this case. In essence, when the municipalities entered into the settlement agreements, they were acting simply as parties litigant, not as legislative bodies exacting taxes according to their constitutional and statutory authority. For this additional reason, yet another necessary element of the Tariff has not been satisfied.

Stepping back a bit from a mechanical approach to construction of the Tariff language (which approach Plaintiffs maintain is required), the Tariff, read as a whole, has a clear purpose and meaning. It exists to provide AT&T with a direct means by which to recover costs of operation about which it has no discretion, and no say in the matter. As AT&T correctly argues, in addition to its logistical utility, the Tariff provides the benefit of attributing taxes exacted upon AT&T to customers of the taxing entity that imposed the tax in the first place. The hallmark of the Tariff's operation, then, is a mechanical flow of *defined* tax liability, first exacted by the

³ Plaintiffs do not suggest that the municipalities had no legal authority to settle with AT&T, but rather that the focus, purpose, and effect of such settlements constitute neither exacting a tax nor recovering what is due, in full. In choosing to settle, the municipalities were presumably weighing the risks and costs of litigation, and not exacting or collecting taxes.

taxing municipality, upon AT&T (serving in a truly ministerial capacity), to the customer-residents of the taxing municipality. The system is logical, fair, and uncontroversial, which is presumably why the PSC approved it many years ago. In contrast, what happened here is detached from, and foreign to, this tried-and-true system, primarily because the Special Municipal Charge was born entirely out of AT&T's prerogative, whether that prerogative is underpinned by its own failure to comply with the various tax ordinances or its own choice to avoid litigation exposure. The rationale and public policy behind the tariff are therefore absent. There is no logistical utility or inherent fairness where a corporate defendant intentionally negotiates with plaintiffs over millions of dollars in potential liabilities, knowing that it has an unquestioned statutory right—and even an *obligation*—to avoid paying any agreed upon settlement amount. If the Tariff can be read this way (which it cannot), AT&T is free to haphazardly settle, for any amount, litigation even remotely related to its “operating costs.” After all, the consequences of its decision to avoid judgment on the merits of the litigation will never be felt by AT&T. It has no dog in the hunt. This particular settlement motivation need not be presumed, because AT&T expressly inserted it into all three settlement agreements. Ex. 10 at 28, §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. 12A at 20, §C; Ex. 12B at 6, §21. Neither the text nor the purpose or spirit of the tariff can be reconciled with AT&T's attempted use of it here.

AT&T makes an additional argument that the second paragraph of Section 17.11 allows the pass-through at issue. AT&T's memo at 11. That paragraph states as follows:

On and 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, in the manner provided below, to the customer's bill or charge on each individual billing date.

AT&T suggests that the language "imposition or determination of liability" somehow applies here. However, as discussed above, there has been no imposition of any tax, fee, or charge upon AT&T in this case. It did not have to settle the lawsuits, particularly in light of the fact that it denies liability for the taxes at issue in those cases. But, it did choose to settle. This is simply not an imposition upon AT&T. To the extent AT&T suggests that its voluntary settlement constitutes a "determination of liability," that position is untenable, given that the settlement agreements expressly and repeatedly deny any admission or determination of liability. AT&T agreed that "Defendants have denied and continue to deny any and all liability with respect to the allegations raised against them in the various lawsuits involving the applicability of Plaintiffs' and other Municipalities' respective Business License Tax ordinances to Defendants' products and services." Ex. 10 at 3. AT&T's motivation for settling could not be clearer: "to effectuate the Parties' desire to fully, finally and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation." Ex. 10 at 37. To be sure, AT&T did not rest on merely a single denial of liability in the settlement agreements, but rather repeated and expanded on its denial of liability for taxes:

Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiation or proceedings is or shall be construed as deemed to be legal evidence of an admission by Defendants with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by any of the Class members in the Action, or the liability of Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Aside from the obligation to pay Business License Taxes going forward. . . **this settlement agreement is not intended to, and shall not be construed as imposing any other obligation on Defendants under the Class member's respective ordinances**, including without limitation any rate regulation or customer service requirements.

Ex. 10 at 43 (emphasis added); *see also* Ex. 12A at 3, 20-21, 23. Although this language from the *Wellston* and *St. Louis County* Agreements is unequivocal, the *Springfield* Agreement is even more so: **"AT&T denies any and all liability for taxes** and will continue to defend itself in litigation and otherwise absent execution of this Agreement." (emphasis added); *see also* Ex. 12B at 2, ¶1; ex. 12B at 4, ¶11.

Even if the filed rate doctrine were somehow applicable here, it would preclude AT&T's attempted surcharging of past liabilities to present customers such as Plaintiffs. In the rate-making case of *State ex rel. Capital City Water Co. v. Public Service Commission*, the Missouri Supreme Court reviewed the propriety of a utility's inclusion of past development costs in its calculation of future rates. 252 S.W. 446, 449 (Mo. 1922). The Court, adopting the analysis of the United States Supreme Court in *Galveston Electric Company v. Galveston*, 258 U. S. 388 (1922), also adopted the following statement made by the PSC: **"If it were possible to capitalize losses, the most unsuccessful property would have the greatest going value, thereby creating an illegal and absurd basis for rate making."** *Capital City Water Co.* at 449 (emphasis added). Similarly, the payments made by AT&T to the municipalities here constitute past losses which cannot, under the analysis of *Capital City Water Co.*, be capitalized and made part of the rates passed through to AT&T customers going forward. In short, the settlement payments represent losses to be set against profits, and do not represent costs of future operation. While Plaintiffs believe this analysis is unnecessary in light of the facial inapplicability of the Tariff, even if the Tariff could be given application here, the pass-through of past settlement liabilities to Plaintiffs and the Class would be contrary to Missouri law.

Finally, Plaintiffs contend that, because Plaintiffs have not secured an order of the PSC regarding AT&T's liability, AT&T is entitled to summary judgment as to Plaintiffs' statutory

cause of action under section 392.350, RSMo. This is still another attempt by AT&T to "have its cake and eat it, too." AT&T has opted out of PSC regulation as to its billing procedures and practices, Ex. A. AT&T cannot have it both ways; either the PSC or this Court must have primary jurisdiction over alleged wrongful billing practices. AT&T has unequivocally chosen the latter.

Section 392.350, RSMo. states as follows:

In case any telecommunications company shall do or cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or other thing required to be done by this chapter or by any order or decision of the commission, such telecommunications company shall be liable to the person or corporation affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery, if the court shall find that such an act or omission was willful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which fee shall be taxed and collected as a part of the costs in the action. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any such person or corporation.

This statute provides a private cause of action as to *any* prohibited act or omission by a telecommunications company. Section 392.350 "is to be liberally construed for the public's, ergo the consumer's, protection." *De Paul Hospital School of Nursing, Inc. v. Southwestern Bell Tel. Co.*, 539 S.W.2d 542, 548 (Mo. App. 1976).

The Petition alleges numerous prohibited and unlawful acts by AT&T, including violations of the Merchandising Practices Act, wrongful and unjust retention of Plaintiffs' money, breach of the implied covenant of good faith and fair dealing, failure to file a rate encompassing the Special Municipal charges, failure to give Plaintiffs notice of the Special Municipal Charge, and failure to file tariff pages pursuant to an order of the PSC. *See* First Amended Petition. These unlawful acts entitle Plaintiffs to relief under the statute. The cases cited by AT&T are limited in their application to matters over which the PSC *has* jurisdiction

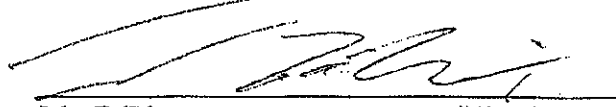
and authority to enter an order. In *Overman v. Sw. Bell Tel. Co.*, the Court held that an action brought under section 392.350 alleging violation of section 392.200, related to the reasonableness of charges, required a prior order of the PSC. 706 S.W.2d 244, 251-52 (Mo. App. 1986). However, *Overman* was decided long before AT&T opted out of PSC regulation of its billing practices. Ex. A. Because of Defendant's opting out, no PSC order could have bearing on the issues alleged in the Petition and the rationale for first seeking an order of that agency is therefore absent. This is confirmed by the other case AT&T cites, *DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674, 676 (Mo. App. 1978). In that case, the Court stated that "[m]atters within the jurisdiction of the Public Service Commission must first be determined by it in every instance before the courts have jurisdiction to make judgments in the controversy." It follows, of course, that matters outside the PSC's jurisdiction, such as billing complaints against Defendant here, fall within the jurisdiction of the Circuit Courts.

V. Conclusion

Because AT&T's payments to the municipalities are not in the nature of tax payments, the Tariff is inapplicable and, consequently, the filed rate doctrine is also inapplicable. The Special Municipal charges are unlawful, deceptive, and unjust. Therefore, Plaintiffs respectfully ask that AT&T's Motion for Summary Judgment be denied.

Respectfully submitted,

EDGAR LAW FIRM LLC



John F. Edgar #47128

Anthony E. LaCroix #60793

1032 Pennsylvania Ave.

Kansas City, Missouri 64105

Telephone: (816) 531-0033

Facsimile: (816) 531-3322

Email: jfe@edgarlawfirm.com

Email: tel@edgarlawfirm.com

ATTORNEYS FOR PLAINTIFFS

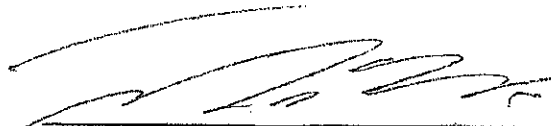
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served, via U.S. Mail, First Class, postage prepaid and electronically emailed in Microsoft Word format on this 10th day of January, 2011 to the following:

Stephen B. Higgins- Lead Counsel
Amanda J. Hettinger
Kimberly M. Bousquet
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
Phone: (314) 552-6000
Fax: (314) 552-7000
Email: shiggins@thompsoncoburn.com
ahettinger@thompsoncoburn.com
kbousquet@thompsoncoburn.com

Ann Ahrens
One AT&T Center, Room 3548
St. Louis, MO 63101
Phone: (314) 235-4099
Fax: (314) 247-0881
Email: ann.beck@att.com

Craig S. Laird
Robert A. Kumin, P.C.
PO Box 30088
Kansas City, MO 64112
Phone: (816) 471-6877
Fax: (913)-236-7115
Email: claird@kuminlaw.com



Attorney for Plaintiffs

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

In the Matter of a Notice of Election of)
Southwestern Bell Telephone Company d/b/a) Case No. IE-2009-0082
AT&T Missouri for Waiver of Commission Rules)
and Statutes Pursuant to Section 392.420, RSMo)

ORDER CONCERNING ELECTION OF WAIVERS

Issue Date: November 10, 2008

Effective Date: November 10, 2008

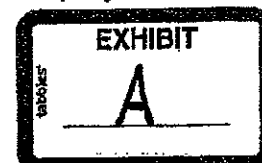
On August 28, 2008, House Bill 1779 became effective, modifying §392.420 RSMo 2000, so that it now provides, in pertinent part:

Notwithstanding any other provision of law in this chapter and chapter 388, RSMo, where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected.

On August 28, 2008, Southwestern Bell Telephone Company d/b/a AT&T Missouri ("the Company") filed notification with the Missouri Public Service Commission ("Commission") that it elects to waive certain Commission rules and statutory provisions pursuant to RSMo Section 392.420. AT&T Missouri has not yet submitted a tariff filing to identify these waivers in their tariff.

On September 26, 2008, the Commission Staff submitted its memorandum concerning the notice. It noted that:

1. AT&T Missouri is an incumbent local exchange telecommunications company as that term is used in Section 392.420.



2. Prior Commission cases and annual reports confirm that one alternative local exchange telecommunications carrier is providing service in some part of the Company's territory.

3. AT&T Missouri is currently compliant in obligations relating to Commission assessment, Missouri Universal Service Fund, Relay Missouri, and the submission of an annual report.

4. The waivers into which AT&T Missouri has opted are:

- 4 CSR 240-3.550 (4) and (5)(A), Held order records, quality of service reports.
- 4 CSR 240-32.060 Engineering and maintenance
- 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
- 4 CSR 240-33.045 Clear identification and placement of charges on bills
- 4 CSR 240-33.080(1) Identify company name and toll-free number on bills
- 4 CSR 240-33.130(1),(4) and (5) Operator service requirements
- 392.210(2) Accounting requirements (system of accounts)
- 392.240(1) Reasonableness of rates
- 392.270 Accounting requirements (valuation of property)
- 392.280 Accounting requirements (depreciation rates/accounts)
- 392.290 Issuance of stocks, bonds and other indebtedness
- 392.300 Transfer of property and ownership of stock
- 392.310 Approval of issuing stocks, bonds and other indebtedness
- 392.320 Certificate of Commission to be recorded-stock dividends
- 392.330 Accounting requirements (proceeds of sales of stock, bonds, notes, etc.)
- 392.340 Company reorganization

The Staff recommends that the Commission take notice of the Company's election to opt into the waivers listed in its Notice of Election for Waivers. In addition, Staff recommends the Commission direct AT&T to file tariff pages in compliance with the waivers that designate the rules and statutes waived.

Section 392.420 further provides:

The commission may reimpose its quality of service and billing standards rules, as applicable, on an incumbent local exchange telecommunications company but not on a company granted competitive status under subdivision (7) of subsection 5 of section 392.245 in an exchange where there is no alternative local exchange telecommunications company or interconnected voice over Internet protocol service provider that is certificated or registered to provide local voice service only upon a finding, following formal notice and hearing, that the incumbent local exchange telecommunications company has engaged in a pattern or practice of

inadequate service. Prior to formal notice and hearing, the commission shall notify the incumbent local exchange telecommunications company of any deficiencies and provide such company an opportunity to remedy such deficiencies in a reasonable amount of time, but not less than sixty days. Should the incumbent local exchange telecommunications company remedy such deficiencies within a reasonable amount of time, the commission shall not reimpose its quality of service or billing standards on such company.

THE COMMISSION ORDERS THAT:

1. The Company's Notice of Election is acknowledged as received.
2. The Staff shall send a public notice to news outlets in the Company's service area and the State Legislators whose districts are in the service area, notifying the news outlets and State Legislators that customers in those exchanges served by the filing company is no longer subject to certain Commission quality of service and billing rules, and also provide a brief description of the rules that are waived. The notice shall also inform the news outlets and State Legislators that although the Commission no longer has jurisdiction to process those complaints, the Commission will continue to track any positive and negative inquiries or complaints about service quality and billing issues.
3. The Company shall file tariff pages in compliance with the waivers that designate the rules and statutes waived on or before December 6, 2008. Such tariff pages will not be approved, but will take effect by operation of law.
4. The Commission's Customer Service Staff shall receive and track any positive and negative inquiries or complaints about service quality and billing issues and if Staff determines that the Company has engaged in a pattern or practice of inadequate service in service quality or increase in billing issues, it shall notify the Commission by filing a written report.
5. This order is effective upon issuance.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Colleen M. Dale, Chief Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
On this 10th day of November, 2008.

No supplement to this tariff will be issued except for the purpose of canceling this tariff.

General Exchange Tariff
Section 17
1st Revised Sheet 26
Replacing Original Sheet 26

RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

RECEIVED

17.10 TERMINATION OF CONTRACTS--(Continued)

SEP 6 1991

17.10.5 General Provisions--(Continued)

MISSOURI

Public Service Commission

- (FC) C. The service is furnished subject to the condition that it will not be used for an unlawful purpose. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such service is being used or will be used in violation of law or if the Telephone Company receives other evidence convincing to it that such service is being or will be so used.
- (FC) D. Abandonment of equipment or service by a customer is regarded by the Telephone Company as a voluntary termination of the contract.
- (FC) E. If it is deemed necessary by the Telephone Company, in compliance with Paragraphs 17.4.2, A. and/or B., customers may be required to provide security satisfactory to the Telephone Company in the amount sufficient to guarantee payment of the termination charge. If a cash deposit is made, simple interest at the rate of 9 percent per annum will be paid on deposits held 30 days or more.
- (C)
- (C)

17.11 SPECIAL TAXES, FEES AND CHARGES

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 and 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, in the manner provided below, to the customer's bill or charge on each individual billing date.

When such tax or taxes are imposed in terms of a flat sum payment of money, the surcharge applicable to each customer's bill or charge, as the pro rata share of such taxes described above, shall be determined by relating the flat sum payment to the total local exchange revenues within the jurisdiction of the taxing body; the fraction so described

Issued: SEP 6 1991

Effective: OCT 6 1991

FILED

OCT 8 1991

By R. D. BARRON, President-Missouri Division
Southwestern Bell Telephone Company
St. Louis, Missouri

MO. PUBLIC SERVICE COMMISSION



No supplement to this tariff will be issued except for the purpose of canceling this tariff.

General Exchange Tariff
Section 17
Original Sheet 27

RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

17.11 SPECIAL TAXES, FEES AND CHARGES--(Continued)

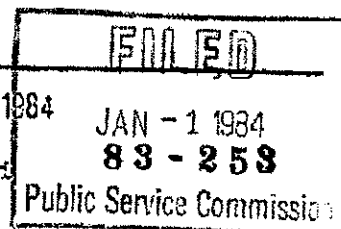
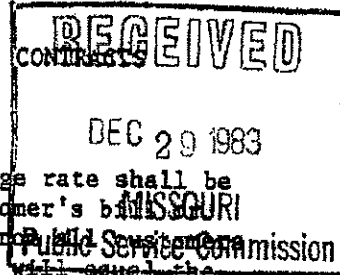
shall be converted to a percentage; the local exchange rate shall be increased by that percentage and applied to the customer's bill charge, so that the amount added, when accumulated from all customers residing in the geographic jurisdiction of the body, will equal the amount of the flat sum payment.

When such tax or taxes are imposed in terms of a percentage of revenues or gross receipts, the surcharge applicable to each customer's bill or charge as the pro rata share of such taxes described above shall be determined by dividing the tax expressed as a percentage by 100 percent minus the tax expressed as a percentage and multiplying the decimal thus obtained by the customer's charges to which such tax applies.

$$\left(\frac{\text{Tax}\%}{100\% - \text{Tax}\%} \right) \times \text{Taxable Charges}$$

The tariff charge constituting the amount of the surcharge provided for herein shall be stated separately on each customer's bill.

Where more than one tax, fee or charge is imposed by a taxing body or authority, the total of such surcharge applicable to a customer may be billed to the customer as a single amount.



Issued: DEC 29 1983

Effective: JAN 01 1984

By R. D. BARRON, Vice President-Missouri
Southwestern Bell Telephone Company
St. Louis, Missouri

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

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,)
Individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

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

AT&T INC., and)

AT&T CORP.,)

Defendants.)

Cause No. 1016-CV02438

Division No. 07

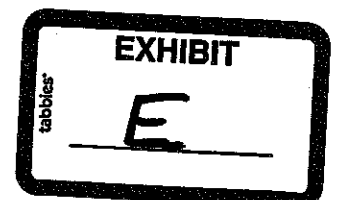
**ANSWER AND AFFIRMATIVE DEFENSES OF SOUTHWESTERN BELL
TELEPHONE COMPANY, d/b/a AT&T MISSOURI, TO
FIRST AMENDED CLASS ACTION PETITION FOR DAMAGES**

COMES NOW Defendant Southwestern Bell Telephone Company, d/b/a AT&T
Missouri, ("AT&T Missouri") and for its answer and affirmative defenses to Plaintiffs' First
Amended Class Action Petition for Damages states as follows:

Nature of the Case

1. AT&T Missouri admits that Plaintiffs purport to bring the action described in
Paragraph 1 but denies all remaining allegations in Paragraph 1.

FILED-CIRCUIT COURT
JACKSON COUNTY, MISSOURI
10 APR -5 PM 3:45



2. AT&T Missouri admits that it was a party to settlement agreements in lawsuits wherein it was sued by Missouri municipalities for failure to pay business license or gross receipt taxes but denies the remaining allegations in Paragraph 2.

3. AT&T Missouri admits that it filed the tariff attached as Exhibit 1 with the Missouri Public Service Commission but denies the remaining allegations in Paragraph 3.

4. AT&T Missouri admits that Plaintiffs seek to represent the putative class set forth in Paragraph 4 but denies the remaining allegations in Paragraph 4.

5. AT&T Missouri admits that Plaintiffs seek damages and disgorgement but denies that Plaintiffs and the putative class are entitled to any relief and denies all remaining allegations in Paragraph 5.

Parties

6. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 6 and therefore denies the same.

7. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 7 and therefore denies the same.

8. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 8 and therefore denies the same.

9. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 9 and therefore denies the same.

10. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 10 and therefore denies the same.

11. AT&T Missouri admits that Plaintiff Harry Mark Wooldridge is its landline telephone customer but denies the remaining allegations in Paragraph 11.

12. AT&T Missouri admits that it is a corporation that conducts business in Missouri as AT&T Missouri with its headquarters and principal place of business in Texas. AT&T Missouri denies the remaining allegations in Paragraph 12.

13. AT&T Missouri admits that it provides local telephone services to Plaintiff Harry Mark Wooldridge as his local exchange carrier and is responsible for the bills he receives. AT&T Missouri further admits that it is a party to the Settlements. AT&T Missouri denies that class treatment is appropriate and is without information or belief sufficient to answer all remaining allegations in Paragraph 13 and therefore denies the same.

14. The allegations contained in Paragraph 14 are not directed to AT&T Missouri, and, therefore, AT&T Missouri need not respond to the allegations in Paragraph 14. To the extent a response is required, AT&T Missouri denies the allegations contained in Paragraph 14.

15. The allegations contained in Paragraph 15 are not directed to AT&T Missouri, and, therefore, AT&T Missouri need not respond to the allegations in Paragraph 15. To the extent a response is required, AT&T Missouri denies the allegations contained in Paragraph 15.

Jurisdiction and Venue

16. AT&T Missouri denies the allegations in Paragraph 16.

17. AT&T Missouri denies the allegations in Paragraph 17.

General Allegations

18. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 18 and therefore denies the same.

19. Paragraph 19 sets forth a short-hand pleading convention used by Plaintiffs in the remainder of the First Amended Class Action Petition for Damages to which no answer is

necessary. To the extent an answer is required, AT&T Missouri denies the allegations in Paragraph 19.

Common Facts

20. AT&T Missouri is without information or belief sufficient to answer the allegations made in the first sentence of Paragraph 20 and therefore denies the same. AT&T Missouri states that the invoices referenced in Paragraph 20 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 20 to the extent they are inconsistent with the referenced invoice.

21. AT&T Missouri is without information or belief sufficient to answer the allegations made in the first sentence of Paragraph 21 and therefore denies the same. AT&T Missouri states that the invoices referenced in Paragraph 21 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 21 to the extent they are inconsistent with the referenced invoice.

22. AT&T Missouri is without information or belief sufficient to answer the allegations made in the first sentence of Paragraph 22 and therefore denies the same. AT&T Missouri states that the invoices referenced in Paragraph 22 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 22 to the extent they are inconsistent with the referenced invoice.

23. AT&T Missouri admits the allegations made in the first sentence of Paragraph 23. AT&T Missouri states that the invoices referenced in Paragraph 23 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 23 to the extent they are inconsistent with the referenced invoice.

24. AT&T Missouri states that the invoices referenced in Paragraph 24 are the best evidence of what language is contained therein but to the extent an answer is required, denies the allegations in Paragraph 24 to the extent they are inconsistent with the referenced invoices.

25. AT&T Missouri denies the allegations in Paragraph 25.

26. AT&T Missouri denies the allegations in Paragraph 26.

27. AT&T Missouri denies that it was not authorized to impose the surcharges at issue here. Its General Exchange Tariff, P.S.C. Mo. – 35 (“General Exchange Tariff”) § 17.11, attached as Exhibit 2, not only authorizes but in fact requires AT&T Missouri to collect these surcharges from certain of its subscribers who reside in municipalities which received a back tax payment by participating in the *Winchester* and *Springfield* settlements. Rather than collect a substantial one-time surcharge from its customers, AT&T Missouri has chosen to collect this surcharge on an incremental basis for some time in the future. AT&T Missouri will not collect more from its customers than the amount of back taxes owed to the participating municipalities as a result of those settlements. AT&T Missouri denies the remaining allegations in Paragraph 27.

Class Action Allegations

28. AT&T Missouri admits that Plaintiffs purport to bring Counts II, III, IV, and V on behalf of the class defined in Paragraph 28. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 28.

29. AT&T Missouri admits that Plaintiffs purport to bring Count I on behalf of the class defined in Paragraph 29. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 29.

30. AT&T Missouri admits that Plaintiffs purport to bring their action as a class action pursuant to Missouri Rule of Civil Procedure 52.08. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 30.

31. AT&T Missouri denies the allegations in Paragraph 31.

32. AT&T Missouri denies the allegations in Paragraph 32, including all subparts.

33. AT&T Missouri denies the allegations in Paragraph 33.

34. AT&T Missouri denies the allegations in Paragraph 34.

35. AT&T Missouri denies the allegations in Paragraph 35, including all subparts.

36. AT&T Missouri denies the allegations in Paragraph 36.

Count I

37. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

38. AT&T Missouri denies the allegations in Paragraph 38.

39. AT&T Missouri denies the allegations in Paragraph 39, including all subparts.

40. AT&T Missouri admits that it promoted, marketed, advertised, and disseminated information regarding its local, long distance, and other telecommunications services, to be utilized by Missouri consumers but denies the remaining allegations in Paragraph 40. AT&T Missouri denies these allegations insofar as they are directed to AT&T Inc. and is without information or belief sufficient to answer the allegations insofar as they are directed to AT&T Corp. and therefore denies the same.

41. AT&T Missouri admits that it has published or caused to be published advertising and/or materials regarding its services in the state of Missouri but denies the remaining

allegations in Paragraph 41. AT&T Missouri denies these allegations insofar as they are directed to AT&T Inc. and is without information or belief sufficient to answer the allegations insofar as they are directed to AT&T Corp. and therefore denies the same.

42. Paragraph 42 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 42.

43. Paragraph 43 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 43.

44. Paragraph 44 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 44.

45. Paragraph 45 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 45.

46. Paragraph 46 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 46.

47. AT&T Missouri denies the allegations in Paragraph 47.

48. AT&T Missouri denies the allegations in Paragraph 48.

49. AT&T Missouri denies the allegations in Paragraph 49.

50. AT&T Missouri denies the allegations in Paragraph 50.

51. AT&T Missouri denies the allegations in Paragraph 51.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count I of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth

with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count II

52. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

53. AT&T Missouri admits that it offers local exchange and other telephone-related services to customers in the state of Missouri but denies the remaining allegations contained in Paragraph 53. AT&T Missouri denies these allegations insofar as they are directed to AT&T Inc. and is without information or belief sufficient to answer the allegations insofar as they are directed to AT&T Corp. and therefore denies the same.

54. AT&T Missouri admits that Plaintiff Harry Mark Wooldridge subscribes to its telephone service and is a customer of AT&T Missouri but is without information or belief sufficient to answer whether Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. subscribe to its telephone service or are its customers. AT&T Missouri denies the remaining allegations in Paragraph 54.

55. AT&T Missouri admits that that it accepted money and agreed to serve as Plaintiff Harry Mark Wooldridge's local exchange carrier and telecommunications service provider but is without information or belief sufficient to answer whether it accepted money and agreed to serve as Plaintiffs Barry Road Associates, Inc. and the Main Street Associates, Inc.'s local exchange carrier and telecommunications service provider. AT&T Missouri denies the remaining allegations in Paragraph 55.

56. AT&T Missouri admits that § 17.11 of its General Exchange Tariff obligates it to collect a surcharge from certain of its subscribers who reside in municipalities that participated in the *Winchester* and *Springfield* settlements and that Plaintiffs are not parties to those settlements. AT&T Missouri denies the remaining allegations in Paragraph 56.

57. AT&T Missouri denies the allegations in Paragraph 57.

58. AT&T Missouri denies the allegations in Paragraph 58.

59. AT&T Missouri denies the allegations in Paragraph 59.

60. AT&T Missouri denies the allegations in Paragraph 60.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count II of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count III

61. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

62. AT&T Missouri denies the allegations in Paragraph 62.

63. AT&T Missouri denies the allegations in Paragraph 63.

64. AT&T Missouri denies the allegations in Paragraph 64.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations

in Count III of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count IV

65. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

66. AT&T Missouri admits that its relationships with Plaintiffs are governed by its General Exchange Tariff, which has the force of law in Missouri. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 66.

67. AT&T Missouri denies the allegations in Paragraph 67.

68. AT&T Missouri denies the allegations in Paragraph 68.

69. AT&T Missouri denies the allegations in Paragraph 69.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count IV of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count V

70. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

71. AT&T Missouri denies the allegations in Paragraph 71.

72. Paragraph 72 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 72.

73. AT&T Missouri denies the allegations in Paragraph 73.

74. AT&T Missouri denies the allegations in Paragraph 74.

75. AT&T Missouri denies the allegations in Paragraph 75.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count V of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in their First Amended Class Action Petition, including the Prayer For Relief paragraph and its subparts, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

AFFIRMATIVE DEFENSES

For its affirmative defenses, AT&T Missouri states:

1. Plaintiffs' First Amended Class Action Petition for Damages fails to state a claim upon which relief can be granted.
2. Plaintiffs lack standing to assert the claims alleged in Plaintiffs' First Amended Class Action Petition for Damages.
3. This Court does not have subject matter jurisdiction over the claims asserted in Plaintiffs' First Amended Class Action Petition for Damages.
4. Plaintiffs lack legal capacity to sue.
5. To the extent Plaintiffs' claims are premised on AT&T Missouri's failure to file tariffs, they fail to state a claim because AT&T Missouri has filed the tariffs at issue. *See* Exhibits 1 and 2.
6. Plaintiffs fail to state a claim and/or lack standing to bring a claim for violation of the Missouri Code of State Regulations because such a claim must be brought before the Missouri Public Service Commission in the first instance, which Plaintiffs have not done.
7. The filed rate doctrine bars each of the causes of action alleged in Plaintiffs' First Amended Class Action Petition for Damages. AT&T Missouri's General Exchange Tariff § 17.11 states that, "[t]here shall be added to the customer's bill or charge, as 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 . . . now or hereinafter imposed . . . by any taxing body or authority, whether by statute, ordinance, law or otherwise and whether presently due or to hereafter become due." *See* Exhibit 2. This tariff mandates that AT&T Missouri collect the surcharge at issue here as part of its rate for service, is the law in Missouri, and

exclusively governs the rights and liabilities of Plaintiffs and AT&T Missouri. The filed rate doctrine further bars Plaintiffs' action because Plaintiffs' challenges, if successful, would have the effect of Plaintiffs paying a rate other than AT&T Missouri's filed tariff rate, which is prohibited.

8. This Court's exercise of jurisdiction is improper because every claim for relief made in the First Amended Class Action Petition for Damages, if not barred by the filed rate doctrine, involves the interpretation and application of AT&T Missouri's General Exchange Tariff and the application of regulations, rules, and orders promulgated and enforced by the Missouri Public Service Commission. The Missouri Public Service Commission has the exclusive authority to resolve such claims for relief pursuant to the primary jurisdiction doctrine.

9. The doctrine of election of remedies bars Plaintiffs' ability to recover under all of the causes of action alleged in the First Amended Class Action Petition for Damages.

10. Plaintiffs' claims are barred, in whole or in part, by the doctrines of ratification, consent, and/or acquiescence. To the extent that Plaintiffs have ratified, consented, or acquiesced to an agreement with AT&T Missouri or any other entity regarding their alleged damages, their claims are barred.

11. Plaintiffs' claims are barred to the extent that third parties, rather than they themselves, incurred the charges and/or damages alleged in the First Amended Class Action Petition for Damages.

12. Plaintiffs have failed to mitigate their damages, if any. To the extent that Plaintiffs have suffered any alleged damages, and have failed to take steps to reduce the scope of those damages, Plaintiffs' recovery is barred.

13. Plaintiffs' claims are barred in whole or in part by the voluntary payment doctrine, including but not limited to the fact that Plaintiffs continued to voluntarily make payments after they instituted this lawsuit.

14. Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, settlement, payment, release, and/or discharge, including but not limited to the fact that Plaintiffs continued to voluntarily make payments after they instituted this lawsuit.

15. Plaintiffs, by and through their actions or omissions, have waived the right to recover and/or are estopped from recovering against AT&T Missouri, including but not limited to the fact that Plaintiffs continued to voluntarily make payments after they instituted this lawsuit.

16. Plaintiffs' claims, and especially Count V, are barred because Plaintiffs failed to comply with applicable procedures for challenging AT&T Missouri's rates for service, including but not limited to filing a complaint with the Missouri Public Service Commission.

17. This Court lacks venue as to all Counts except Count V in that Plaintiff Wooldridge's Missouri Merchandising Practices Act claim (Count I) may only be brought where the transaction at issue took place—Cooper County—or where the registered agent for the resident Defendants is located, which is in St. Louis County. Venue for Counts II, III, and IV is governed by § 508.010.2(4) RSMo., which requires that this action be brought in St. Louis County, where the registered agent for the resident Defendants is located. Count V is a pretensive attempt to create venue, and if the Court finds that Count V is improper, this case should be transferred to St. Louis County.

18. Plaintiffs' claims for penalties are barred because AT&T Missouri complied with the mandatory provisions of its General Exchange Tariff, which has the force of law, and therefore did not collect the surcharge at issue here in bad faith.

19. Plaintiffs' claims for attorney's fees are barred because AT&T Missouri complied with the mandatory provisions of its General Exchange Tariff, which has the force of law. It did not willfully violate any order of the Missouri Public Service Commission or any provision of the Public Utility Act.

20. Plaintiffs' claims for punitive damages are barred because this action sounds in contract, not tort. Further, AT&T Missouri complied with the mandatory provisions of its General Exchange Tariff, which has the force of law, and therefore has not acted with the requisite degree of culpability required for the imposition of punitive damages.

21. Plaintiffs' claims for punitive damages are barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

22. AT&T Missouri alleges and avers that Plaintiffs' claim for punitive damages is not cognizable by this Court in that the laws establishing the standards for granting and assessing punitive damages are vague, ambiguous and arbitrary, resulting in extremely disparate results among similar defendants accused of similar conduct, thereby violating AT&T Missouri's Constitutional rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Missouri, Article I, §10, and that any law of the State of Missouri, whether enacted by the Missouri legislature or founded upon decisions of the Missouri courts, permitting Plaintiffs to recover punitive damages is unconstitutional.

23. Plaintiffs' claim for punitive damages is unconstitutional to the extent that an award, if made, would punish AT&T Missouri without protection of constitutional safeguards, including but not limited to, proof beyond a reasonable doubt, the right to a speedy trial, the prohibitions against double jeopardy and excessive fines, and freedom from self-incrimination during the discovery process and trial which is guaranteed under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Missouri, Article I, §18(a) and §19, and that any law of the state of Missouri, whether enacted by the Missouri legislature or founded upon decisions of Missouri courts, permitting Plaintiffs to recover punitive damages without protection of such safeguards is unconstitutional.

24. Unless AT&T Missouri's liability for punitive damages and the appropriate amount of punitive damages are required to be established by clear and convincing evidence, any award of punitive damages would violate its due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Missouri, Article I, §10, and would be improper under the common law and public policies of the state of Missouri.

25. Plaintiffs' claim for punitive damages against AT&T Missouri cannot be sustained because an award of punitive damages under Missouri law is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, and under such circumstances an award of any amount of punitive damages would violate its due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Missouri, Article I, §10, and would be improper under the common law and public policies of the state of Missouri.

26. Plaintiffs' claim for punitive damages against AT&T Missouri cannot be sustained because an award of punitive damages under Missouri law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damage award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of AT&T Missouri, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, (5) is not adequately instructed on a required relationship between the actual damages sustained and the amount of punitive damages which may be awarded, and (6) is not subject to a trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate AT&T Missouri's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Missouri, Article I, §10, and Article I, §2, and would be improper under the common law and public policies of the state of Missouri.

27. Plaintiffs' claim for punitive damages against AT&T Missouri cannot be sustained because any law which awards a portion of any damage award to the state, such as provided in §537.675 RSMo., is unconstitutional as it would amount to a taking of its property without due process of law and would violate its due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Missouri, Article I, §10, and Article I, §2.

28. An award of punitive damages is barred by the Eighth Amendment to the United States Constitution and Article I, §21 of the Missouri Constitution because an award of punitive damages would constitute an excessive fine in that under Missouri law, a portion of punitive damage awards are paid to the state of Missouri, thus constituting a penal fine that is excessive and disproportionate to the conduct at issue in this case.

29. Recovery of punitive damages by Plaintiffs in this case is barred by the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §10 of the Missouri Constitution because the standards and procedures for determining and reviewing such awards under applicable law do not sufficiently ensure a meaningful individualized assessment of appropriate deterrence and retribution.

30. AT&T Missouri reserves the right to assert any additional affirmative defenses that may develop through further discovery in this case.

Respectfully submitted,

KUTAK ROCK LLP

By: 

Eric Kendall Banks, #28655
1010 Grand Blvd., Suite 500
Kansas City, Missouri 64106
(816) 960-0090 (Telephone)
(816) 960-0041 (Facsimile)
eric.banks@kutakrock.com

THOMPSON COBURN LLP

Stephen B. Higgins, #25728
Amanda J. Hettinger, #55038
Kimberly M. Bousquet, #56829
One US Bank Plaza
St. Louis, Missouri 63101
Phone: (314) 552-6000
Fax: (314) 552-7000
shiggins@thompsoncoburn.com
ahettinger@thompsoncoburn.com
kbousquet@thompsoncoburn.com

Ann Ahrens Beck, #49601
One AT&T Center, Room 3548
St. Louis, MO 63101
Phone: (314) 235-4099
Fax: (314) 247-0881
ann.beck@att.com


Attorneys for Defendants Southwestern Bell
Telephone Company, d/b/a AT&T Missouri, and
AT&T Corp.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, first class
mail postage prepaid, this 5th day of April, 2010 to:

John F. Edgar
Anthony E. LaCroix
The Edgar Law Firm
1032 Pennsylvania Ave.
Kansas City, MO 64105

Attorneys for Plaintiffs



IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

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,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

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

AT&T CORP.,

Defendants.

Cause No. 1016-CV02438

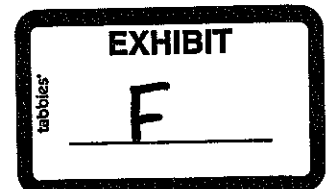
Division No. 07

FILED - CIRCUIT COURT
JACKSON CO., MO - KC
10 OCT 22 AM 10:35

AT&T MISSOURI'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant AT&T Missouri and moves this Court pursuant to Rule 74.04 of the Missouri Rules of Civil Procedure to grant summary judgment in favor of AT&T Missouri with respect to Plaintiffs' First Amended Class Action Petition for Damages. In support of its Motion, AT&T Missouri states as follows:

1. On March 11, 2010, Plaintiffs 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 (collectively "Plaintiffs") filed a first amended putative class action petition against Southwestern Bell Telephone Company, d/b/a AT&T Missouri ("AT&T Missouri"), AT&T Corp., and AT&T Inc. (collectively "Defendants"), for violation of the Merchandising Practices



Act, unjust enrichment, money had and received, breach of the implied covenant of good faith and fair dealing, and statutory damages under § 392.350 RSMo.¹

2. Plaintiffs' claims arise out of and relate to charges on their telephone bills. *See* First Am. Pet. ¶ 4. Specifically, each of the counts set forth in the First Amended Petition is premised on Plaintiffs' allegation that Defendants wrongfully charged AT&T Missouri's customers for back tax payments Defendants made as a result of settlement agreements with Missouri municipalities. *Id.*; *see also id.* ¶¶ 20-22, 25, 39, 47, 56-58, 62-64, 68-69, 72.

3. Plaintiffs' proposed class includes all individuals and businesses in Missouri who have local exchange telephone service through AT&T Missouri and who have been charged fees related to a pass-through of back taxes. *Id.* ¶ 24.

4. The back-tax surcharge at issue is mandated under a tariff approved by the Missouri Public Service Commission ("PSC"). *See* Exs. 1 and 2 to AT&T Missouri's Memorandum of Law in Support of its Motion for Summary Judgment.

5. Summary judgment in favor of AT&T Missouri is therefore warranted under Rule 74.04 of the Missouri Rules of Civil Procedure pursuant to the filed rate doctrine, which holds that where a tariff is "filed with the appropriate regulatory agency [it] is sanctioned by the government and cannot be the subject of legal action." *Bauer v. Sw. Bell Tel. Co.*, 958 S.W.2d 568, 570 (Mo. App. 1997).

6. Count V of Plaintiffs' First Amended Petition seeks statutory damages under § 392.350 RSMo. *See generally* First Am. Pet., Count V.

¹ Plaintiffs voluntarily dismissed AT&T Inc. on June 3, 2010.

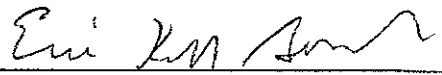
7. Summary judgment in favor of AT&T Missouri is warranted under Rule 74.04 as to Count V because Plaintiffs did not secure an order from the PSC declaring the practices of which they complain unlawful, which is a condition precedent to this cause of action. *See Overman v. Sw. Bell Tel. Co.*, 706 S.W.2d 244, 251 (Mo. App. 1986) ("a final order by the Public Service Commission that an act or omission is in violation of § 392.200.3, *supra*, is, however, a condition precedent to filing a statutory action under § 392.350").

8. In further support of this Motion, AT&T Missouri files herewith and incorporates herein by reference its Memorandum in Support of its Motion for Summary Judgment.

WHEREFORE, Defendant AT&T Missouri respectfully requests that this Court enter an Order granting summary judgment in its favor with respect to Plaintiffs' First Amended Class Action Petition. It also requests such other and further relief as this Court deems just and proper under the circumstance.

Respectfully submitted,

KUTAK ROCK LLP

By: 
Eric Kendall Banks, MBE #28655
1010 Grand Blvd., Suite 500
Kansas City, Missouri 64106
(816) 960-0090 (Telephone)
(816) 960-0041 (Facsimile)
eric.banks@kutakrock.com

THOMPSON COBURN LLP

Stephen B. Higgins, #25728
Amanda J. Hettinger, #55038
Kimberly M. Bousquet, #56829
One US Bank Plaza
St. Louis, Missouri 63101
Phone: (314) 552-6000
Fax: (314) 552-7000
shiggins@thompsoncoburn.com
ahettinger@thompsoncoburn.com
kbousquet@thompsoncoburn.com

Ann Ahrens Beck, #49601
One AT&T Center, Room 3548
St. Louis, MO 63101
Phone: (314) 235-4099
Fax: (314) 247-0881
ann.beck@att.com

Attorneys for Defendant AT&T Missouri

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, first class
mail postage prepaid, this 22nd day of October, 2010 to:

John F. Edgar
Anthony E. LaCroix
The Edgar Law Firm
1032 Pennsylvania Ave.
Kansas City, MO 64105

Attorneys for Plaintiffs



IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

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,)
Individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

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

AT&T CORP.,)

Defendants.)

Cause No. 1016-CV02438

Division No. 07

FILED - CIRCUIT COURT
JACKSON CO., MO - MC
10 OCT 22 AM 10:35

**MEMORANDUM OF LAW IN SUPPORT OF
AT&T MISSOURI'S MOTION FOR SUMMARY JUDGMENT**

I. Introduction

Plaintiffs' class action lawsuit challenges back-tax surcharges billed by AT&T Missouri to its customers. Because this surcharge was mandated under a tariff approved by the Missouri Public Service Commission ("PSC"), Plaintiffs' claims are barred as a matter of law under the filed rate doctrine. Accordingly, summary judgment must be granted in AT&T Missouri's favor as to claims asserted in Counts I through IV.

Summary judgment in AT&T Missouri's favor is also mandated with respect to Count V, which seeks statutory damages under § 392.350 RSMo. This statutory claim fails because Plaintiffs did not secure an order from the PSC declaring the practices of which they complain unlawful, a condition precedent to this cause of action.

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, 1983.² See Ex. 1 and 2.³

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 July 1971 until January 1, 1984 (when it was replaced in its entirety by P.S.C. Mo. - No. 35). See Ex. 4.

¹ Plaintiffs' vague allegations regarding a "newly unregulated environment," First Am. Pet. ¶ 3, do not change the controlling statutes, nor the governing 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 Plaintiffs' allegation that no tariff "covers" the challenged tax pass-through charges be given any effect. First Am. Pet. ¶ 71. This Court must interpret the tariff as a matter of law and ignore Plaintiffs' 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 The copies of the Tariffs attached as Exhibits are judicially noticeable and admissible in that form without certification. See § 490.235 RSMo. (holding that copies of tariffs on file with the PSC are admissible without certification); see also *Cent. Controls Co. v. AT&T Info. Sys., Inc.*, 746 S.W.2d 150, 153 (Mo. App. 1988) (trial court can take judicial notice of tariffs on file with the PSC).

³ 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).

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 Commission 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 Plaintiffs and the putative class. *Bauer v. Sw. Bell Tel. Co.*, 958 S.W.2d 568, 570 (Mo. App. 1997).

7. On March 11, 2010, Plaintiffs 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.⁴ *See generally* First Am. Pet.

⁴ Plaintiffs voluntarily dismissed AT&T Inc. on June 3, 2010. Contemporaneously with this motion, AT&T Corp. will be filing its own motion for summary judgment, arguing that because Plaintiffs are not its customers, and because it never imposed the Special Municipal Charge at issue, it is not a proper party to this lawsuit.

8. Plaintiffs' claims arise out of and relate to charges on their telephone bills. See First Am. Pet. ¶ 4. Plaintiffs allege that charges attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed" are unlawful and entitle them to damages. *Id.* ¶¶ 20-22, 25, 39, 47, 56-58, 62-64, 68-69, and 72.

9. Plaintiffs' proposed class includes all individuals and businesses in Missouri who:

have received local exchange carrier telephone services through "Southwestern Bell Telephone Company," "AT&T Missouri," or "AT&T," have been billed for such services, and have received a charge on a bill attributable to a settlement agreement reached in response to a lawsuit by any Missouri municipality alleging that Defendants failed to pay business license or municipal gross receipts taxes, including, but not limited to, the settlements reached in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645, filed on June 26, 2009 in the Circuit Court of St. Louis, Missouri and *City of Jefferson and City of Springfield v. Cingular Wireless LLC, et al.*, Case No. 04-CV-4099-NKL, filed on May 12, 2004 in the United States District Court for the Western District of Missouri.

Id. ¶ 29.

10. The pass through of back taxes (*i.e.*, the Special Municipal Charges) upon which Plaintiffs' 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").⁵

⁵ Plaintiffs' First Amended Petition alleges that "Defendants are parties to settlement agreements in lawsuits wherein they were sued by Missouri municipalities for failure to pay business license . . . taxes for landline telephone operations." First Am. Pet. ¶ 2. This court may therefore judicially notice the court papers in the Tax Litigation, including the Petitions and any other documents filed with the respective courts. See *Knorp v. Thompson*, 175 S.W.2d 889, 894 (Mo. 1943) ("[T]here may be cases so closely interwoven, or so clearly interdependent as to invoke a rule of judicial notice in one suit of the proceedings in another suit.") (internal quotations

11. 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, ¶ 2.⁶

12. 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.

13. AT&T Missouri began to pass through these back tax payments to its customers via a monthly surcharge. See First Am. Pet. ¶ 2.

14. These back-tax surcharges give rise to each of Plaintiffs' asserted causes of action. See generally First Am. Pet.

III. Standard of Review

Summary judgment is appropriate when there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. MO. R. CIV. P. 74.04; *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 377 (Mo. banc 1993). A defendant establishes a right to summary judgment 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).

omitted); see also *State ex rel. Moore v. Sharp*, 151 S.W.3d 104, 106 (Mo. App. 2004) (judicially noticing relevant parts of court file in separate case).

⁶ The original affidavit of S. Shashack, with Exhibits A and B, was filed as Exhibit 6 to AT&T Inc.'s Memorandum in Support of its Motion to Dismiss, filed on May 19, 2010.

The movant bears the burden of proving that summary judgment 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 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 judgment here.

IV. Argument

A. The Filed Rate Doctrine Bars Counts I through IV.

It is established law that the filed rate doctrine “governs a utility’s relationship with its customers” *Bauer*, 958 S.W.2d at 570. Indeed, the doctrine holds that where a tariff is “filed with the appropriate regulatory agency [it] is sanctioned by the government and cannot be the subject of legal action.” *Id.* Where, as here, the surcharge complained of by plaintiffs is part of the tariff, the suit must be dismissed. *See id.*; *Orscheln Bros. Truck Lines, Inc. v. Ferguson Mfg., Inc.*, 793 S.W.2d 525, 530 (Mo. App. 1990).

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

The crux of Plaintiffs’ complaint in their First Amended Petition 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, Plaintiffs assert that common issues for the putative class are whether the back-tax surcharges were “unauthorized, unlawful, and/or illegal” and whether they were “legally or rightfully charged to customers.” First Am. Pet. ¶¶ 32(b), 39(b). Count I specifically alleges a violation of the MMPA premised upon the theory that the back-tax

surcharges “were not legally or rightfully chargeable to customers.” *Id.* ¶ 39(b). Counts II and III, alleging unjust enrichment and money had and received, are premised upon the theory that AT&T Missouri “had no legal basis for billing customers these charges” and that the back-tax surcharges themselves were “unlawful” and “unauthorized.” *Id.* ¶¶ 56, 58 and 62. And Count IV, for breach of the implied covenant of good faith and fair dealing, is based on “contracts or service agreements with Defendants” entered into by customers. *Id.* ¶ 66. 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, 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, this Court 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).⁷ 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.").

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 54.⁸

⁷ 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"). Moreover, even if the pass-through were not so clearly a rate, the filed rate doctrine would still apply, as it bars all challenges to any tariff provision even affecting rates. *See In re Univ. Serv. Fund Tel. Billing Practices Litig.*, 300 F. Supp. 2d 1107, 1142 (D. Kan. 2003) ("Under this rule [the filed rate doctrine], charges as well as the classifications, practices, and regulations affecting such charges, filed with the FCC bind both carriers and [customers] with the force of law.") (internal quotations omitted).

⁸ 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

3. Plaintiffs' claims are barred by the filed rate doctrine because they challenge the Tariff.

Plaintiffs' claims 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 Plaintiffs' suit amounts to a direct challenge to the mandate of § 17.11 that AT&T Missouri pass through license taxes. *See generally* First. Am. Pet. Accordingly, the filed rate doctrine bars Counts I through IV of Plaintiffs' First Amended Petition because "any rate filed with the appropriate regulatory agency is sanctioned by the government and **cannot be the subject of legal action.**" *Bauer*, 958 S.W.2d at 570 (emphasis added).

Moreover, Plaintiffs' claims are also barred by the filed rate doctrine to the extent that they seek refunds for amounts paid as back-tax surcharges. Indeed, courts routinely bar such claims because:

[a]llowing plaintiffs to collect damages measured by the difference between the filed rate and the rate a court finds reasonable would encourage consumers of a utility's services to sit out the state's rate-making process and then to repair to court to play litigation lottery. There could be no end to the number of strike suits that would be brought as eager lawyers, using the class action vehicle, circumvent the states' rate-making mechanisms—all at the expense of consumers.

Taffet v. S. Co., 967 F.2d 1483, 1492 (11th Cir. 1992) (en banc).

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.").

Other courts addressing issues similar to those raised here have held that the filed rate doctrine bars an action at law challenging surcharges assessed on a customer's bill when the surcharges are included in the tariff approved by a regulator. For example, in *Hill v. BellSouth Telecommunications*, the United States Court of Appeals for the Eleventh Circuit addressed class action claims challenging the recoupment of payments made to the Universal Service Fund ("USF"). 364 F.3d 1308 (11th Cir. 2004). The plaintiffs contended that the telephone carrier's pass through of the USF charges to its customers violated Georgia's consumer protection statutes and implicated a number of common law causes of action. *Id.* at 1312. While the District Court had previously applied the filed rate doctrine in dismissing four of the claims, it declined to dismiss the remaining two counts alleging fraud and violations of a state consumer protection statute. *Id.* at 1312-13. But the Eleventh Circuit held that even these claims were barred by the filed rate doctrine because the USF surcharge was included in the company's tariff and was part of the regulator's rate-making authority. *Id.* at 1317. As such, it would be impermissible for a court to interfere with this authority by allowing complaints about the tariffed charges to be pursued in a court of law. *Id.*

In *Evanns v. AT&T Corp.*, the United States Court of Appeals for the Ninth Circuit considered a similar challenge to a pass through of USF charges to telephone customers. 229 F.3d 837, 840 (9th Cir. 2000). Because the pass through of the USF charges was part of a tariff (or rate) approved by the regulator, the court held that a customer could not "bring an action against a carrier that would invalidate, alter or add to the terms of the filed tariff." *Id.* Similarly, the United States Court of Appeals for the Second Circuit upheld the district court's dismissal of fraud and misrepresentation claims relating to a telephone carrier's billing practices in *Marcus v. AT&T Corp.*, 138 F.3d 46 (2d Cir. 1998). Although *Marcus*, like *Hill* and *Evanns*, dealt with a

federal rather than a state tariff, it reiterated the basic principle that legal claims related to billing surcharges are barred under the filed rate doctrine where the surcharge is part of the tariff. *Id.* at 58. See also *Pfeil v. Sprint Nextel Corp.*, 504 F. Supp. 2d 1273, 1276 (N.D. Fla. 2007) (holding that the filed rate doctrine bars complaints about a bill surcharge that was part of the rate approved by regulators); *In re Univ. Serv. Fund Tel. Billing Practices Litig.* (“*In re USF Litig.*”), 300 F. Supp. 2d 1107, 1143 (D. Kan. 2003) (same).

Here, the PSC, which has exclusive jurisdiction over the reasonableness of AT&T Missouri’s rates, has approved the Tariff’s pass-through provision. For this Court to support Plaintiffs’ pursuit of their claims and invalidate the pass-through provision would undercut the PSC’s authority and its critical role in regulating utilities like AT&T Missouri. See *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm’n of Mo.*, 938 S.W.2d 339, 344 (Mo. App. 1997) (“The Commission has considerable discretion in rate setting due to the inherent complexities involved in the rate setting process. . . . Missouri courts do not set utility rates.”).

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

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 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).

Plaintiffs’ argument, logically extended, seeks to penalize AT&T Missouri for settling the tax dispute with Missouri municipalities, even though 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.

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

Plaintiffs’ First Amended Petition 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, ¶ 2.⁹ *See also County of Suffolk v. Alcorn*, 266 F.3d 131, 139 (2d Cir. 2001) (in a

⁹ *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

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 thus accepted as full compensation of AT&T Missouri's tax liabilities and clearly fall within the pass-through provision of § 17.11, which mandate 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.

6. Plaintiffs' allegations regarding misrepresentations cannot overcome the bar of the filed rate doctrine.

Plaintiffs' allegations that AT&T Missouri "fail[ed] to inform the Plaintiffs" of the back-tax surcharges or "employed misleading statements," do not shield them from the strict bar of the filed rate doctrine. First Am. Pet. ¶¶ 39, 42. Indeed, courts routinely find that the filed rate doctrine applies even when a utility is alleged to have misquoted the tariff, or engaged in other allegedly fraudulent conduct in connection with a tariff charge. *See Orscheln Bros.*, 793 S.W.2d at 530; *Bauer*, 958 S.W.2d at 570 ("Courts that have considered the fraud issue almost unanimously have rejected the notion that there is a fraud exception to the filed rate doctrine.") (internal quotations omitted); *see also, e.g., Evanns*, 229 F.3d at 841 (rejecting plaintiff's "claim that the defendant carriers had obligations to him **beyond those** set out in the filed tariffs, i.e., that the defendants had a duty to **disclose** the fact that the . . . assessment was a pass-through charge, [as] also barred by the filed-rate doctrine") (emphasis added); *Marco Supply Co. v.*

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.

AT&T Commc'ns, Inc., 875 F.2d 434, 436 (4th Cir. 1989) (“[A] customer does not have a claim for relief against a carrier even if the latter’s representation as to applicable rates is fraudulent.”); *In re USF Litig.*, 300 F. Supp. 2d at 1143 (barring statutory fraud and money had and received claims where telephone company allegedly misrepresented a surcharge as a legally required pass-through by designating it as a tax, because “Plaintiffs cannot claim that they suffered any legally cognizable injury or were aggrieved by virtue of defendants’ alleged deception because plaintiffs were legally required to pay the tariff rate”).

B. Plaintiffs Have Failed to Satisfy the Condition Precedent to Count V.

Count V is premised upon AT&T Missouri’s alleged violation of § 392.350 RSMo., which 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” § 392.350 RSMo. Further, “[a]n action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any such person or corporation.” *Id.* A condition precedent to bringing a claim under this statute, however, is a determination by the PSC that the defendant has committed an act giving rise to liability under the statute. *See Overman v. Sw. Bell Tel. Co.*, 706 S.W.2d 244, 251 (Mo. App. 1986) (“a final order by the Public Service Commission that an act or omission is in violation of § 392.200.3, *supra*, is, however, a condition precedent to filing a statutory action under § 392.350”); *DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674, 676 (Mo. App. 1978) (“A circuit court has no jurisdiction to consider the plaintiff’s action for recovery until the Commission makes its decision regarding the rates and classification. Matters within the jurisdiction of the Public Service Commission must first be determined by it in every instance before the courts have jurisdiction to make judgments in the controversy.”). Because Plaintiffs have failed to plead, and cannot prove, that they obtained a final order of the PSC adjudicating

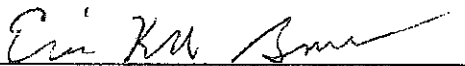
the lawfulness of the practices at issue, Plaintiffs have failed to state a claim for relief under § 392.350 RSMo., and summary judgment is appropriate.

V. Conclusion

The filed rate doctrine bars Plaintiffs' class action claims in Counts I through IV, seeking damages purportedly arising from back-tax surcharges. Because these back-tax surcharges were mandated under a tariff imposed by the PSC, this Court should grant summary judgment in favor of AT&T Missouri as to these claims. This Court should likewise grant summary judgment in favor of AT&T Missouri with respect to Count V because Plaintiffs have not satisfied the condition precedent to bringing this cause of action.

Respectfully submitted,

KUTAK ROCK LLP

By: 
Eric Kendall Banks, #28655
1010 Grand Blvd., Suite 500
Kansas City, Missouri 64106
(816) 960-0090 (Telephone)
(816) 960-0041 (Facsimile)
eric.banks@kutakrock.com

THOMPSON COBURN LLP

Stephen B. Higgins, #25728
Amanda J. Hettinger, #55038
Kimberly M. Bousquet, #56829
One US Bank Plaza
St. Louis, Missouri 63101
Phone: (314) 552-6000
Fax: (314) 552-7000
shiggins@thompsoncoburn.com
ahettinger@thompsoncoburn.com
kbousquet@thompsoncoburn.com

Ann Ahrens Beck, #49601
One AT&T Center, Room 3548
St. Louis, MO 63101
Phone: (314) 235-4099
Fax: (314) 247-0881
ann.beck@att.com

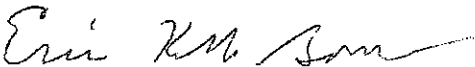
Attorneys for Defendant Southwestern Bell
Telephone Company, d/b/a AT&T Missouri

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, first class mail postage prepaid, this 22nd day of October, 2010 to:

John F. Edgar
Anthony E. LaCroix
The Edgar Law Firm
1032 Pennsylvania Ave.
Kansas City, MO 64105

Attorneys for Plaintiffs



IN THE CIRCUIT COURT
OF THE CITY OF ST. LOUIS,
STATE OF MISSOURI

FILED
JUN 26 2009

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

STATE OF MISSOURI, at the relation and
to the use of the CITY COLLECTORS OF
WELLSTON and WINCHESTER, MISSOURI;
CITY OF UNIVERSITY CITY, MISSOURI;
CITY OF WELLSTON, MISSOURI; and
CITY OF WINCHESTER, MISSOURI;

On behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

SBC COMMUNICATIONS, INC. n/k/a AT&T,
INC.; SBC LONG DISTANCE INC., f/k/a
SBC COMMUNICATIONS SERVICES, INC.;
SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a AT&T MISSOURI;
and SBC LONG DISTANCE, LLC;

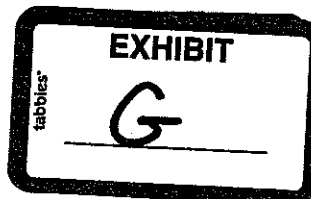
Defendants.

Cause No. 044-02645

Division No. 31

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into, subject to Court approval, as of June 26, 2009, by and amongst the City of University City, Missouri, the City of Winchester, Missouri, and the City of Wellston, Missouri (collectively "Plaintiffs"), on behalf of the Settlement Class (as defined below), and Southwestern Bell Telephone Company d/b/a AT&T Missouri, f/k/a Southwestern Bell Telephone, L.P., SBC Long Distance, LLC d/b/a AT&T Long Distance, AT&T Messaging, Inc., AT&T Inc., American Information Technologies Corporation (Nevada), American Telephone and Telegraph Company, Ameritech Information Industry Services, Inc., Ameritech Publishing, Inc., Ameritech Services, Inc., AT&T Advanced Solutions,



Inc. (now merged into AT&T Corp.), AT&T Advertising, L.P., AT&T Broadband Services Purchasing and Leasing, LLC, AT&T Capital Holdings International, Inc., AT&T Capital Holdings, Inc., AT&T Capital Services, Inc., AT&T Communications - East, Inc., AT&T Communications of the Southwest, Inc., AT&T Consulting Solutions, Inc., AT&T Corp., AT&T Credit Holdings, Inc., AT&T DataComm, Inc., AT&T Foundation, AT&T Global Network Services, LLC, AT&T Government Solutions, Inc., AT&T Information Systems, Inc., AT&T Labs, Inc., AT&T Management Services, L.P., AT&T Messaging, LLC, AT&T Network Procurement L.P., AT&T Operations, Inc., AT&T Services, Inc., AT&T Solutions, Inc., AT&T Technical Services Company, Inc., AT&T Technologies, Inc., AT&T Video Services, Inc., Bell South Long Distance, Inc. d/b/a AT&T Long Distance Service, L.M. Berry & Company, Missouri Bell Telephone Company, Pacific Bell Telephone Company, Resort WiFi Operating Corp., SBC Asset Management, Inc., SBC Global Services, Inc., SBC Internet Services, Inc., SBC Telecom, Inc., SBC Tower Holdings, LLC, SBCSI Purchasing & Leasing Limited Partnership, SNET of America, Inc. d/b/a AT&T Long Distance East, Southwestern Bell Yellow Pages, Inc., Southwestern Bell Yellow Pages Resources, Inc., Sterling Commerce (America), Inc., Sterling Commerce, Inc., SWBT Purchasing & Leasing Limited Partnership, TCG America, Inc., TCG Kansas City, Inc., TCG St. Louis, Inc., Teleport Communications Group, Inc., Wayport, Inc., and YellowPages.com, LLC.

Notwithstanding anything to the contrary herein, those AT&T Inc. subsidiaries governed by the wireless settlement agreement in *City of University City, et al. v. AT&T Wireless Services, Inc., et al.*, Case No. 01-CC-004454, Circuit Court of St. Louis County, are expressly excluded from this Settlement Agreement. Their obligations to the Municipalities are not affected or altered by this Agreement in any respect.

PREAMBLE

WHEREAS, a dispute has arisen between Plaintiffs and Defendants regarding the applicability of Plaintiffs' and other Municipalities' respective Business License Tax ordinances to receipts from certain of Defendants' products and services;

WHEREAS, Plaintiffs claim that Defendants are liable to Plaintiffs and other Municipalities under their respective Business License Tax ordinances on revenues derived from Carrier Access (interstate and intrastate), End User Common Line surcharges ("EUCL"), private line services (interstate and intrastate), long-distance toll services (interstate and intrastate), federal and state universal service fee surcharges ("FUSF" and "SUSF"), and other revenues upon which Business License Taxes are not currently being paid by Defendants, and for interest and/or penalties thereon;

WHEREAS, Defendants have denied and continue to deny any and all liability with respect to the allegations raised against them in the various lawsuits involving the applicability of Plaintiffs' and other Municipalities' respective Business License Tax ordinances to Defendants' products and services;

WHEREAS, Defendants and Plaintiffs and other Municipalities wish to avoid the expense and uncertainty of continued litigation and desire to settle their disputes without further litigation, including all claims and issues that have been brought or could have been brought in this Action by or on behalf of Class Members, including by compromising Defendants' alleged past tax liability owed to Class Members, and establishing and/or clarifying what taxes Defendants are to pay on their future revenues to Class Members, all in accordance with the terms and conditions set forth in this Settlement Agreement;

WHEREAS, Defendants and Plaintiffs have conducted an investigation and evaluation of the facts and law relating to the claims in this Action and believe this settlement is fair, reasonable, adequate, and in the best interests of the Parties, including the Settlement Class, in light of the continued uncertainty and expense of litigation; and

WHEREAS, after arm's-length negotiations between counsel for Plaintiffs and the proposed Settlement Class and counsel for Defendants, this Settlement Agreement has been reached.

NOW THEREFORE, it is hereby stipulated and agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to approval of the Court, this Action shall be fully and finally settled and dismissed with prejudice and without costs to Defendants except as provided for under the following terms and conditions:

I. DEFINITIONS

As used in this Settlement Agreement and the related documents attached hereto as exhibits, the following terms shall have the meanings set forth below:

- A. "Action" means the civil action entitled *State of Missouri, et al., v. SBC Communications, Inc., et al.*, Cause No. 044-02645, pending in the Circuit Court of the City of St. Louis, Missouri.
- B. "Approved Claim" means a Claim Form determined to be valid in accordance with Section IV.F. or as resolved in favor of a Claimant pursuant to Sections IV.G. or IV.H.
- C. "Business License Tax" means any tax, including any fee, charge, or assessment in the nature of a tax, imposed by a Municipality on any entity which constitutes a "telephone company," "exchange telephone company," "telecommunications company," "public utility," "utility," or any similar entity or service provider for the privilege of

engaging in the business of providing telephone, exchange telephone, public utility, or any other type of telecommunications service, and specifically includes any such tax imposed under §§ 80.090, 92.045, 92.073, 94.110, 94.270, or 94.360 RSMo, or under authority granted in its charter, as well as an occupation license tax, gross receipts tax, franchise tax, or similar tax, or any tax "alternative" to any of the foregoing, but shall not include:

1. Any municipal sales tax; or
2. Any municipal right-of-way usage fee, including but not limited to any fee imposed under the authority of a municipality's police powers under §§ 67.1830 to 67.1846 RSMo; or
3. Any tax levied for emergency services under §§ 190.292, 190.305, 190.325, 190.335, or 190.430 RSMo, or any tax authorized by the Missouri General Assembly hereinafter enacted for emergency services; or
4. Any rent for use of municipal premises; or
5. Any tax which would otherwise meet the definition of Business License Tax, but which is imposed solely as a flat amount, and not on the basis of a percentage of gross receipts.

D. "Carrier Access" means a service provided by any Defendant whereby it originates or terminates long-distance traffic for other telecommunications carriers. It does not include EUCL, intraLATA toll charges and services, and other surcharges, products and services that Defendants have agreed to include as a Future Tax Benefit under Section II.A.2 herein.

- E. **"Claim Form"** means the document substantially in the form of Exhibit B to this Settlement Agreement that must be submitted by each Class Member in order to be eligible to receive, in settlement, the Back Tax Payment.
- F. **"Claim Period"** means that period of time commencing on the entry of the Preliminary Approval Order and continuing up to and including the date that is sixty (60) days after Defendants mail the Notice to Municipalities as set forth in Section III.C. below, and by which members of the Settlement Class must mail their Claim Forms (including all associated documentation) to Defendants and must otherwise meet all requirements hereunder to be entitled to the Back Tax Payment.
- G. **"Class Counsel"** means John W. Hoffman and Douglas R. Sprong, Korein Tillery, LLC, 505 N. Seventh Street, Suite 3600, St. Louis, MO 63101; John F. Mulligan, Jr., 1600 South Hanley, Suite 101, Richmond Heights, MO 63144; and Howard Paperner, 9322 Manchester Road, St. Louis, MO 63119.
- H. **"Class Member"** or **"Class Members"** means Plaintiffs and all Municipalities which fall within the definition of the Settlement Class, set forth herein, and which have not validly and timely submitted a Request for Exclusion from the Settlement Class.
- I. **"Class Representatives"** means the City of University City, Missouri, City of Winchester, Missouri, and City of Wellston, Missouri.
- J. **"Court"** means the Circuit Court of the City of St. Louis.
- K. **"Defendants"** mean (1) Southwestern Bell Telephone Company d/b/a AT&T Missouri, SBC Long Distance, LLC d/b/a AT&T Long Distance, AT&T Messaging, Inc., AT&T Inc., American Information Technologies Corporation (Nevada), American Telephone and Telegraph Company, Ameritech Information Industry Services, Inc., Ameritech Publishing, Inc.,

Ameritech Services, Inc., AT&T Advanced Solutions, Inc. (now merged into AT&T Corp.), AT&T Advertising, L.P., AT&T Broadband Services Purchasing and Leasing, LLC, AT&T Capital Holdings International, Inc., AT&T Capital Holdings, Inc., AT&T Capital Services, Inc., AT&T Communications - East, Inc., AT&T Communications of the Southwest, Inc., AT&T Consulting Solutions, Inc., AT&T Corp., AT&T Credit Holdings, Inc., AT&T DataComm, Inc., AT&T Foundation, AT&T Global Network Services, LLC, AT&T Government Solutions, Inc., AT&T Information Systems, Inc., AT&T Labs, Inc., AT&T Management Services, L.P., AT&T Messaging, LLC, AT&T Network Procurement L.P., AT&T Operations, Inc., AT&T Services, Inc., AT&T Solutions, Inc., AT&T Technical Services Company, Inc., AT&T Technologies, Inc., AT&T Video Services, Inc., Bell South Long Distance, Inc. d/b/a AT&T Long Distance Service, L.M. Berry & Company, Missouri Bell Telephone Company, Pacific Bell Telephone Company, Resort WiFi Operating Corp., SBC Asset Management, Inc., SBC Global Services, Inc., SBC Internet Services, Inc., SBC Telecom, Inc., SBC Tower Holdings LLC, SBCSI Purchasing & Leasing Limited Partnership, SNET of America, Inc. d/b/a AT&T Long Distance East, Southwestern Bell Yellow Pages, Inc., Southwestern Bell Yellow Pages Resources, Inc., Sterling Commerce (America), Inc., Sterling Commerce, Inc., SWBT Purchasing & Leasing Limited Partnership, TCG America, Inc., TCG Kansas City, Inc., TCG St. Louis, Inc., Teleport Communications Group, Inc., Wayport, Inc., and YellowPages.com, LLC; (2) all Persons on whose behalf any of the foregoing entities acted or purported to act; and (3) for each of the foregoing Persons and entities, each of their present, former, or future officers, directors, shareholders, employees, representatives, agents, principals, consultants, contractors, insurers, accountants, attorneys, partners, members, administrators, legatees, executors, heirs, estates, successors in interest, or assigns or any other Person or entity with whom any of them is

affiliated or otherwise for whom any of them is responsible at law or in equity. For purposes of clarification, the term "Defendants" shall not include those AT&T Inc. subsidiaries governed by the wireless settlement agreement in *City of University City, et al. v. AT&T Wireless Services, Inc., et al.*, Case No. 01-CC-004454, Circuit Court of St. Louis County.

L. **"Defendants' Counsel"** means John F. Medler, Jr., AT&T Legal Department, One AT&T Center, Room 3558, St. Louis, MO 63101, and Stephen B. Higgins, Amanda J. Hettinger, Sharon B. Rosenberg, and Ann Ahrens Beck, Thompson Coburn, LLP, One US Bank Plaza, St. Louis, MO 63101.

M. **"Effective Date of Future Tax Benefit(s)"** means November 1, 2009.

N. **"Effective Date of the Settlement"** means the first day by which all of the following events shall have occurred: (1) the Court has entered the Preliminary Approval Order as set forth in Section VII.C. of this Settlement Agreement; (2) the Court has entered the Order and Judgment of Dismissal, substantially in the form of Exhibit D, as set forth in Section VII.F. of this Settlement Agreement; and (3) the Order and Judgment of Dismissal has become Final as defined in Section I.P. of this Settlement Agreement.

O. **"Fee and Expense Application"** means that written motion or application by which Class Counsel requests that the Court award them fees and/or expenses.

P. **"Final"** with respect to the Order and Judgment of Dismissal (as defined in Section I.U. of this Settlement Agreement) means the occurrence of all of the following events:

1. This Settlement is approved in all respects by the Court;
2. The Court has entered the Order and Judgment of Dismissal, or a judgment substantially in the form of Exhibit D, which has not been reversed, stayed, modified, or amended; and

3. The time to appeal from the Court's Order and Judgment of Dismissal under the Missouri Supreme Court Rules has expired and no appeal or further appeal has been timely filed, or any appeal has been resolved by the highest court to which it was appealed upholding or affirming the Order and Judgment of Dismissal. An appeal pertaining solely to an application for or award of attorneys' fees, costs, and expenses, shall not in any way delay or preclude the Order and Judgment of Dismissal from being Final.

Q. "Final Fairness Hearing" means the hearing at which the Court shall: (1) determine whether to grant final approval to this Settlement Agreement; (2) consider any timely objections to this Settlement and all responses to objections by the Parties; and (3) rule on any Fee and Expense Application.

R. "Municipality" means any city, town, or village in Missouri entitled by authority of §§ 80.090, 92.045, 92.073, 94.110, 94.270, or 94.360 RSMo, or under authority granted in its charter, to assess a Business License Tax, and who has in fact enacted an ordinance or adopted a code assessing a Business License Tax prior to June 26, 2009.

S. "Notice" means the notice of class action settlement attached as Exhibit A.

T. "Objection Date" means the postmark date by which members of the Settlement Class must mail their objections to the Settlement in order for their objections to be considered by the Court.

U. "Order and Judgment of Dismissal" means the order, substantially in the form attached hereto as Exhibit D, in which the Court grants final approval of this Settlement Agreement and authorizes the entry of a final judgment and dismissal of the Action.

V. "Parties" means Defendants and the Class Members.

W. "Person" or "Persons" means any natural person, firm, corporation, unincorporated association, partnership, or other form of legal entity or government body, including its agents and representatives.

X. "Preliminary Approval Order" means the order, substantially in the form of Exhibit C hereto, in which the Court grants its preliminary approval to this Settlement Agreement, approves Plaintiffs as Class Representatives, preliminary approves certification of the Settlement Class for settlement purposes only, authorizes the dissemination of Notice to Missouri municipalities, and enjoins members of the Settlement Class from filing any other actions based upon any of the Released Claims as defined in Section I.Y.

Y. "Released Claims" means, without limitation, any and all claims, actions, demands, audits, rights, liabilities, complaints, causes of action (including, but not limited to, claims based on violation of any federal, state, or local law or regulation, fraud, unjust enrichment, unpaid taxes, back tax liability, and breach of contract, and claims arising under the laws of any other jurisdiction that have been or could or might have been alleged by any Class Member in any form in the United States of America, as part of the present Action, or in any other action, arbitration, or proceeding), requests for damages, requests for injunctive relief, disgorgement of monies, requests for declaratory relief, requests for equitable relief of every nature and description whatsoever, requests for interest, penalties, attorneys' fees, costs, and expenses, whether known or unknown, arising out of the claims that were made or that could have been made against Defendants regarding the alleged failure of Defendants to pay, or the alleged underpayment by Defendants of, the Class Members' respective Business License Taxes, as applied to receipts due before June 26, 2009, or due after June 26, 2009, with respect to any receipts earned before June 26, 2009, from services: (1) alleged to be telephone,

telecommunications, exchange telephone, public utility, and similar services; and/or (2) alleged to be related to such services, including but not limited to, receipts from Carrier Access (switched and special, interstate and intrastate), EUCL, private line service (interstate and intrastate), long-distance toll (intra LATA and inter LATA, intrastate and interstate), FUSF and SUSF, all other fees and/or taxes, CallNotes ® voice messaging services, data services, information services, voice services, Customer Premises Equipment ("CPE"), rental or lease of network elements, wireless access, reciprocal compensation, directory and operator services, operator surcharges, dishonored fees and late fees, trunks, installation services, construction services, repair services, security services, advertising services, call blocking services, vertical services, call screening services, adjustments and credits, third-party billing services, charges for allowing customers to call outside a local area or into a local area (including, but not limited to, Outside the Base Rate Area ("OBRA") charges, Metropolitan Calling Area ("MCA") charges, optional Extended Area Service ("EAS") charges, and non-optional EAS charges), Voice-over-Internet-Protocol services and calling plans, inside wire and jack maintenance plans, surcharges for prison inmate calling, payphone services, Lifeline services, deaf relay services, 1-900 services, call forwarding services, network services, number portability charges and surcharges, all services billed out of the Defendants' CRIS or CABS databases or similar databases, and other similar services. Plaintiffs and the other Class Members expressly acknowledge that "Released Claims" include, and this Settlement Agreement constitutes a release of, any and all claims that a Class Member does not know or suspect to exist in its favor at the time of the release, which, if known by it, might have affected its settlement with and release of Defendants or might have affected its decision whether to object or participate in this Settlement Agreement or any portion or aspect of the Settlement Agreement reached by the Parties.

Z. "Releasing Parties" means Plaintiffs and each other Class Member.

AA. "Request for Exclusion" means a request, made in compliance with the terms and conditions provided in this Agreement, by a Municipality to opt out of the Settlement Class as set forth in Section VII.D.

BB. "Revenues Derived From Interstate Services" means revenues derived from, among other items, interstate telephone service and interstate private line service. It does not include revenues derived from intraLATA interstate telephone service.

CC. "Settlement Agreement," "Settlement," or "Agreement" means this Settlement Agreement, including the attached Exhibits.

DD. "Settlement Class" means the class certified for settlement purposes only, pursuant to the Order and Judgment of Dismissal, consisting of all Municipalities in the State of Missouri that, on or before June ~~2~~², 2009, have imposed a Business License Tax, and in which AT&T Missouri or SBC Long Distance, LLC derived gross receipts from the provision of telephone, exchange telephone, public utility, or telecommunications services, or related services. Excluded from the Settlement Class is the City of Springfield, Missouri.

EE. "Back Tax Payment" means, with respect to each Class Member other than the City of St. Louis, Missouri, an amount calculated under the formula set forth in Exhibit G.

A schedule of the Back Tax Payment each Class Member is estimated to receive, to the extent it has timely and validly submitted a Claim Form, as set forth in Section IV.E., below, is attached as Exhibit E. Because the City of St. Louis has previously entered into a settlement agreement over Business License Taxes, the City of St. Louis will not be entitled to the Back Tax Payment, although the City of St. Louis, Missouri will be entitled to the Future Tax Benefit as set forth in Section II.A.2. upon execution of a mutually satisfactory amendment to, or a

termination of, the settlement agreement entered into between the City of St. Louis and AT&T Missouri on September 3, 1998. Because the amount payable under the City of Cape Girardeau's ordinance is capped and AT&T Missouri already has paid that amount, the City of Cape Girardeau will be entitled to the Back Tax Payment only with respect to SBC Long Distance, L.L.C., although the City of Cape Girardeau will be entitled to Future Tax Benefits as provided by this Agreement.

FF. "Total Back Tax Payment" means \$65 million, inclusive of attorneys' fees, to be divided among (1) the Class Members which have timely and validly submitted a Claim Form, as set forth in Section IV.E., below, (2) St. Louis County, pursuant to a separate agreement between St. Louis County and Defendants, and (3) Class Counsel. Any amount that is not paid because a Municipality validly and timely objects to the Settlement or fails to submit a valid Claim Form as set forth in Section IV.E. below shall be retained by Defendants, but it shall not serve to reduce the Back Tax Payment of any Class Member nor the amount of the Agreed Fees nor St. Louis County's share of the Total Back Tax Payment under its separate settlement agreement. AT&T Missouri and SBC Long Distance LLC shall pay St. Louis County its share of the Total Back Tax Payment pursuant to a separate agreement between St. Louis County and Defendants.

II. SETTLEMENT CLASS RELIEF

In consideration of a full, complete, and final settlement of this Action, and in consideration of dismissal of the Action with prejudice with respect to Defendants and the Releases and Dismissals in Section VI. below, and subject to the Court's approval, the Parties agree to the following:

A. Class Benefit

1. Back Tax Benefit

AT&T Missouri and SBC Long Distance, LLC shall collectively make a Back Tax Payment to each Class Member (other than the City of St. Louis, Missouri, which is not entitled to any Back Tax Payment due to a previous settlement) which has submitted an Approved Claim Form. Said payment shall be made on or before the later to occur of: (i) ten (10) days after submission of the Approved Claim Form and acceptance of this Settlement Agreement; or (ii) ten (10) days after the Effective Date of this Settlement. Neither AT&T Inc., AT&T Messaging, Inc., nor any AT&T Inc. subsidiary other than AT&T Missouri and SBC Long Distance, LLC shall have any obligation to make Back Tax Payments. Plaintiffs and Class Members agree that the consideration paid by AT&T Missouri and SBC Long Distance, LLC is sufficient consideration to support a valid and binding settlement agreement and a full release of back tax liability for those entities, as well as themselves.

2. Future Tax Benefit

Beginning on the Effective Date of Future Tax Benefits, both AT&T Missouri and SBC Long Distance, LLC, and any Defendants providing similar services, shall pay, going forward, to each Class Member future Business License Taxes as follows:

a. *AT&T Missouri*

With respect to AT&T Missouri, the Business License Tax code or ordinance of each Class Member shall be interpreted, beginning on the Effective Date of Future Tax Benefits, to apply to: (i) revenues upon which AT&T Missouri already pays a Business License Tax to that Class Member; **PLUS** (ii) revenues from any additional services that are subject to Missouri's state sales tax on "telecommunications service" as that term is used in § 144.010.1(13), as

restricted by § 144.030.1 RSMo; PLUS (iii) revenues as described in section (ii) above from any retail customer which would otherwise be subject to the Missouri state sales tax but for an exemption for such customer from the state sales tax (e.g., not-for-profits under § 144.030.2(19) RSMo). Services subject to the Business License Tax shall include, but not be limited to, FUSF, SUSF, intraLATA toll service, EUCL, and intrastate private line. Services subject to the Business License Tax shall not include, inter alia, Carrier Access, Revenues Derived From Interstate Services, except as otherwise provided in subsection c. below (although AT&T Missouri agrees to pay the Business License Tax on revenues from intraLATA interstate telephone service), Call Notes voice messaging services, and CPE. For purposes of clarification only, AT&T Missouri acknowledges that it will include receipts from Business License Tax surcharges in the Business License Tax base.

However, any Class Member whose Business License Tax is limited to a particular type of customer -- for example, a business customer only -- shall retain such limitation until changed as provided by law. And, any Class Member whose Business License Tax explicitly exempts a revenue or service by name that would otherwise qualify as a Future Tax Benefit under this Agreement shall retain such exemption until changed as provided by law, provided that no such exemption shall apply to (1) revenues described in II.A.2.(a)(i) above or (2) EUCL. A list of such exemptions is attached hereto as Exhibit F. If a Class Member listed on Exhibit F as having an exemption for intrastate toll enacts an ordinance clarifying that the long-distance exclusion in its current Business License Tax ordinance applies only to interstate long-distance, and includes a certified copy of this clarifying ordinance with its Claim Form or if the Class Member is not required to submit a Claim Form due to a separate agreement with Defendants, provides a certified copy of this clarifying ordinance to Defendant no later than October 1, 2009, the

exemption in Exhibit F as to intrastate toll shall not apply to said Class Member. If a Class Member passes such a clarifying ordinance after submitting its Claim Form, or if a Class Member which is not required to submit a Claim Form due to a separate agreement with Defendants passes a clarifying ordinance after October 1, 2009, the exemption in Exhibit F as to intrastate toll shall cease to apply six months from the date on which the Class Member presents AT&T Missouri and SBC Long Distance, LLC with a certified copy of said clarifying ordinance.

b. SBC Long Distance, LLC

With respect to SBC Long Distance, LLC, the Business License Tax code or ordinance of each Class Member shall be interpreted, beginning on the Effective Date of Future Tax Benefits, to apply to: (i) revenues from services that are subject to Missouri's state sales tax on "telecommunications service" as that term is used in § 144.010.1(13) as restricted by § 144.030.1 RSMo; PLUS (ii) revenues as described in section (i) above from any retail customer which would otherwise be subject to the Missouri state sales tax but for an exemption for such customer from the state sales tax (e.g., not-for-profits under § 144.030.2(19) RSMo). Services subject to the Business License Tax shall include, but not be limited to, intrastate long-distance telephone services. Services subject to the Business License Tax shall not include, inter alia, interstate long-distance telephone services, except as otherwise provided in subsection c. below. For purposes of clarification only, SBC Long Distance, LLC acknowledges that, henceforth, it will include receipts from Business License Tax surcharges in the Business License Tax base.

However, any Class Member whose Business License Tax is limited to a particular type of customer – for example, a business customer only – shall retain such limitation until changed as provided by law. And, any Class Member whose Business License Tax explicitly exempts a revenue or service by name that would otherwise qualify as a Future Tax Benefit under this

Agreement shall retain such exemption until changed as provided by law. A list of such exemptions is attached hereto as Exhibit F. If a Class Member listed on Exhibit F as having an exemption for intrastate toll enacts an ordinance clarifying that the long-distance exclusion in its current Business License Tax ordinance applies only to interstate long-distance, and includes a certified copy of this clarifying ordinance with its Claim Form, the exemption in Exhibit F as to intrastate toll shall not apply to said Class Member. If a Class Member passes such a clarifying ordinance after submitting its Claim Form, the exemption in Exhibit F as to intrastate toll shall cease to apply six months from the date on which the Class Member presents AT&T Missouri and SBC Long Distance, LLC with a certified copy of said clarifying ordinance.

c. Bundled and Packaged Telephone Services

In the event Defendants, individually or collectively, receive revenues from bundled or packaged telephone services, whether intrastate or interstate, and such telephone services are not separately accounted for on an end-user's bill, Defendant(s) shall pay future Business License Taxes on such bundled and packaged telephone services consistent with 12 Mo. CSR 10-3.188(7) or any successor regulation.

d. Reservation of Rights

Notwithstanding anything to the contrary herein, the Parties agree all Class Members retain the right to audit and inspect the books and records of AT&T Missouri, SBC Long Distance, LLC, and any other Defendant entity to ensure compliance with this Agreement, and they do not waive or abrogate any right(s) they possess under their respective codes or ordinances. In the event a Class Member has reason to question compliance with this Agreement, and in particular to question whether a service is taxable pursuant to § 144.010.1(13), as restricted by § 144.030.1 RSMo, the Parties agree the Class Member reserves

all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this Agreement.

e. Hancock Amendment

Nothing in this Settlement Agreement is intended to broaden any pre-existing Business License Tax base in violation of the Hancock Amendment to the Missouri Constitution.

f. Rates

Defendants agree to pay future Business License Taxes at the rates specified within each Class Member's Business License Tax code or ordinance, unless and until there is a change in law as specified in subsection g. below.

g. Change of Law

(i) Change of Law Altering Defendants' Future Obligations

The obligations of Defendants shall continue with respect to each Class Member unless and until: (1) a court or administrative or regulatory body of competent jurisdiction determines, or a Class Member specifies in writing after the date of execution of this Agreement, that such Class Member's Business License Tax does not apply to any or all of the subject services or gross receipts derived therefrom, and such determination is not subject to further appeal or the time to appeal has expired and no appeal or further appeal has been timely filed; (2) the Missouri General Assembly or other legislative body enacts constitutional legislation removing the authority of such Class Member to impose a Business License Tax to any or all of the subject services or gross receipts derived therefrom, and such legislation is in effect; (3) the Missouri Department of Revenue issues a final ruling that any service taxable pursuant to Sections II.A.2.a.(ii) and b.(i) of this Agreement is no longer subject to the state sales tax; or (4) any other constitutional change in law, including a change in the Class Member's Business License Tax

ordinance, occurs that affects the obligations of Defendants under this Section, in which case, the remaining obligations shall be consistent with such determination, legislation, or change.

Defendants shall not, in the case of any judgment, legislation, or other change of law as referred to above, be entitled to recover any sums paid which became due and owing prior to the finality of such judgment or effective date of such legislation or other change of law.

(ii) Change of Code or Ordinance

Nothing in this Settlement Agreement shall serve to restrict any Class Member from amending its ordinance or code in the future, in accordance with law, to tax or exclude from taxation any product or service covered by this Settlement Agreement. In the event a Class Member seeks to amend its ordinance or code to expand its municipal tax base, the Parties agree the Defendants reserve all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to challenge the legality, application or enforcement of the amendment.

(iii) Change of Law for One City Applies to All Cities

In the event of:

(1) a settlement of or a final non-appealable judgment in City of Springfield v. Cingular Wireless LLC, et al., cause no. 04-CV-4099, currently pending in the U.S. District Court for the Western District of Missouri, at any time, or

(2) a settlement of or a final non-appealable judgment in another case within five years of the Effective Date of the Settlement, or

(3) a legislative change within five years of the Effective Date of the Settlement, and pursuant to which Defendants, individually or collectively, voluntarily or involuntarily, pay a Business License Tax to a Municipality in the future, and include or are required to include

receipts from a product or service excluded from this Settlement, then Defendants agree to treat all Class Members with substantially similar ordinances the same as the Municipality being paid and to pay taxes to all Class Members with substantially similar ordinances on the same receipt(s), at then-existing rates, if such Class Member has satisfied the preconditions set forth in Section II.B.2., unless such receipts are specifically and expressly excluded from taxation by such Class Member's Business License Tax ordinance. No Class Member shall, in case of any settlement, final non-appealable judgment, or legislative change referred to above, be entitled to recover back taxes on receipts from a product or service excluded from this Settlement earned prior to the finality of such settlement, non-appealable judgment, or legislative change.

Should a Class Member have reason to question Defendants' compliance with this provision, and in particular to question whether its ordinance is substantially similar to the ordinance of the Municipality being paid, the Parties agree the Class Member reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this provision. In the event enforcement action is taken, Defendants agree not to raise, assert, or seek Class Member compliance with § 71.675 RSMo (class action bar) and agree that § 71.675 RSMo shall not serve to restrict the method or manner of enforcement of this provision. Further, in the event it is determined that Defendants have breached this provision, either individually or collectively, then back taxes shall accrue and be payable from the date of the settlement, final non-appealable judgment, or legislative change.

Likewise, each Defendant, either individually or collectively, reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings should it have reason to question whether any Class Member is entitled to payment pursuant to this provision. Further, the Parties agree that nothing in this paragraph shall serve to preclude a Class

Member from amending its Business License Tax code or ordinance in the future, as provided by law, so as to clarify or conform its code or ordinance to reflect any change in law.

The Parties agree that the promises and commitments contained in this section are vital provisions going to the very substance or root of the Settlement and that a failure or breach of such promises and commitments would constitute a material breach of this Settlement Agreement. In said event, each Class Member and each Defendant, either individually or collectively, would be entitled to all remedies available at law or in equity for such a material breach, including, but not limited to, rescission of this Settlement Agreement.

Similarly, in the event of:

- (1) a final, contested¹, non-appealable judgment in the case of City of Springfield v. Cingular Wireless LLC, et al., cause no. 04-CV-4099, currently pending in the U.S. District Court for the Western District of Missouri, at any time, or
- (2) a legislative change within five (5) years of the Effective Date of the Settlement,

and pursuant to which Defendants, individually or collectively, are relieved from paying, or are determined not to owe, Business License Taxes on receipts from a product or service that is specifically included within this Settlement, then Defendants may treat all Class Members with ordinances substantially similar to Springfield's ordinance the same, or conform its payments to the legislative change, as the case may be, and may refrain from paying Business License Taxes to all such Class Members on the same receipts, unless such receipts are specifically and expressly included in the tax base by the Class Member's Business License Tax ordinance and otherwise authorized by law.

¹ The term "contested," as used in this provision, is meant to exclude a settlement, consent judgment, consent decree, negotiated compromise, friendly suit, or similar resolution.

This provision (iii) shall not apply in the event Defendants' payment of a Business License Tax to any Municipality on revenues in addition to those listed in this Settlement Agreement is the result of any Municipality expanding the scope of its Business License Tax base through a legislative change or as otherwise authorized by law.

(iv) Separate Agreements with Class Members

If, before or after the Effective Date of this Agreement, Defendants, individually or collectively, enter into a written agreement with a representative of a Class Member that is enforceable by such Class Member and which serves to reduce the taxability of any service, fee, or product, or gross receipts derived therefrom, then such agreement shall supersede this Settlement Agreement, but only to the extent applicable, and Defendants shall pay such Class Member Business License Taxes pursuant to that separate written agreement. Such separate written agreement shall be binding on the parties to that agreement only, and shall not impact Defendants' Business License Tax payment(s) or obligation(s) to any other Class Member under this Agreement, notwithstanding the provisions of Section II.A.2.g.(iii).

However, if Defendants, individually or collectively, enter into a written agreement with a Class Member or a representative of a Class Member that is enforceable by such Class Member within five (5) years of the date of execution of this Agreement, and such agreement includes terms that are materially more favorable to the Class Member than to other Class Members, then Defendants shall promptly notify all Class Members of such agreement, and the other Class Members shall, at their discretion, have the right to amend this Agreement to take advantage of such more favorable terms. This provision shall only apply in the event any Class Member enters into an agreement with a Defendant that allows or requires such Defendant to pay prospective Business License Taxes without regard to exemption(s) or exclusion(s), or on

materially more favorable terms than those being paid by Defendants under this Agreement.²

In such case, Defendants shall on a going forward basis pay Business License Taxes to all similarly situated Class Members (except for those who instruct otherwise) at the same rate and/or on the same terms as those applicable to the Class Member(s) who reached the agreement(s).

h. New Products and Services

In the future, Defendants, individually or collectively, may develop new products and services. If they are taxable pursuant to Section II A.2., above, and in particular pursuant to § 144.010.1(13), as restricted by § 144.030.1 RSMo, then Defendants agree to include such products and services in the Business License Tax base and to pay Business License Taxes thereon to Class Members. In the event a Class Member has reason to question compliance with this provision, and in particular to question whether a product or service is taxable pursuant to § 144.010.1(13) RSMo, as restricted by § 144.030.1 RSMo, the Parties agree the Class Member reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this provision.

3. No Lobbying Missouri General Assembly

Defendants agree that, for a period of five (5) years from the date of execution of this Agreement, they will not seek or support legislation in the Missouri General Assembly that would (a) cap or reduce the Business License Taxes subject to this Settlement Agreement, (b) interfere with or reduce Class Members' rights under Sections II.A.2.g (ii) and (iii), or (c) exclude from the Business License Tax base sources of revenue agreed in this Settlement

² For purposes of clarification, this provision shall not apply in the event that Defendants, individually or collectively, agree to pay any Class Member's attorney on more favorable or different terms, and/ or agree to permit a Class Member to undergo a different claims process than is outlined herein.

Agreement to be included within the tax base. Nothing in this Section shall preclude Defendants from opposing any proposal to increase the rate or broaden the scope of a Municipality's Business License Tax. The Parties agree that the promises and commitments by Defendants contained in this Section are vital provisions going to the very substance or root of the Settlement and that failure or breach of such promises or commitments would constitute a material breach of this Settlement Agreement, entitling the Class Members to all remedies available at law or equity for such a material breach, including but not limited to rescission of this Agreement.

4. Interim Prospective Tax Payments

Any payments of Business License Taxes by AT&T Missouri made before the Effective Date of Future Tax Benefits shall be made in the same manner and on the same sources of revenue as AT&T Missouri has always made such payments. The obligation of SBC Long Distance, LLC to make any future tax payments shall not arise until the Effective Date of Future Tax Benefits. Neither Defendant shall have any liability to any Class Member, other than the obligations set forth in this Settlement Agreement, for any future tax payments until the Effective Date of Future Tax Benefits.

Any Business License Tax payment made by Defendants on or after the Effective Date of Future Tax Benefits, but before the Effective Date of the Settlement, to the extent identified by Defendants with such payment as incremental payments pursuant to Sections II.A.2.(a)(ii) and (iii) and II.A.2.(b) (each an "Interim Prospective Tax Payment"), shall be deemed to be made under protest within the meaning of § 139.031 RSMo, and to the tax collector of the Municipality, whether or not so designated by Defendants, with the grounds for the protest (which shall be deemed to accompany the payment in the form of a written protest statement) being those grounds set forth in Defendants' answer in the Action and such other grounds as

Defendants may designate in writing on or before the filing of any petition for refund of such payment. Each Class Member receiving an Interim Prospective Tax Payment agrees to segregate and hold those funds in a separate, interest-bearing bank account in accordance with § 139.031.2 RSMo, until disposition as provided herein. Upon the Effective Date of the Settlement, such funds shall be deemed released to each Class Member, free and clear of all claims, liens and encumbrances under § 139.031 RSMo, and this Agreement. In the event that the Settlement Agreement is nullified as set forth below in Section IX.L., Defendants may, within ninety (90) days following the date of such event, file an action to perfect their refund claim(s) for such funds in accordance with § 139.031 RSMo, and, notwithstanding any provision of law to the contrary, the statute of limitations as to such claim shall be tolled up to and including the date that is ninety (90) days after the date that the Settlement Agreement is nullified.

Notwithstanding any provision of this Section II.A.4. to the contrary, Defendants may make Interim Prospective Tax Payments under protest until the Effective Date of Settlement and/or may file tax protest litigation with respect to the Interim Prospective Tax Payments and otherwise perfect their protests with respect to the subject payments pending the occurrence of the Effective Date of Settlement. Such cases shall be (i) promptly dismissed in the event of the occurrence of the Effective Date of Settlement, or (ii) prosecuted in the discretion of Defendants in the event this Settlement Agreement is nullified pursuant to Section IX.L. below.

B. Most Favored Nation—Other Landline Providers Treated the Same

With respect to each Class Member provision 2. set forth below shall apply. With respect to each Class Member whose Back Tax Payment is equal to or greater than \$2,500 (and the City of St. Louis should it be entitled to a Future Tax Benefit as set forth in Section I.EE.), provisions 1., 3., and 4. set forth below shall also apply.

1. Non-Discrimination; Reasonable Efforts to Enforce

Class Members agree not to unconstitutionally discriminate among landline telephone providers, and to treat similarly-situated providers similarly. Accordingly, Class Members agree to use reasonable efforts to enforce their Business License Taxes in a similar way with respect to similarly-situated landline telephone providers, and to treat as taxable the same or similar revenue sources of such other landline providers as are taxable under this Agreement. Class Members further agree to take reasonable tax enforcement actions to ensure that all similarly-situated landline providers pay a Business License Tax in the same manner as Defendants are required to do so.

In the event a Class Member breaches this provision, each Defendant agrees that its remedy shall be limited to specific performance only.

2. Disclosures by Landline Providers

If any Class Member seeks to enforce any of the rights guaranteed by Section II.A.2.g(iii) of this Agreement, said Class Member, as a pre-condition of enforcing its rights under such Section, shall present proof to Defendants that it has, as part of its reasonable efforts under Section II. B. 1., adopted a rule requiring (in whatever manner or procedure authorized by statute, ordinance, city charter, or otherwise) all similarly-situated landline providers within the Class Member to file, at least once each year, a verified statement disclosing the revenue streams on which it pays or does not pay the municipality's Business License Tax. The revenue streams contained in such statement shall include, at minimum, substantially the following: FUSF, SUSF, intraLATA toll service, EUCL, intrastate long distance, fixed VoIP, and intrastate private line service, as well as any additional items the Class Member contends are taxable as a result of the application of Section II.A.2.g(iii).

3. More Favorable Settlements

If any Class Member that is bound by the terms of this Settlement Agreement settles claims regarding the alleged failure of another similarly-situated landline provider to pay Business License Taxes, and such settlement includes terms that are materially more favorable to the other provider than those set forth herein, such Class Member shall promptly notify Defendants of such agreement, and Defendants shall, at their discretion, have the right to amend this Agreement to take advantage of such more favorable terms with regard to the Class Member(s) who have reached such other settlement.

In the event a Class Member breaches this provision, Defendants agree they shall not be entitled to recover any sums paid which became due and owing prior to the date or occurrence of said breach.

With regard to Defendants' payment of Future Tax Benefits pursuant to Section II.A.2. above, this provision shall apply in the event any Class Member enters into an Agreement with another similarly-situated landline provider that allows such provider to pay prospective Business License Taxes on more favorable terms than those being paid by Defendants within five (5) years of the date of execution of this Agreement. In such case, Defendants shall be entitled on a going forward basis to pay Business License Taxes on the same terms as those applicable to such other provider. However, nothing in this section shall be construed to apply to another provider's payment of back Business License Taxes, or in any way affect Defendants' obligations to pay Back Tax Benefits under Section II.A.1. of this Agreement.

4. Specific Exemptions for Certain Landline Carriers

Notwithstanding anything to the contrary contained herein, Defendants agree that this Section B. (Most Favored Nation) shall not encompass any landline telephone provider while in

bankruptcy, nor shall the treatment of any landline telephone provider while in bankruptcy, either through action or inaction, serve to impose any obligations upon Class Members under this provision. For purposes of clarification, the terms "landline telephone provider" or "landline provider," as used in this Section B., do not include any company while in bankruptcy or any company having a market share of 10% or less as measured by the receipts subject to the Class Member's Business License Tax base.

C. Pass Through

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.

III. NOTICE OF CLASS ACTION SETTLEMENT

Notice of the Settlement shall be provided to all Missouri municipalities as follows:

A. Notified Municipalities

Defendants shall send the Notice to every municipality in Missouri via first-class mail, addressed using reasonably available information and sources. Class Counsel will assist Defendants in identifying the name and address for each such municipality.

B. Amount of Back Tax Payment

Attached as Exhibit E is the calculation of the Back Tax Payment each Class Member is estimated to receive, assuming it has timely and validly submitted a Claim Form, as set forth in Section IV.E. below. These calculations have been reviewed and agreed upon by Class Counsel and Defendants, but they are subject to adjustment if Defendants approve an adjustment to the calculations pursuant to a Class Member's appeal to Defendants under Section IV.H. or otherwise. Prior to the mailing of the Notice, Class Counsel and the respective Class Member

may make inquiries of Defendants regarding the calculations of each Class Member's Back License Tax payment, and Defendants agree to respond to such inquiries in a timely manner and to confer in good faith to resolve any disputes concerning the amount of the Back License Tax payment.

C. Notice

Within twenty (20) days after the entry of the Preliminary Approval Order, and in accordance with the timetable established under the Preliminary Approval Order, Defendants shall mail the Notice together with a Claim Form, in the form attached hereto as Exhibit B, to each municipality as described in Section III.A. above. The Notice shall inform the municipalities of the conditional certification of the Settlement Class and the general terms of the Settlement Agreement, advise of the manner in which to opt out or object to the Settlement, and state the date and time of the Final Fairness Hearing. The Notice to each municipality shall also contain the calculation of the municipality's estimated share of the amount to be distributed pursuant to the Settlement, assuming the municipality submits a valid and timely Claim Form. Because the formula for calculating the Back Tax Payment depends on the calculations of each Class Member's 2008 Business License Tax payment, it is possible that a municipality's share of the amount to be distributed pursuant to the Settlement may change if the Defendants approve an adjustment to the calculations pursuant to a Class Member's appeal to Defendants under Section IV.H. or otherwise.

D. Website

Promptly after entry of the Preliminary Approval Order, and in accordance with the timetable established under the Preliminary Approval Order, Class Counsel shall post or cause to have posted the Settlement Agreement and template Notice and Claim Form and a Frequently

Asked Questions and Answers section on the Internet website of the Missouri Municipal League (www.mocities.com), said posting to be maintained from the first date of publication through the end of the Claim Period.

E. Best Notice Practicable

Compliance with the procedures described in this Section III is the best notice practicable under the circumstances and shall constitute due and sufficient notice to municipalities of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Fairness Hearing, and shall satisfy the requirements of the Missouri Supreme Court Rules, the Constitution of the State of Missouri, the United States Constitution, and any other applicable law. This Settlement Agreement shall be binding even on municipalities not receiving the Notice.

IV. DISTRIBUTION OF SETTLEMENT CLASS RELIEF

A. Settlement Administration

Class Counsel or their designated agent(s) will cooperate to assist Defendants in performing all duties required of them pursuant to this Settlement Agreement, including, but not limited to, approving or rejecting Claim Forms; determining which Municipalities have filed valid and timely Claim Forms; and mailing checks, all as described below. Additionally, Defendants will be obligated to bring to the Court's attention for resolution any disputes that arise in the course of the settlement administration process and cannot be resolved by agreement between Defendants and Class Counsel.

B. Report on Requests for Exclusion

Within five (5) days of the last postmark date on which a Municipality shall be permitted to submit a Claim Form to be eligible for a Back Tax Payment, Defendants shall prepare and

file with the Court, after consultation with Class Counsel, a report identifying each Municipality which has mailed a Request for Exclusion. With respect to any Municipalities which do not submit a valid and timely Claim Form, such Municipalities will not be entitled to receive any Back Tax Payment.

C. Report on Members of the Settlement Class Ineligible To Receive Settlement Class Relief

Within five (5) days of the last postmark date on which a Municipality shall be permitted to submit a Claim Form or to resubmit a Claim Form as described herein, Defendants shall prepare and deliver to Class Counsel a report identifying all such Municipalities as well as those municipalities deemed by Defendants to be ineligible to receive the Back Tax Benefit under Section II.A.1. on account of any deficiency in their Claim Forms.

D. Acceptance of Settlement Agreement

Each Class Member, in order to be entitled to the Back Tax Payment, must, within the Claim Period, take all actions necessary to make this Settlement Agreement enforceable against such Class Member in accordance with Missouri law as well as local ordinances and enabling authority.

E. Claim Form

In order for a Class Member to receive the Back Tax Payment pursuant to Section II.A.1. of this Settlement Agreement, it must complete, sign and submit to Defendants by mail a hard copy of a Claim Form to the address specified on the Claim Form. The Claim Form will require the Class Member to provide the following:

1. the name, address and telephone number of the Class Member's duly authorized representative(s), to whom all inquiries regarding the Claim Form and Business License Tax may be directed;

2. **only if the Back Tax Payment for the Class Member is listed as \$0 on Exhibit E**, a certified copy of the ordinances or municipal code provisions imposing the Business License Tax pursuant to which Class Member believes it is entitled to a Back Tax Payment;
3. a certified copy of an ordinance enacted by the Class Member accepting all terms and provisions of this Settlement Agreement or, if the Class Member chooses to effect its acceptance of all terms and conditions of this Settlement Agreement by another accepted, legally binding method, copies of an acknowledgment that the Class Member agrees to be bound by the terms of this Settlement Agreement if approved by the Court, which acknowledgment shall describe the method used to accept this Settlement Agreement and shall be accompanied by an opinion of counsel, addressed to Defendants, that the Settlement Agreement, if approved by the Court, is a binding obligation of the Class Member; and
4. the name and address to which the Back Tax Payment shall be made and mailed.

The person submitting the Claim Form must certify that (i) the information contained in and submitted with the Claim Form is complete and accurate to the best of his/her and the Class Member's knowledge, after due inquiry; (ii) he/she is authorized to submit the Claim Form on behalf of the Class Member and to make the attendant representations on behalf of the Class Member; (iii) the Class Member agrees to be bound by the terms of this Settlement Agreement if

approved by the Court; and (iv) prior to submitting the Claim Form, the Class Member has taken all actions necessary for this Settlement Agreement to be enforceable against the Class Member.

All completed Claim Forms and required supporting documents must be mailed to the address designated by Defendants. The postmark deadline for submitting the Claim Form will be sixty (60) days from the date of the mailing of the Claim Form to the Class Member, unless an extension is agreed to by Defendants' Counsel and Class Counsel or permitted by the Court.

Subject to Section IV.H. below, submission of a Claim Form shall be deemed acceptance by the Class Member of Defendants' calculation of the Back Tax Payment as adequate consideration for the Released Claims and settlement of any back tax liability as set forth in this Settlement Agreement and such amounts shall not be open to further audit or dispute.

F. Approval and Rejection of Claim Forms

Defendants shall determine whether a Claim Form is valid based solely upon the responses provided to the questions set forth on the Claim Form, the documents provided with the Claim Form, and the postmarked date that the Claim Form is submitted. To be valid, a Claim Form must: (1) be fully completed, as set forth in Section IV.E.; (2) be certified by a duly authorized representative of the Class Member, as set forth in Section IV.E.; and (3) be timely mailed to Defendants. If Defendants reject a Claim Form, Defendants shall within thirty (30) days of receipt notify Class Counsel and the Class Member submitting the Claim Form of the rejection and the reasons for rejection in writing, as well as the procedure for challenging the rejection.

G. Procedures for Challenging Rejection of Claim Forms

Subject to Section IV.H., which provides the sole basis for a Class Member to challenge the amount of the Back Tax Payment, a Class Member that was notified by Defendants that its Claim Form was rejected pursuant to the preceding Section shall have the right to challenge the rejection under this Section IV.G. Such Class Member shall be permitted a period of thirty (30) days from the date of the mailing of the notice of rejection in which either to (a) resubmit the Claim Form to Defendants with any missing information necessary for the Claim Form to be approved, or (b) notify Defendants of its challenge to the rejection. Upon such notification, Defendants promptly shall notify Class Counsel, who then shall have the obligation to meet and confer with Defendants and representatives of the Class Member in question in an attempt consensually to resolve the challenge. Failing consensual resolution, Defendants shall notify the challenging Class Member that it may, within ten (10) days of receipt of such notice, present the challenge through its counsel to the Court; **provided, however,** that any dispute regarding the amount of the Back Tax Payment shall be handled pursuant to Section IV.H., and not pursuant to this Section IV.G. A claim by a municipality disputing a zero Back Tax Payment shall be reviewed under this paragraph rather than under Section IV.H.

H. Disputes as to Amount of Back Tax Payment

In the event a Class Member disagrees with the Back Tax Payment set forth on Exhibit E, such Class Member shall submit with its Claim Form a detailed explanation as to why it believes the Back Tax Payment was incorrectly calculated. In the event that Defendants disagree with such a Class Member's contention, Defendants shall meet and confer in good faith with Class Counsel and representatives of the Class Member in question in an effort to resolve the issue. If, despite such consultation, the Class Member and Defendants cannot agree on the Back Tax Payment, the figures contained in Exhibit E shall be the amount used to calculate the Class

Member's Back Tax Payment which such Class Member shall be entitled to receive pursuant to the Settlement, subject to the Municipality's right to opt out of the Settlement, which opt-out deadline shall be extended for such Municipality only for a period of thirty (30) days to resolve disputes related solely to the amount of the Back Tax Payment. Such right to opt out shall be the sole remedy of such Municipality, and the disagreement as to the amount of the Back Tax Payment shall not be subject to challenge or appeal pursuant to Section IV.G. or otherwise.

I. Payment and Processing of Approved Claims

Approved claims will be paid either by a check that is mailed on or before the date specified in Section II.A.1., or by a wire transfer, as specified on the Municipality's Claim Form.

V. PAYMENT OF ATTORNEYS' FEES AND EXPENSES AND SETTLEMENT COSTS

Attorneys' fees and expenses and settlement costs shall be paid as follows:

A. Costs of Notice

Defendants shall be responsible for providing notice of the proposed Settlement to the municipalities as provided herein, including costs of identifying members of the Settlement Class, costs of printing the Notice, and costs of mailing the Notice, and shall be responsible for printing the Notice, Claim Forms, and other necessary documents. If, for any reason, the Effective Date of the Settlement does not occur, then the costs of providing notice to the municipalities that are incurred by Defendants shall nevertheless be borne by Defendants.

B. Costs of Administering Settlement

Defendants shall bear all reasonable costs of administering the Settlement and the cost of printing and mailing any checks to be issued as part of the Settlement. If, for any reason, the Effective Date of the Settlement does not occur, then the costs of administering the Settlement that are incurred by Defendants shall nevertheless be borne by Defendants.

C. Attorneys' Fees, Expenses, and Attorneys' Liens

Class Counsel will make a Fee and Expense Application to be heard in connection with the Final Fairness Hearing, requesting that the Court award attorneys' fees, costs and expenses in the amount of Sixteen Million Two Hundred Fifty Thousand Dollars (\$16,250,000) (collectively, the "Agreed Fees"), which shall be paid by Defendants out of the \$65 million settlement fund. Defendants agree not to oppose such request in an amount up to the Agreed Fees. Defendants shall pay the lesser of (i) the amount of fees awarded by the Court, or (ii) the Agreed Fees, within ten (10) days of the Effective Date of the Settlement. Upon full payment of such fees, Class Counsel shall be deemed to release and discharge Defendants from and against any and all attorneys' liens they may have on any and all sums paid to or for the benefit of each Class Member hereunder, including without limitation any attorneys' lien pursuant to §§ 484.130 and 484.140 RSMo.

D. Severability of Attorneys' Fees and Expenses

The Parties agree that the rulings of the Court regarding the amount of attorneys' fees and expenses, and any claim or dispute relating thereto, will be considered by the Court separately from the remaining matters to be considered at the Final Fairness Hearing as provided for in this Settlement Agreement. Any order or proceedings relating to the amount of attorneys' fees or expenses, and any appeal from any order related thereto, shall not operate to terminate or cancel the Settlement Agreement, affect the Releases provided for in the Settlement Agreement, or affect whether the Order and Judgment of Dismissal is Final.

VI. RELEASES AND DISMISSALS

In order to effectuate the Parties' desire to fully, finally and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation, the Releasing Parties and Defendants agree as follows:

A. Release by Releasing Parties

Upon the Effective Date of the Settlement, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment of Dismissal shall have, fully, finally, and forever released, relinquished, and discharged the Released Claims, as defined in Section I.Y. Further, upon the Effective Date of the Settlement and to the fullest extent permitted by law, Plaintiffs and each of the Class Members shall be barred and estopped from commencing, prosecuting, or participating in, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, any recovery in any action in this or any other forum (other than participation in the Settlement as provided herein) in which any of the Released Claims are asserted.

B. Release by Defendants

Upon the Effective Date of the Settlement, Defendants shall be deemed to have, and by operation of the Order and Judgment of Dismissal shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs, the Class Members and Class Counsel, from all claims arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims. In any future dispute relating to Defendants' payment of Business License Taxes, Defendants shall not raise any claims or defenses relating to the enactment or validity of the Class Members' Business License Tax codes or ordinances in the form existing as of the Effective Date of this Settlement Agreement or the

applicability of those codes or ordinances to the revenue streams deemed included within the Business License Tax base under this Settlement Agreement.

C. Preclusive Effect

On the Effective Date of the Settlement, Plaintiffs and each and every Class Member shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights and remedies provided hereunder. No other action, demand, suit or other claim may be pursued against Defendants with respect to the Released Claims by the Releasing Parties. The Parties acknowledge and agree that Defendants' agreement to pay the Back Tax Payment to each Class Member which submits a valid and timely Claim Form and the Future Tax Benefit with respect to each Class Member, as well as the attorneys' fees provided herein, is based on each such Class Member's representation that it has the authority to enter into, and will be bound by, this Settlement Agreement. The Parties further acknowledge and agree that, in the event a court of competent jurisdiction declares that this Settlement Agreement is unenforceable against, or can be voided or rescinded by, any Class Member, it would be unjust and inequitable for such Class Member to retain the consideration paid by Defendants hereunder, yet reinstitute any legal proceeding against Defendants with respect to the matters released herein. Notwithstanding anything to the contrary contained herein or provided under applicable law (including without limitation, to the extent applicable, § 432.070 RSMo), the dismissal with prejudice of the Action as set forth herein shall be res judicata and shall bar the re-filing of any and all Released Claims that were or could have been brought by the Class Members. In addition, in the event that, despite the provisions of this Settlement Agreement, any Releasing Party is permitted in the future to pursue any claim that is or was a Released Claim under this Agreement, such Releasing Party shall forfeit and return to Defendants, prior to proceeding with any such claim, any Back

Tax Payment received from Defendants pursuant to this Agreement. For avoidance of doubt, the provisions of this Section shall be severable from the remaining provisions of this Settlement Agreement, and the Parties acknowledge and agree that the consideration given by Defendants under this Settlement Agreement constitutes fair and adequate consideration for the releases by the Class Members hereunder, and for the obligations of the Class Members and Class Counsel under this Section and the remaining Sections of this Settlement Agreement.

D. Mistake

In entering into this Settlement Agreement, the Releasing Parties and Defendants each assume the risk of any mistake of fact or law. If they, or any of them, should later discover that any fact which they relied upon in entering this Agreement is not true, or that their understanding of the facts or law was incorrect, they shall not be entitled to set aside this Settlement Agreement by reason thereof.

E. Covenant Not to Sue

As of the Effective Date of the Settlement, this Settlement Agreement may be pled as a full and complete defense to any Released Claims that may be instituted, prosecuted or attempted in breach of this Settlement Agreement. Except as otherwise provided in Sections II.A.2.d., II.A.2.g., and II.A.2.h. herein, the Releasing Parties covenant that they will not institute or prosecute, against Defendants, any action, suit or other proceeding based in whole or in part upon any of the Released Claims, and Defendants likewise covenant that they will not institute or prosecute against the Releasing Parties or any of them, any action, suit or other proceeding based in whole or in part upon any of the Released Claims nor based in whole or in part on the defenses, counterclaims, or other assertions raised by Defendants in the Action.

F. Injunctive Relief

The Parties, and each of them, covenant that this Settlement Agreement may be used as a basis for a temporary restraining order, preliminary injunction, or permanent injunction against any breach of this Agreement. The Parties judicially admit hereby for all purposes that time is of the essence as to all terms and conditions of the Settlement Agreement and that damages for a breach of this Settlement Agreement would be inadequate.

VII. CERTIFICATION OF SETTLEMENT CLASS AND COURT APPROVAL OF THE SETTLEMENT

The Parties shall use their respective best efforts to obtain Court approval of this Settlement Agreement. The process for obtaining Court approval of this Settlement Agreement shall be as follows:

A. Appointment of Class Representatives and Class Counsel

For settlement purposes only, Plaintiffs and Defendants will request, as part of the Preliminary Approval Order, that the Court make preliminary findings and enter an Order granting provisional certification of the Settlement Class, subject to final findings and ratification of the Order and Judgment of Dismissal, and appointing Plaintiffs as Class Representatives of the Settlement Class, and John W. Hoffman and Douglas R. Sprong, Korein Tillery, LLC, 505 N. Seventh Street, Suite 3600, St. Louis, MO 63101; John F. Mulligan, Jr., 1600 South Hanley, Suite 101, Richmond Heights, MO 63144; and Howard Paperner, 9322 Manchester Road, St. Louis, MO 63119, as Class Counsel.

B. Conditional Certification

Defendants consent to certification of the Settlement Class for the sole purpose of effectuating the settlement of this Action. If this Settlement Agreement is terminated pursuant to its terms, or if the Settlement Agreement is not approved, the Order conditionally certifying the Settlement Class shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement, and the matter shall proceed as though the Settlement Class had never been conditionally certified and such findings had never been made, without prejudice to the ability of any Party thereafter to request or oppose class certification on any basis.

C. Preliminary Approval

As soon as practicable after the execution of this Settlement Agreement by Class Counsel and Defendants' Counsel, but no later than ten (10) days after the last person executes this Settlement Agreement, unless an extension is agreed to by Defendants' Counsel and Class Counsel, Class Counsel and Defendants' Counsel shall submit the Settlement Agreement to the Court and shall jointly request entry of the Preliminary Approval Order substantially in the form of Exhibit C hereto. The Preliminary Approval Order shall include provisions: (1) preliminarily certifying the Settlement Class for settlement purposes only; (2) preliminarily approving Plaintiffs as Class Representatives; (3) preliminarily approving this Settlement and finding this Settlement sufficiently fair, reasonable and adequate to allow Notice to be disseminated to Missouri municipalities; (4) approving the form of the Notice; (4) setting a schedule for final approval of the Settlement; (5) providing a date for submitting Claim Forms and for filing objections or for opting out; and (6) providing that, pending entry of the Order and Judgment of Dismissal, neither Plaintiffs nor any Class Member (either directly, in a representative capacity, or in any other capacity) shall commence or continue any action against Defendants asserting

any of the Released Claims and that all proceedings in the Action are stayed, other than such proceedings as are related to the Settlement.

D. Opt-Out Procedure

Each member of the Settlement Class wishing to opt out of the Settlement Class shall individually sign and timely submit a Request for Exclusion to a designated address. To be valid, the Request for Exclusion must: (a) set forth the name of the Municipality and its duly authorized representative's name, address and phone number, and the name and cause number of the Action (*State of Missouri, et al., v. SBC Communications, Inc., et al.*, Cause No. 044-02645); (b) be signed by an authorized representative of the Municipality; (c) clearly manifest an intent to be excluded from the Settlement Class; and (d) be postmarked no later than forty-five (45) days after the date of mailing the Notice.

E. Objections to Settlement

A Municipality wishing to object to the proposed Settlement and/or the Fee and Expense Application may do so by filing a written objection, stating, in detail, the substance of the objection and the reason(s) therefor. The objection must be filed with the Clerk of the Court and served upon counsel for all Parties, whose names and addresses are listed in the Notice, within forty-five (45) days of the date of the mailing of the Notice. Any Class Member may appear at the Final Fairness Hearing by duly authorized counsel and be heard, in support of or in opposition to the fairness, reasonableness, or adequacy of the proposed Settlement. No Class Member or counsel, however, shall be heard at the hearing, and no paper, brief, or evidence submitted by any such person shall be received or considered by the Court, unless such person, within forty-five (45) days of the date of the mailing of the Notice, files with the Clerk of Court and serves upon counsel for all Parties, whose names and addresses shall be listed in the Notice,

a notice of his or her intention to appear, a statement of the position he or she will assert, and the reasons for his or her position, and all papers, briefs, or other evidence that he or she intends to present to the Court in support of such position.

F. Final Fairness Hearing

On the date set forth in the Preliminary Approval Order, which shall be approximately ninety (90) days after mailing of the Notice, the Court shall conduct a Final Fairness Hearing in order to: (1) determine whether to grant final approval to this Settlement Agreement; (2) consider any timely objections to this Settlement and all responses to objections by the Parties; and (3) rule on the Fee and Expense Application. At the Final Fairness Hearing, the Parties shall ask the Court to give final approval to this Settlement Agreement. If the Court grants final approval to this Settlement Agreement, then the Court shall enter an Order and Judgment of Dismissal, substantially in the form of Exhibit D hereto, which approves the Settlement, authorizes entry of a final judgment and dismisses the Action with prejudice with respect to Defendants.

VIII. LIMITATIONS ON USE OF SETTLEMENT AGREEMENT

The Parties' use of the Settlement Agreement shall be limited as follows:

A. No Admission

Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiations or proceedings is or shall be construed as or deemed to be legal evidence of an admission by Defendants with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by any of the Class Members in the Action, or the liability of Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Aside from the obligation to pay Business License Taxes going forward, as set forth in Section II.A.2. above,

this Settlement Agreement is not intended to, and shall not be construed as imposing any other obligations on Defendants under the Class Member's respective ordinances, including without limitation any rate regulation or customer service requirements.

B. No Evidentiary Use

This Agreement shall not be used, offered or received into evidence in the Action for any purpose other than to enforce, construe or finalize the terms of the Settlement Agreement and/or to obtain the preliminary and final approval by the Court of the terms of the Settlement Agreement. Neither this Agreement nor any of its terms shall be offered or received into evidence in any other action or proceeding except in a proceeding by a third party challenging any of the payments or obligations hereunder, or as otherwise provided herein.

C. Characterization to Media

The Parties agree that in the event any counsel for any Party contacts or is contacted by any member of the media regarding the Action or this Settlement Agreement, said counsel shall not refer to or characterize the Action or the Settlement Agreement as continuing or evidencing an admission or inference of: (1) liability, fault or wrongdoing on the part of Defendants or Defendants' Counsel, including any wrongdoing in connection with the defense of the Action; or (2) lack of merit of any claim asserted in the Action, or wrongdoing on the part of Plaintiffs, Class Counsel or the Class Members in connection with the institution, prosecution or settlement of the Action.

IX. MISCELLANEOUS PROVISIONS

A. Assignment

Except for the ordinary assignment of tax revenues in connection with municipal tax anticipations and other financings, or any assignment of Back Tax Payment made to the Missouri

Municipal League or St. Louis County Municipal League pursuant to the Claim Form (but only if such assignment to the Missouri Municipal League or St. Louis County Municipal League is specifically authorized by an ordinance that is submitted with the Class Member's Claim Form), each Party represents, covenants and warrants it has not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action or rights that it herein releases.

B. Binding on Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties, all Class Members, and their respective heirs, trustees, executors, successors and assigns.

C. Captions and Interpretations

Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

D. Construction

The Parties agree that the terms and conditions of this Settlement Agreement are the result of arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, or his, her or its counsel, participated in the drafting of this Agreement.

E. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts, and any Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

F. Governing Law

Construction and interpretation of the Agreement shall be determined in accordance with the laws of the State of Missouri, irrespective of the State of Missouri's choice of law principles.

G. Integration Clause

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties in respect of the subject matter contained herein. There are no promises, representations, warranties, covenants or undertakings governing the subject matter of this Agreement other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Agreement may not be changed, altered or modified, except in a writing signed by the Parties and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

H. Invalidation

The voiding, by Court order or otherwise, of any material portion of this Agreement shall invalidate the Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect, except as otherwise explicitly provided for in Section VI.C.

I. Jurisdiction

The Court shall retain jurisdiction, after entry of the Order and Judgment of Dismissal, with respect to enforcement of the terms of this Settlement, and all Parties and members of the Settlement Class submit to the exclusive jurisdiction of the Court with respect to the enforcement of the Settlement and any dispute with respect thereto.

J. Modification

If the Court orders any modification to the Settlement Agreement that has not been previously agreed to by the Parties, as a condition of preliminary approval or final approval of the Settlement Agreement, then the Parties, and each of them, shall have the option to rescind the Settlement Agreement and resume the Action if they are not willing to accept any such modification.

K. No Collateral Attack

This Agreement shall not be subject to collateral attack by any Class Member at any time on or after the date upon which the Order and Judgment of Dismissal becomes Final. Such prohibited collateral attacks shall include claims that a Class Member's claim was improperly denied, that the payment to a Class Member was improperly calculated, and/or that a Class Member failed to receive timely Notice of the Settlement Agreement.

L. Nullification

If, for any reason, the Court fails to grant preliminary approval as provided herein, the Court fails to grant final approval to this Settlement Agreement or the approval of the Order and Judgment of Dismissal is reversed or rendered void as a result of an appeal, then: (1) this Settlement Agreement shall be considered null and void; (2) neither this Settlement Agreement nor any of the related negotiations shall be of any force or effect; (3) the certification of the class for settlement purposes shall be vacated and any findings regarding the certification shall not be used or admissible for any purpose in the Action or any other proceedings involving the subject matter of the action; and (4) all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had neither been entered into nor filed with the Court.

M. Parties' Authority

The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions hereof.

N. Receipt of Advice of Counsel

The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement, and fully understand its legal effect.

O. Right to Rescind

Upon the occurrence of any of the following events prior to the Effective Date of the Settlement, Defendants may, at their option, elect to rescind this Settlement Agreement: (i) a sum of fifty (50) or more Municipalities (other than the City of St. Louis) (a) in which AT&T Missouri does business and (b) which are included within the definition of the Settlement Class, or (ii) a Municipality or a sum of Municipalities (a) in which AT&T Missouri does business and (b) which represent Back Tax Payments totaling \$4,875,000 or more, validly and timely object to the Settlement or fail to submit a valid and timely Claim Form or request exclusion from the Settlement Class. For purposes of this Section IX.O., only those objections to this Settlement which are not withdrawn prior to the Final Fairness Hearing shall be included in the calculation of the threshold amounts related to Defendants' option to rescind. Defendants' election to rescind pursuant to this Section must be made in writing and be delivered to Class Counsel no later than the Effective Date of the Settlement. Upon the exercise by Defendants of the option to terminate, this Agreement is nullified as set forth above in Section IX.L.

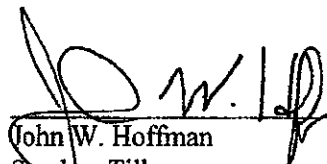
P. Waiver of Compliance

Any failure of any Party to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

IN WITNESS WHEREOF, Plaintiffs' counsel and proposed Class Counsel and Defendants' Counsel have executed this Settlement Agreement on this 26th day of June 2009; subject to Court approval.

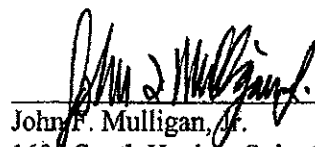
Plaintiffs' Counsel, Proposed Class Counsel, and Plaintiffs' Authorized Representatives:

By:




John W. Hoffman
Stephen Tillery
Douglas R. Sprong
Korein Tillery, LLC
505 N. 7th Street, Suite 3600
St. Louis, MO 63101

By:



John F. Mulligan, Jr.
1600 South Hanley, Suite 101
Richmond Heights, MO 63144


By:



Howard Paperner
9322 Manchester Road
St. Louis, MO 63119

Defendants' Counsel and Defendants' Authorized Representatives:

By:



THOMPSON COBURN, L.L.P.

Stephen B. Higgins

Amanda J. Hettinger

Sharon B. Rosenberg

Ann Ahrens Beck

One U.S. Bank Plaza

St. Louis MO 63101

By:



AT&T LEGAL

John F. Modler, Jr.

One AT&T Center Room 3558

St. Louis, MO 63101

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

ST. LOUIS COUNTY, MISSOURI,

Plaintiff,

vs.

AT&T, INC., et al.,

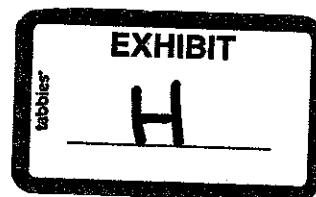
Defendants.

Case No. 08SL-CC125

Division No. 12

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of June ____, 2009, by and among plaintiff St. Louis County, Missouri ("Plaintiff") and Southwestern Bell Telephone Company d/b/a AT&T Missouri, f/k/a Southwestern Bell Telephone, L.P., SBC Long Distance, LLC d/b/a AT&T Long Distance, AT&T Messaging, Inc., AT&T Inc., American Information Technologies Corporation (Nevada), American Telephone and Telegraph Company, Ameritech Information Industry Services, Inc., Ameritech Publishing, Inc., Ameritech Services, Inc., AT&T Advanced Solutions, Inc. (now merged into AT&T Corp.), AT&T Advertising, L.P., AT&T Broadband Services Purchasing and Leasing, LLC, AT&T Capital Holdings International, Inc., AT&T Capital Holdings, Inc., AT&T Capital Services, Inc., AT&T Communications - East, Inc., AT&T Communications of the Southwest, Inc., AT&T Consulting Solutions, Inc., AT&T Corp., AT&T Credit Holdings, Inc., AT&T DataComm, Inc., AT&T Foundation, AT&T Global Network Services, LLC, AT&T Government Solutions, Inc., AT&T Information Systems, Inc., AT&T Labs, Inc., AT&T Management Services, L.P., AT&T Messaging, LLC, AT&T Network Procurement L.P., AT&T Operations, Inc., AT&T Services, Inc., AT&T Solutions, Inc., AT&T Technical Services Company, Inc., AT&T Technologies, Inc., AT&T Video Services, Inc., Bell



South Long Distance, Inc. d/b/a AT&T Long Distance Service, L.M. Berry & Company, Missouri Bell Telephone Company, Pacific Bell Telephone Company, Resort WiFi Operating Corp., SBC Asset Management, Inc., SBC Global Services, Inc., SBC Internet Services, Inc., SBC Telecom, Inc., SBC Tower Holdings, LLC, SBCSI Purchasing & Leasing Limited Partnership, SNET of America, Inc. d/b/a AT&T Long Distance East, Southwestern Bell Yellow Pages, Inc., Southwestern Bell Yellow Pages Resources, Inc., Sterling Commerce (America), Inc., Sterling Commerce, Inc., SWBT Purchasing & Leasing Limited Partnership, TCG America, Inc., TCG Kansas City, Inc., TCG St. Louis, Inc., Teleport Communications Group, Inc., Wayport, Inc., and YellowPages.com, LLC. (collectively "Defendants").

Notwithstanding anything to the contrary herein, those AT&T Inc. subsidiaries governed by the wireless settlement agreement in *St. Louis County v. AT&T Wireless Services, Inc., et al.*, Case No. 01-CC-004454, Circuit Court of St. Louis County, are expressly excluded from this Settlement Agreement. Their obligations to Plaintiff are not affected or altered by this Agreement in any respect.

PREAMBLE

WHEREAS, a dispute has arisen between Plaintiff and Defendants regarding the applicability of Plaintiff's business license tax to receipts from certain of Defendants' products and services;

WHEREAS, Plaintiff claims that Defendants are liable to Plaintiff under §§ 502.150 through 502.157 of the Revised Ordinances of St. Louis County for taxes (collectively, the "County Business License Tax") on revenues derived from Carrier Access (interstate and intrastate), End User Common Linesurcharges ("EUCL"), private line services (interstate and intrastate), long distance toll services (interstate and intrastate), federal and state universal

service fee surcharges ("FUSF" and "SUSF"), and other revenues upon which County Business License Taxes are not currently being paid by Defendants, and for interest and/or penalties thereon;

WHEREAS, Defendants have denied and continue to deny any and all liability with respect to the allegations raised against them;

WHEREAS, Defendants and Plaintiff wish to avoid the expense and uncertainty of continued litigation and desire to settle their disputes without further litigation, including all claims and issues that have been brought or could have been brought in this Action by or on behalf of Plaintiff, including by compromising Defendants' alleged past tax liability owed to Plaintiff, and establishing and/or clarifying what taxes Defendants are to pay to Plaintiff on their future revenues, all in accordance with the terms and conditions set forth in this Settlement Agreement;

WHEREAS, Defendants and Plaintiff have conducted an investigation and evaluation of the facts and law relating to the claims in this Action and believe this settlement is fair, reasonable, adequate, and in the best interests of the Parties, in light of the continued uncertainty and expense of litigation; and

WHEREAS, after arm's-length negotiations between counsel for Plaintiff and counsel for Defendants this Settlement Agreement has been reached.

NOW THEREFORE, it is hereby stipulated and agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, this Action shall be fully and finally settled and dismissed with prejudice and without costs to Defendants except as provided for under the following terms and conditions:

I. DEFINITIONS

As used in this Settlement Agreement and the related documents attached hereto as exhibits, the following terms shall have the meanings set forth below:

- A. "Action" means the civil action entitled *St. Louis County, Missouri v. AT&T, Inc., et al.*, No. 08SL-CC125, pending in the Circuit Court of the County of St. Louis, Missouri.
- B. "Court" means the Circuit Court of the County of St. Louis, Missouri.
- C. "Carrier Access" means a service provided by any Defendant whereby it originates or terminates long-distance traffic for other telecommunications carriers. It does not include EUCL, intraLATA toll charges and services, and other surcharges, products and services that Defendants have agreed to include as a Future Tax Benefit under Section II.A.2 herein.
- D. "Defendants" means (1) Southwestern Bell Telephone Company d/b/a AT&T Missouri SBC Long Distance, LLC d/b/a AT&T Long Distance, AT&T Messaging, Inc., AT&T Inc., American Information Technologies Corporation (Nevada), American Telephone and Telegraph Company, Ameritech Information Industry Services, Inc., Ameritech Publishing, Inc., Ameritech Services, Inc., AT&T Advanced Solutions, Inc. (now merged into AT&T Corp.), AT&T Advertising, L.P., AT&T Broadband Services Purchasing and Leasing, LLC, AT&T Capital Holdings International, Inc., AT&T Capital Holdings, Inc., AT&T Capital Services, Inc., AT&T Communications - East, Inc., AT&T Communications of the Southwest, Inc., AT&T Consulting Solutions, Inc., AT&T Corp., AT&T Credit Holdings, Inc., AT&T DataComm, Inc., AT&T Foundation, AT&T Global Network Services, LLC, AT&T Government Solutions, Inc., AT&T Information Systems, Inc., AT&T Labs, Inc., AT&T Management Services, L.P., AT&T Messaging,

LLC, AT&T Network Procurement L.P., AT&T Operations, Inc., AT&T Services, Inc., AT&T Solutions, Inc., AT&T Technical Services Company, Inc., AT&T Technologies, Inc., AT&T Video Services, Inc., Bell South Long Distance, Inc. d/b/a AT&T Long Distance Service, L.M. Berry & Company, Missouri Bell Telephone Company, Pacific Bell Telephone Company, Resort WiFi Operating Corp., SBC Asset Management, Inc., SBC Global Services, Inc., SBC Internet Services, Inc., SBC Telecom, Inc., SBC Tower Holdings LLC, SBCSI Purchasing & Leasing Limited Partnership, SNET of America, Inc. d/b/a AT&T Long Distance East, Southwestern Bell Yellow Pages, Inc., Southwestern Bell Yellow Pages Resources, Inc., Sterling Commerce (America), Inc., Sterling Commerce, Inc., SWBT Purchasing & Leasing Limited Partnership, TCG America, Inc., TCG Kansas City, Inc., TCG St. Louis, Inc., Teleport Communications Group, Inc., Wayport, Inc., and YellowPages.com, LLC; (2) all Persons on whose behalf any of the foregoing entities acted or purported to act; and (3) for each of the foregoing Persons and entities, each of their present, former, or future officers, directors, shareholders, employees, representatives, agents, principals, consultants, contractors, insurers, accountants, attorneys, partners, members, administrators, legatees, executors, heirs, estates, successors in interest, or assigns or any other Person or entity with whom any of them is affiliated or otherwise for whom any of them is responsible at law or in equity. For purposes of clarification, the term "Defendants" shall not include those AT&T Inc. subsidiaries governed by the wireless settlement agreement in *City of University City, et al. v. AT&T Wireless Services, Inc., et al.*, Case No. 01-CC-004454, Circuit Court of St. Louis County.

- E. **"Defendants' Counsel"** means John F. Medler, Jr., AT&T Legal Department, One AT&T Center, Room 3558, St. Louis, MO 63101, and Stephen B. Higgins, Amanda J. Hettinger, Sharon B. Rosenberg, and Ann Ahrens Beck, Thompson Coburn, LLP, One US Bank Plaza, St. Louis, MO 63101.
- F. **"Effective Date of Future Tax Benefit(s)"** means November 1, 2009.
- G. **"Joint Stipulation for Dismissal"** means the stipulations for dismissal, in the form attached hereto as Exhibit A, dismissing with prejudice all claims against Defendants, asserted in the Action.
- H. **"Parties"** means Defendants and Plaintiff.
- I. **"Back Tax Payment"** has the meaning set forth in Section II.A.1 below.
- J. **"Person" or "Persons"** means any natural person, firm, corporation, unincorporated association, partnership, or other form of legal entity or government body, including its agents and representatives.
- K. **"Released Claims"** means, without limitation, any and all claims, actions, demands, audits, rights, liabilities, complaints, causes of action (including, but not limited to, claims based on violation of any federal, state, or local law or regulation, fraud, unjust enrichment, unpaid taxes, back tax liability, and breach of contract, and claims arising under the laws of any other jurisdiction that have been or could or might have been alleged by Plaintiff in any form in the United States of America, as part of the present Action, or in any other action, arbitration, or proceeding), requests for damages, requests for injunctive relief, disgorgement of monies, requests for declaratory relief, requests for equitable relief of every nature and description whatsoever, requests for interest, penalties, attorneys' fees, costs, and expenses, whether known or unknown, arising out of

the claims that were made or that could have been made against Defendants regarding the alleged failure of Defendants to pay, or the alleged underpayment by Defendants of, the County Business License Tax, as applied to receipts due before June 20, 2009, or due after June 20, 2009, with respect to any receipts earned before June 20, 2009, from services: (1) alleged to be telephone, telecommunications, exchange telephone, public utility, and similar services; and/or (2) alleged to be related to such services, including but not limited to, receipts from Carrier Access (switched and special, interstate and intrastate), EUCL, private line service (interstate and intrastate), long distance toll (intra-LATA and inter-LATA, intrastate and interstate), FUSF and SUSF, all other fees and/or taxes, CallNotes ® voice messaging services, data services, information services, voice services, Customer Premises Equipment ("CPE"), rental or lease of network elements, wireless access, reciprocal compensation, directory and operator services, operator surcharges, dishonored fees and late fees, trunks, installation services, construction services, repair services, security services, advertising services, call blocking services, vertical services, call screening services, adjustments and credits, third-party billing services, charges for allowing customers to call outside a local area or into a local area (including, but not limited to, Outside the Base Rate Area ("OBRA") charges, Metropolitan Calling Area ("MCA") charges, optional Extended Area Service ("EAS") charges, and non-optional EAS charges), Voice-over-Internet-Protocol services and calling plans, inside wire and jack maintenance plans, surcharges for prison inmate calling, payphone services, Lifeline services, deaf relay services, 1-900 services, call forwarding services, network services, number portability charges and surcharges, all services billed out of the Defendants' CRIS or CABS databases or similar databases, and

other similar services. Plaintiff expressly acknowledges that "Released Claims," include, and this Settlement Agreement constitutes a release of, any and all claims that Plaintiff does not know or suspect to exist in its favor at the time of the release, which, if known by it, might have affected its settlement with and release of Defendants or might have affected its decision whether to object or participate in this Settlement Agreement or any portion or aspect of the Settlement Agreement reached by the Parties.

L. "Revenues Derived From Interstate Services" means revenues derived from, among other items, interstate telephone service and interstate private line service. It does not include revenues derived from intraLATA interstate telephone service.

M. "Settlement Agreement," "Settlement," or "Agreement" means this Settlement Agreement, including the attached Exhibits.

II. RELIEF

In consideration of a full, complete, and final settlement of this Action, and in consideration of dismissal of the Action with prejudice with respect to Defendants and the Releases and Dismissals in Section IV below, the Parties agree to the following:

A. Benefit

1. Amount of Back Tax Payment. AT&T Missouri and SBC Long Distance, LLC shall remit to Plaintiff a Back Tax Payment of \$ 4,605,672 within 30 days of the execution of this Agreement. Since the amount due Plaintiff is based on Plaintiff's proportionate share of a total settlement amount shared with municipalities in State ex rel. City Collectors of Wellston, et al. v. SBC Communications, Inc., et al, Cause No. 044-02645 in the Circuit Court of the City of St. Louis, ("Wellston") the final calculated amount may be different. Accordingly, AT&T Missouri shall adjust by withholding or

making additional payment as necessary when the final calculation in Wellston is made. Neither AT&T Inc., AT&T Messaging, Inc., nor any AT&T Inc. subsidiary other than AT&T Missouri and SBC Long Distance, LLC shall have any obligation to make a Back Tax Payment. Plaintiff agrees that the consideration paid by AT&T Missouri and SBC Long Distance, LLC is sufficient consideration to support a valid and binding settlement agreement and a full release of back tax liability for those entities, as well as themselves.

2. Future Tax Benefit. Beginning on the Effective Date of Future Tax Benefits, both AT&T Missouri and SBC Long Distance, LLC, and any Defendants providing similar services, shall pay, going forward, future County Business License Taxes to Plaintiff as follows:

a. *AT&T Missouri*

With respect to AT&T Missouri, the County Business License Tax shall be interpreted, beginning on the Effective Date of Future Tax Benefits, to apply to: (i) revenues upon which AT&T Missouri already pays County Business License Tax; PLUS (ii) revenues from any additional services that are subject to Missouri's state sales tax on "telecommunications service" as that term is used in § 144.010.1(13), as restricted by § 144.030.1, RSMo.; PLUS (iii) revenues as described in section (ii) above from any retail customer which would otherwise be subject to the Missouri state sales tax but for an exemption for such customer from the state sales tax (e.g., not-for-profits under § 144.030.2(19), RSMo). Services subject to the Business License Tax shall include, but not be limited to, FUSE, SUSF, intraLATA toll service, EUCL, and intrastate private line. Services subject to the County Business License Tax shall not include, inter alia, Carrier

Access, Revenues Derived From Interstate Services, except as otherwise provided in subsection c below (although AT&T Missouri agrees to pay the County Business License Tax on revenues from intraLATA interstate telephone service), Call Notes voice messaging services, and CPE. For purposes of clarification only, AT&T Missouri acknowledges that it will include receipts from County Business License Tax surcharges in the County Business License Tax base.

b. *SBC Long Distance, LLC*

With respect to SBC Long Distance, LLC, the County Business License Tax shall be interpreted, beginning on the Effective Date of Future Tax Benefits, to apply to: (i) revenues from services that are subject to Missouri's state sales tax on "telecommunications service" as that term is used in § 144.010.1(13), as restricted by § 144.030.1, RSMo.; PLUS (ii) revenues as described in section (i) above from any retail customer which would otherwise be subject to the Missouri state sales tax but for an exemption for such customer from the state sales tax (e.g., not-for-profits under § 144.030.2(19), RSMo). Services subject to the County Business License Tax shall include, but not be limited to, intrastate long distance telephone services. Services subject to the County Business License Tax shall not include, inter alia, interstate long distance telephone services, except as otherwise provided in subsection c. below. For purposes of clarification only, SBC Long Distance, LLC acknowledges that, henceforth, it will include receipts from County Business License Tax surcharges in the County Business License Tax base.

c. *Bundled and Packaged Telephone Services*

In the event Defendants, individually or collectively, receive revenues from bundled or packaged telephone services, whether intrastate or interstate, and such telephone services are not separately accounted for on an end-user's bill, Defendant(s) shall pay future County Business License Taxes on such bundled and packaged telephone services consistent with 12 Mo. CSR 10-3.188(7) or any successor regulation.

d. Reservation of Rights

Notwithstanding this Settlement Agreement, Plaintiff retains the right to audit and inspect the books and records of AT&T Missouri, SBC Long Distance, LLC, and any other Defendant entity to ensure compliance with this Agreement, and does not waive or abrogate any right(s) it possesses under its codes or ordinances. In the event Plaintiff has reason to question compliance with this Agreement, and in particular to question whether a service is taxable pursuant to § 144.010.1(13), as restricted by § 144.030.1, RSMo, the Parties agree Plaintiff reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this Agreement.

e. Hancock Amendment

Nothing in this Settlement Agreement is intended to broaden the County Business License Tax base in violation of the Hancock Amendment to the Missouri Constitution.

f. Rates

Defendants agree to pay future County Business License Taxes at the rates

specified within Plaintiff's ordinances, unless and until there is a change in law as specified in subsection "g" below.

g. Change of Law

(i) Change of Law Altering Defendants' Future Obligations

The obligations of Defendants shall continue with respect to Plaintiff unless and until: (1) a court or administrative or regulatory body of competent jurisdiction determines, or Plaintiff specifies in writing after the Parties execute this Agreement, that the County Business License Tax does not apply to any or all of the subject services or gross receipts derived therefrom, and such determination is not subject to further appeal or the time to appeal has expired and no appeal or further appeal has been timely filed; (2) the Missouri General Assembly or other legislative body enacts constitutional legislation removing the authority of Plaintiff to impose a County Business License Tax to any or all of the subject services or gross receipts derived therefrom, and such legislation is in effect; (3) the Missouri Department of Revenue issues a final ruling that any service taxable pursuant to Sections II.A.2.a.(ii) and b.(i) of this Agreement is no longer subject to the state sales tax; or (4) any other constitutional change in law, including a change in the County Business License Tax, occurs that affects the obligations of Defendants under this Section, in which case, the remaining obligations shall be consistent with such determination, legislation, or change. Defendants shall not, in the case of any judgment, legislation, or other change of law as referred to above, be entitled to recover any sums paid which became due and owing prior to the finality of such judgment or effective date of such legislation or other change of law.

(ii) Change of Code or Ordinance

Nothing in this Settlement Agreement shall serve to restrict Plaintiff from amending its ordinance or code in the future, in accordance with law, to tax or exclude from taxation any product or service covered by this Settlement Agreement. In the event Plaintiff seeks to amend the County Business License Tax to expand its tax base, the Parties agree the Defendants reserve all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to challenge the legality, application or enforcement of the amendment.

(iii) Change of Law for a Municipality Applies to Plaintiff

In the event of:

- (1) a settlement of or a final non-appealable judgment in City of Springfield v. Cingular Wireless LLC, et al., cause no. 04-CV-4099, currently pending in the U. S. District Court for the Western District of Missouri, at any time, or
- (2) a settlement of or a final non-appealable judgment in another case within five years of the Effective Date of the Settlement, or
- (3) a legislative change within five years of the Effective Date of the Settlement, and pursuant to which Defendants, individually or collectively, voluntarily or involuntarily, pay a Business License Tax to a Municipality whose ordinances are substantially similar to the County Business License Tax, in the future, and include or are required to include receipts from a product or service excluded from this Settlement, then Defendants agree to treat Plaintiff the same as the Municipality being paid and to pay taxes to Plaintiff on the same receipt(s), if Plaintiff has satisfied the preconditions set forth in Section II.B.2, at then-existing rates, unless such receipts are specifically and expressly excluded from taxation by the County Business License Tax. Plaintiff shall

not, in case of any settlement, final non-appealable judgment, or legislative change referred to above, be entitled to recover back taxes on receipts from a product or service excluded from this Settlement earned prior to the finality of such settlement, final non-appealable judgment or legislative change.

Should Plaintiff have reason to question Defendants' compliance with this provision, and in particular to question whether its ordinance is substantially similar to the ordinance of the Municipality being paid, the Parties agree Plaintiff reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this provision.

Likewise, each Defendant, either individually or collectively, reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings should it have reason to question whether Plaintiff is entitled to payment pursuant to this provision. Further, the Parties agree that nothing in this paragraph shall serve to preclude Plaintiff from amending the County Business License Tax code or ordinances in the future, so as to clarify or conform its code or ordinance to reflect any change in law.

The Parties agree that the promises and commitments contained in this section are vital provisions going to the very substance or root of the Settlement and that a failure or breach of such promises and commitments would constitute a material breach of this Settlement Agreement. In said event, Plaintiff and each Defendant, either individually or collectively, would be entitled to all remedies available at law or in equity for such a material breach, including, but not limited to, rescission of this Settlement Agreement. Similarly, in the event of:

(1) a final, contested¹, non-appealable judgment in the case of City of Springfield v. Cingular Wireless LLC, et al., cause no. 04-CV-4099, currently pending in the U. S. District Court for the Western District of Missouri, at any time, or

(2) a legislative change within five (5) years of the Effective Date of the Settlement,

and pursuant to which Defendants, individually or collectively, are relieved from paying, or are determined not to owe, Business License Taxes on receipts from a product or service that is specifically included within this Settlement, then Defendants may treat Plaintiff insofar as its ordinance is substantially similar to Springfield's ordinance the same (or conform its payments to the legislative change, as the case may be) and may refrain from paying County Business License Taxes to Plaintiff on the same receipts, unless such receipts are specifically and expressly included in the tax base by the Plaintiff's County Business License Tax and otherwise authorized by law..

This provision (iii) shall not apply in the event Defendants' payment of a Business License Tax to any Municipality on revenues in addition to those listed in this Settlement Agreement is the result of any Municipality expanding the scope of its Business License Tax base through a legislative change or as otherwise authorized by law.

(iv) Separate Agreements with Wellston Class Members

If Defendants, individually or collectively, enter into a written agreement with a Wellston Class Member or a representative of a Wellston Class Member that is

¹ The term "contested," as used in this provision, is meant to exclude a settlement, consent judgment, consent decree, negotiated compromise, friendly suit, or similar resolution.

enforceable by such Class Member within five (5) years of the date of execution of this Agreement, and such agreement includes terms that are materially more favorable to the Class Member than to Plaintiff, then Defendants shall promptly notify Plaintiff of such agreement, and Plaintiff shall, at its discretion, have the right to amend this Agreement to take advantage of such more favorable terms. This provision shall only apply in the event any Wellston Class Member enters into an agreement with a Defendant that allows or requires such Defendant to pay prospective Business License Taxes without regard to ordinance exemption(s) or exclusion(s), or on materially more favorable terms than those being paid by Defendants under this Agreement. In such case, insofar as Plaintiff is similarly situated, Defendants shall on a going forward basis pay Business License Taxes to Plaintiff (unless Plaintiff instructs otherwise) on the same terms as those applicable to the Wellston Class Member(s) who reached the agreement(s).

h. New Products and Services

In the future, Defendants, individually or collectively, may develop new products and services. If they are taxable pursuant to Section II.A.2, above, and in particular pursuant to § 144.010.1(13), as restricted by § 144.030.1, RSMo., then Defendants agree to include such products and services in the County Business License Tax base and to pay County Business License Taxes thereon. In the event Plaintiff has reason to question compliance with this provision, and in particular to question whether a product or service is taxable pursuant to § 144.010.1(13), as restricted by § 144.030.1, RSMo, the Parties agree Plaintiff reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this provision.

3. No Lobbying Missouri General Assembly

Defendants agree that, for a period of five (5) years from the date this Agreement is executed by counsel for Plaintiff and counsel for Defendants, Defendants will not seek or support legislation in the Missouri General Assembly that would (a) cap or reduce the County Business License Taxes subject to this Settlement Agreement, (b) interfere with or reduce Plaintiff's rights under Sections II.A.2.g (ii) and (iii) or (c) exclude from the County Business License Tax base sources of revenue agreed in this Settlement Agreement to be included within the tax base. Nothing in this Section shall preclude Defendants from opposing any proposal to increase the rate or broaden the scope of the County Business License Tax. The Parties agree that the promises and commitments by Defendants contained in this Section are vital provisions going to the very substance or root of the Settlement and that failure or breach of such promises or commitments would constitute a material breach of this Settlement Agreement, entitling Plaintiff to all remedies available at law or equity for such a material breach, including but not limited to rescission of this Agreement.

4. Interim Prospective Tax Payments

Any payments of County Business License Taxes by AT&T Missouri made before the Effective Date of Future Tax Benefits shall be made in the same manner and on the same sources of revenue as AT&T Missouri has always made such payments. The obligation of SBC Long Distance, LLC to make any future tax payments shall not arise until the Effective Date of Future Tax Benefits. Neither Defendant shall have any liability to Plaintiff, other than the obligations set forth in this Settlement Agreement, for any future tax payments until the Effective Date of Future Tax Benefits.

B. Most Favored Nation—Other Landline Providers Treated the Same

1. Non-Discrimination; Reasonable Efforts to Enforce

Plaintiff agrees not to unconstitutionally discriminate among landline telephone providers, and to treat similarly-situated providers similarly. Accordingly, Plaintiff agrees to use reasonable efforts to enforce its Business License Taxes in a similar way with respect to similarly situated landline telephone providers, and to treat, as taxable, the same or similar revenue sources of such other landline providers as are taxable under this Agreement. Plaintiff further agrees to take reasonable tax enforcement actions to ensure that all similarly-situated landline providers pay a Business License Tax in the same manner as Defendants are required to do so.

In the event Plaintiff breaches this provision, each Defendant agrees that its remedy shall be limited to specific performance only.

2. Disclosures by Landline Providers

If Plaintiff seeks to enforce any of the rights guaranteed by Section II.A.2.g(iii) of this Agreement, Plaintiff, as a pre-condition of enforcing its rights under such Section, shall present proof to Defendants that it has, as part of its reasonable efforts under Section II. B. 1, adopted a rule requiring (in whatever manner or procedure authorized by statute, ordinance, County charter, or otherwise) all similarly situated landline providers within the County to file, at least once each year, a verified statement disclosing the revenue streams on which it pays or does not pay the County Business License Tax. The revenue streams contained in such statement shall include, at minimum, substantially the following: FUSF, SUSE, intraLATA toll service, EUCL, intrastate long-distance, fixed VoIP and intrastate private line service as well as any additional items the Plaintiff contends are taxable as a result of the application of Section II.A.2.g(iii).

3. More Favorable Settlements.

If Plaintiff settles claims regarding the alleged failure of another similarly situated landline provider to pay Business License Taxes, and such settlement includes terms that are materially more favorable to the other provider than those set forth herein, Plaintiff shall promptly notify Defendants of such agreement, and Defendants shall, at their discretion, have the right to amend this Agreement to take advantage of such more favorable terms.

In the event Plaintiff breaches this provision, Defendants agree they shall not be entitled to recover any sums paid which became due and owing prior to the date of occurrence of said breach.

With regard to Defendants' payment of Future Tax Benefits pursuant to Section II.A.2 above, this provision shall apply in the event Plaintiff enters into an Agreement or issues instructions to another similarly situated landline provider that allows such provider to pay prospective Business License Taxes at a lower rate or otherwise on more favorable terms than those being paid by Defendants. In such case, Defendants shall be entitled on a going forward basis to pay the County Business License Taxes at the same rate and/or the same terms as those applicable to such other provider. However, nothing in this section shall be construed to apply to another provider's payment of back Business License Taxes, or in any way affect Defendants' obligations to pay Back Tax Benefits under Section II.A.1 of this Agreement.

4. Notwithstanding anything to the contrary contained herein, Defendants agree that this Section B (Most Favored Nation) shall not encompass any landline telephone provider while in bankruptcy, nor shall the treatment of any landline telephone provider while in bankruptcy, either through action or inaction, serve to impose any obligations upon Plaintiff under this provision. For purposes of clarification, the terms "landline telephone provider" or "landline provider", as used in this Section B., do not include any company while in bankruptcy or any

company with a landline market share of 10% or less as measured by the receipts subject to the County's Business License Tax base.

C. Pass Through

Plaintiff agrees 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 Plaintiff under the County Business License Tax and this Settlement Agreement.

III. PAYMENT OF ATTORNEYS' FEES AND EXPENSES

Each Party shall bear its own costs and attorney's fees.

IV. RELEASES AND DISMISSALS

In order to effectuate the Parties' desire to fully, finally and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation, Plaintiff and Defendants agree as follows:

A. Release by Plaintiff. Upon execution of this Agreement by both Plaintiff and Defendants, Plaintiff shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Released Claims, as defined in Section I.K. Further, upon such execution, and to the fullest extent permitted by law, Plaintiff shall be barred and estopped from commencing, prosecuting, or participating in, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

B. Release by Defendants. Upon execution of this Agreement by both Plaintiff and Defendants, Defendants shall be deemed to have, and by operation of this Agreement shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff and its present and

former officials, agents, employees, and attorneys, from all claims and counterclaims arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the litigation or the Released Claims. In any future dispute relating to Defendants' payment of County Business License Tax, Defendants shall not raise any claims or defenses relating to the enactment or validity of the County Business License Tax in the form existing as of the execution date of this Settlement Agreement or the applicability of those codes or ordinances to the revenue streams deemed included within the County Business License Tax base under this Settlement Agreement.

C. Dismissal of Action. Defendants and Plaintiff agree to file the Joint Stipulation for Dismissal in the Action, no later than ten (10) days after the execution of this Agreement by both Defendants and Plaintiff.

D. Preclusive Effect. Upon execution of this Settlement Agreement by both Plaintiff and Defendants, Plaintiff shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights and remedies provided hereunder. No other action, demand, suit or other claim may be pursued against the Defendants with respect to the Released Claims by Plaintiff. The Parties acknowledge and agree that Defendants' agreement to pay the Back Tax Payment and the County Business License Tax going forward is based on Plaintiff's representation that it has the authority to enter into, and will be bound by, this Settlement Agreement. The Parties further acknowledge and agree that, in the event a court of competent jurisdiction declares that this Settlement Agreement is unenforceable against, or can be voided or rescinded by, Plaintiff, it would be unjust and inequitable for Plaintiff to retain the consideration paid by Defendants hereunder, yet reinstitute any legal proceeding against Defendants with respect to the matters released herein. Notwithstanding anything to the contrary contained herein

or provided under applicable law (including without limitation, to the extent applicable, § 432.070, RSMo), the dismissal with prejudice of the Action as set forth herein shall be res judicata and shall bar the re-filing of any and all claims that were or could have been brought by Plaintiff. In addition, in the event that, despite the provisions of this Settlement Agreement, Plaintiff is permitted in the future to pursue any claim that is or was a Released Claim under this Agreement, Plaintiff shall forfeit and return to Defendants, prior to proceeding with any such claim, any Back Tax Payment received from Defendants pursuant to this Agreement. For avoidance of doubt, the provisions of this Section shall be severable from the remaining provisions of this Settlement Agreement, and the Parties acknowledge and agree that the consideration given by Defendants under this Settlement Agreement constitutes fair and adequate consideration for the release by Plaintiff hereunder, and for the obligations of Plaintiff under this Section and the remaining Sections of this Settlement Agreement.

E. Mistake. In entering into this Settlement Agreement, Plaintiff and Defendants each assume the risk of any mistake of fact or law. If they, or any of them, should later discover that any fact which they relied upon in entering this Agreement is not true, or that their understanding of the facts or law was incorrect, they shall not be entitled to set aside this Settlement Agreement by reason thereof.

F. Covenant Not to Sue. As of the date of execution of this Settlement Agreement by both Plaintiff and Defendants, this Settlement Agreement may be pled as a full and complete defense to any Released Claims that may be instituted, prosecuted or attempted in breach of this Settlement Agreement. Except as otherwise provided in Sections II.A.2.d, II.A.2.g, and II.A.2.h herein, Plaintiff covenants that it will not institute or prosecute, against the Defendants, or any of them, any action, suit or other proceeding based in whole or in part upon any of the Released

Claims, and Defendants likewise covenant that they will not institute or prosecute against Plaintiff, or any of its officials or employees, any action, suit or other proceeding based in whole or in part upon any of the Released Claims nor based in whole or in part on the defenses, counterclaims, or other assertions raised by the Defendants in the Action.

G. Injunctive Relief. The Parties, and each of them, covenant that this Settlement Agreement may be used as a basis for a temporary restraining order, preliminary injunction and permanent injunction against any breach of this Agreement. The Parties judicially admit hereby for all purposes that time is of the essence as to all terms and conditions of the Settlement Agreement and that damages for a breach of this Settlement Agreement would be inadequate.

V. **LIMITATIONS ON USE OF SETTLEMENT AGREEMENT**

The Parties' use of the Settlement Agreement shall be limited as follows:

A. No Admission. Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiations or proceedings is or shall be construed as or deemed to be legal evidence of an admission by any of the Defendants with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by Plaintiff in the Action, or the liability of any of the Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Aside from the obligation to pay the County Business License Tax going forward, as set forth in Section II.A.2 above, this Settlement Agreement is not intended to, and shall not be construed as imposing any other obligations on Defendants under the County Business License Tax, including without limitation any rate regulation or customer service requirements.

B. No Evidentiary Use. This Agreement shall not be used, offered or received into evidence in the Action for any purpose other than to enforce, construe or finalize the terms of the Settlement Agreement. Neither this Agreement nor any of its terms shall be offered or received into evidence in any other action or proceeding except in a proceeding by a third party challenging any of the payments or obligations hereunder, or as otherwise provided herein.

C. Characterization to Media. The Parties agree that in the event any counsel for any Party contacts or is contacted by any member of the media regarding the Action or this Settlement Agreement, said counsel shall not refer to or characterize the Action or the Settlement Agreement as continuing or evidencing an admission or inference of: (1) liability, fault or wrongdoing on the part of Defendants or Defendants' Counsel, including any wrongdoing in connection with the defense of the Action; or (2) lack of merit of any claim asserted in the Action, or wrongdoing on the part of Plaintiff or Plaintiff's Counsel in connection with the institution, prosecution or settlement of the Action.

VI. MISCELLANEOUS PROVISIONS

A. Assignment. Except for the ordinary assignment of tax revenues in connection with municipal tax anticipations and other financings, each Party represents, covenants and warrants that it has not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action or rights that it herein releases.

B. Binding on Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors and assigns.

C. Captions and Interpretations. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or

describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

D. Construction. The Parties agree that the terms and conditions of this Settlement Agreement are the result of arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, or its counsel, participated in the drafting of this Agreement.

E. Counterparts. This Agreement, and any amendments hereto, may be executed in any number of counterparts, and any Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The Parties agree that this Agreement may be signed by any Party and transmitted to the other Party by facsimile with originals to follow. The Parties agree that such signature transmitted by facsimile shall bind each such Party to this Agreement.

F. Governing Law. Construction and interpretation of the Agreement shall be determined in accordance with the laws of the State of Missouri, irrespective of the State of Missouri's choice of law principles.

G. Integration Clause. This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties in respect of the subject matter contained herein. There are no promises, representations, warranties, covenants or undertakings governing the subject matter of this Agreement other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Agreement may not be changed, altered or modified, except in a writing signed by the Parties. This

Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

H. Invalidation. The voiding, by Court order or otherwise, of any material portion of this Agreement shall invalidate the Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect, except as otherwise explicitly provided for in Section IV.D.

I. Jurisdiction. The Court shall retain jurisdiction, after dismissal of the Action, with respect to enforcement of the terms of this Settlement, and all Parties submit to the exclusive jurisdiction of the Court with respect to the enforcement of the Settlement and any dispute with respect thereto.

J. No Collateral Attack. This Agreement shall not be subject to collateral attack by any Party at any time.

K. Parties' Authority. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions hereof.

L. Receipt of Advice of Counsel. The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement, and fully understanding its legal effect.


M. Waiver of Compliance. Any failure of any Party to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement or condition. A waiver or failure to insist upon strict compliance with any

representation, warranty, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

IN WITNESS WHEREOF, Plaintiff's counsel and Defendants' Counsel have executed this Settlement Agreement on this 26th day of June, 2009.

Plaintiff's Counsel:

**PATRICIA REDINGTON
COUNTY COUNSELOR**


Patricia Redington # 33143
Cynthia L. Hoemann #28245
James H. White # 21427
41 South Central Ave.
Clayton, MO 63105

Approved:



Director of Administration

Approved:


Accounting Officer

Defendants' Counsel:

By:



THOMPSON COBURN, L.L.P.

Stephen B. Higgins

Amanda J. Hettinger

Sharon B. Rosenberg

Ann A. Beck

One U.S. Bank Plaza

St. Louis MO 63101



AT&T LEGAL DEPARTMENT

John F. Medler, Jr.

One AT&T Center Room 3558

St. Louis, MO 63101

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into this _____ day of January, 2010 by Southwestern Bell Telephone Company (d/b/a AT&T Missouri) and all of its past, present and future employees, agents, divisions, representatives, insurers, shareholders, officers, directors, assigns, direct and indirect parent, predecessor, successor, affiliate and subsidiary companies, partners and joint venture entities, (collectively, "AT&T") and the City of Springfield, Missouri, a charter city in the State of Missouri ("Springfield"). The Agreement is as follows:

RECITALS

The following recitals are a material part of this Agreement:

Springfield is and was, at all relevant times, a lawfully existing charter city in the State of Missouri.

AT&T is and was, at all relevant times, directly or through its predecessor entities and affiliates, providing telephone, telephonic and telecommunications services and equipment to persons, firms and entities in Springfield.

There is litigation pending between Springfield and AT&T in the United States District Court for the Western District of Missouri captioned *City of Jefferson and City of Springfield v. Cingular Wireless LLC, et al.*, Case No. 04-CV-4099-NKL (hereinafter referred to as the "Litigation"). In the Litigation, Springfield seeks to obtain a determination that certain revenue streams are within the gross receipts tax applicable to AT&T pursuant to Springfield City Code Section 70-452 ("Section 70-452").

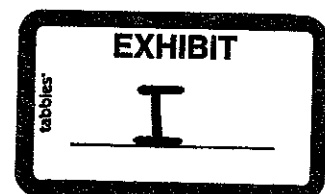
The Litigation is pending and Springfield intends, absent execution of this Agreement, to litigate the federal declaratory judgment to conclusion and then commence an administrative action under its City Code against AT&T to obtain a determination as to the precise amount of taxes owed by AT&T.

AT&T denies any and all liability for taxes and will continue to defend itself in litigation and otherwise absent execution of this Agreement.

The parties hereto desire to resolve all disputes, claims, allegations, and/or charges, however denominated, that are now pending or may exist between them, in any way, relating to or arising out of the Litigation, and/or the payment or non-payment of the tax under Section 70-452 for all periods through five years after the Effective Date of this Agreement.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Springfield and AT&T agree as follows:



1. Dismissal of the Litigation. The parties shall file with the Court within two (2) business days after this Agreement is fully executed a Stipulation of Dismissal With Prejudice, each party to bear its own costs. The parties hereby expressly acknowledge and agree that this dismissal shall have no res judicata effect or collateral estoppel effect since there was no judgment reached as to the merits of this matter.

2. Back Tax Payment to Springfield. On or before December 30, 2009 or within ten (10) business days after the receipt of this fully-executed Agreement and W-9 tax documentation from Springfield and Lowther Johnson, Attorneys at Law, Southwestern Bell Telephone Company d/b/a AT&T Missouri will pay the amount of Twelve Million Dollars (\$12,000,000.00) by wire transfer as follows: \$7,450,000.00 shall be directly wire transferred to the City of Springfield and \$4,550,000.00 shall be directly wire transferred to Lowther Johnson, LLC. No other AT&T entity other than AT&T Missouri shall have any obligation to make a back tax payment

3. Future Payments to Springfield. Commencing with the first quarterly payment in April 2010, AT&T will continue to report its gross receipts and remit payments due to the City of Springfield in a manner commensurate with Section 70-452 and payments to other Missouri cities for services subject to the Springfield's Business License Tax as long as Section 70-452 remains in full force and effect and in a form that is not materially amended, changed or modified from its current form as it relates to the taxation of telephone, telephonic or telecommunications services. Starting with the first regular license tax payment in April 2010 and until Springfield issues a notice of assessment, institutes an audit or files a lawsuit against AT&T arising from AT&T's payments pursuant to Section 70-452, AT&T will include (i) revenues upon which AT&T Missouri already pays a tax pursuant to Section 70-452; PLUS (ii) revenues subject to Missouri's state sales tax on "telecommunications service," as that term is used in R.S. Mo. § 144.010(13) as restricted by R.S. Mo. § 144.030.1, in its calculation of payments owed under Section 70-452; PLUS (iii) revenues as described in section (ii) above from any retail customer which would otherwise be subject to the Missouri state sales tax but for an exemption for such customer from the state sales tax (e.g., not-for-profits under § 144.030.2(19) RSMo). These revenues currently include, but are not limited to, receipts from fixed intrastate Voice over Internet Protocol ("VoIP") service, Federal Universal Service Fund ("FUSF") charges, State Universal Service Fund ("SUSF") charges, receipts from toll service within a single local access and transport area ("intraLATA toll service"), and user common line ("EUCL") charges, receipts from intrastate private line service, and receipts from Business License Tax surcharges. There remains a dispute between the parties with respect to certain revenue streams such as Carrier Access, Revenue Derived from Interstate Services (unless part of a bundled and packaged telephone services), Call Notes voice messaging service, and the provision of Customer Premises Equipment ("CPE"), and this Agreement does not determine the taxability of such revenue streams. Nothing in this Agreement, however, shall require AT&T to pay a License Tax pursuant to Section 70-452 on revenue generated from such disputed services. Other revenues not listed herein (such as nomadic VoIP) may or may not be subject to the Springfield tax. In the event AT&T, individually or collectively, receive revenues from bundled or packaged telephone services, whether intrastate or interstate, and such telephone services are not separately accounted for on an end-user's bill, AT&T shall include receipts from such bundled and packaged telephone services in its calculation of payments owed under Section 70-452 consistent with 12 Mo. CSR 10-3.188(7) or any successor regulation. AT&T's obligation to

remit the Tax is subject to (a) any future constitutional change to Section 70-452 or applicable and valid federal, state or local law, (b) any future constitutional and valid legislation, judicial, administrative tribunal or administrative rule-making applying to Section 70-452. The party with knowledge of such actions shall give notice to the attorney's offices of the other party at the earliest opportunity prior to a ruling or determination or passage of such action.. AT&T's and the City's remaining obligations under this Section shall be consistent with such change, legislation, or determination to the extent such change, legislation or determination is valid and constitutional.

4. **No Payment Under Protest or Refunds.** Starting with the first regular license tax payment after the Effective Date and until the end of the covenant period identified in section nine below, AT&T will not seek any tax refunds for payments under Section 70-452 calculated as described in the precoding section.

5. **Effective Date of Settlement Agreement.** This Agreement will be in effect from the date the parties execute the Agreement (the "Effective Date").

6. **Release of Claims Against AT&T.** Springfield does hereby remise, release, acquit and forever discharge AT&T from any and all claims for damages, back taxes, interest, penalties or any other monetary claims whatsoever, related to the Litigation, and/or Section 70-452, for gross receipts received by AT&T through five years after the Effective Date of this Agreement ("Released Claims"). Springfield agrees that the back tax and future tax payments referenced in Sections 2 and 3 above are sufficient consideration to support a valid and binding settlement agreement and a full release of back tax liability for AT&T.

7. **Release of Claims Against Springfield.** AT&T hereby remises, releases, acquits and forever discharges Springfield and its employees, agents, representatives, city council members and mayor from any and all matters, claims, charges, demands, causes of action, debts, liabilities, requests for fees or expenses, controversies, judgments, and suits of every kind and nature whatsoever ("Claims"), related to the Litigation, and/or Section 70-452, for gross receipts received by AT&T prior to the Effective Date of this Agreement.

8. **Limitation on Releases.** This release is intended to release all claims relating to wireline telephone, telephonic and telecommunications service and/or equipment provided or sold by AT&T and claims related to the application of Section 70-452 to all revenues received by AT&T from gross receipts in Springfield prior to the execution of this Agreement. To the extent any "past, present and future employees, agents, divisions, representatives, insurers, shareholders, officers, directors, assigns, direct and indirect, parent predecessor, successor, affiliate and subsidiary companies, partners and joint venture entities" of AT&T provide wireless telecommunications services, claims related to such wireless services are not released herein, and may be the subject of another and separate Settlement Agreement with AT&T Mobility.

9. **Covenant Not To Sue, Covenant Not to Issue a Notice of Assessment and Covenant Not To Audit.** As further consideration for the payment described in Section 2 above, Springfield agrees it will not sue, issue a notice of assessment or audit AT&T for a period of five (5) years from the Effective Date, provided remittances do not deviate materially from what remittances could be expected to be based on sales tax payments and information provided

by AT&T or others to Springfield. "Deviate materially" as used in this section means the tax base upon which the tax is paid pursuant to Section 70-452 is not less than 100% of the taxable base reported on contemporaneous sales tax returns, the parties acknowledging and agreeing that Section 70-452 is a business license tax, not a sales tax. Prior to any demand for audit, issuing of a notice of assessment, or filing of suit, Springfield and AT&T shall attempt to mediate any differences for at least sixty (60) days with the costs of the same split by the two parties. In addition, AT&T agrees that it will not pursue any legislative, administrative or judicial alteration of Springfield's ordinance or rights thereunder for the same time period.

10. **Further Assurances.** The parties executing this Agreement agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement. The parties agree that their successors, agents and assigns shall be bound to the obligations hereunder.

11. **No Admission of Liability and No Waiver or Estoppel Effect.** This Agreement represents the settlement of disputed claims, and is not an admission of liability or of indebtedness by any party. This Agreement shall not constitute a confession of judgment by any party hereto. Nothing in this Agreement, nor in any of the calculations underlying this Agreement, shall be deemed to constitute a waiver or estoppel against AT&T or Springfield with respect to the appropriate amount, revenue streams upon which to determine the tax remittances, or the proper calculation of future remittances of the Tax. Nor shall this Agreement be construed as a waiver or estoppel against Springfield with respect to the proper revenue streams upon which AT&T or other telephone companies should base their remittances of the Tax. Aside from the obligation to pay license taxes going forward, as set forth in Section 3 above, this Settlement Agreement is not intended to, and shall not be construed as, imposing any other obligations on AT&T under Section 70-452, including without limitation, any rate regulation or customer service requirements or limiting any right the City of Springfield may possess not released herein.

12. **Disclosure of Terms of Agreement.** The parties will work together to prepare a Joint Press Release, acceptable to both parties, using the standard of reasonableness. The parties will not further publicize or take affirmative action to disclose the terms of this Agreement except as is required to approve and implement the terms of the Agreement, or except as otherwise required by law or court order. The parties acknowledge that the terms of the agreement may be subject to disclosure by Springfield under applicable state law.

13. **Enforcement.** All remedies at law or in equity shall be available to either party hereto for the enforcement of this Agreement. This Agreement may be pled as a full bar to any claims arising from the transactions and incidents which are the subject matter of this Agreement.

14. **Governing Law.** This Agreement shall be governed by the laws of the State of Missouri.

15. **Advice of Counsel and No Representation.** All parties to this Agreement have been fully advised by counsel before signing it. The parties to this Agreement have not relied on any written or oral promises in entering this Agreement.

16. **Preclusive Effect.** On the Effective Date of the Agreement, Springfield shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights and remedies provided hereunder. No other action, demand, suit or other claim may be pursued against AT&T with respect to the Released Claims. The parties acknowledge and agree that AT&T's agreement to pay the back tax and future tax payments referenced in Sections 2 and 3 above is based on Springfield's representation that it has the authority to enter into, and will be bound by, this Settlement Agreement. The parties further acknowledge and agree that, in the event a court of competent jurisdiction declares that this Settlement Agreement is unenforceable against, or can be voided or rescinded by Springfield, it would be unjust and inequitable for Springfield to retain the consideration paid by AT&T hereunder, yet reinstitute any legal proceeding against AT&T with respect to the Released Claims, except as described in Section 9 above. Notwithstanding anything to the contrary contained herein or provided under applicable law (including without limitation, to the extent applicable, § 432.070 RSMo), the dismissal with prejudice of the Litigation as set forth herein shall be res judicata as to Released Claims and shall bar the re-filing of any and all Released Claims that were or could have been brought by Springfield except as described in Section 9. In addition, in the event that Springfield is permitted in the future to pursue any claim that is or was a Released Claim under this Agreement, except as otherwise set forth in Section 9 above, Springfield shall forfeit and return to AT&T, prior to proceeding with any such claim, the payment referenced in Section 2 above. For avoidance of doubt, the provisions of this Section shall be severable from the remaining provisions of this Settlement Agreement, and the parties acknowledge and agree that the consideration given by AT&T and the City of Springfield, Missouri under this Settlement Agreement constitutes fair and adequate consideration for the releases by AT&T and Springfield hereunder, and for the obligations of AT&T and Springfield under this Section and the remaining Sections of this Settlement Agreement.

17. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and all prior oral or written agreements with respect to the matters set forth herein are expressly superseded by the terms of this Agreement.

18. **Modification and Waiver.** This Agreement may not be modified except by written amendment to this Agreement signed by all parties hereto.

19. **Non-Discrimination: Reasonable Efforts to Enforce.** Springfield agrees not to unconstitutionally discriminate among landline telephone providers, and to treat similarly-situated providers similarly. Accordingly, Springfield agrees to continue its practice of requiring telephone companies paying its business license tax to designate revenue streams and will endeavor to enlarge its reporting form to require at least once a year a complete designation of such by all providers. AT&T shall designate revenue streams on which it is paying taxes also. The revenue streams contained in such statement shall include, at minimum, substantially the following: FUSP, SUSP, intraLATA toll service, EUCL, intrastate long distance, fixed VoIP, and intrastate private line service.

20. **More Favorable Settlements.** For a period of five years from the Effective Date, if Springfield settles any claim regarding the alleged failure of another similarly-situated landline provider to pay under Section 70-452 or AT&T settles a claim by another Missouri municipality for failure to pay business license taxes under a substantially similar ordinance, and such

settlement includes terms that are materially more favorable to the other provider or Missouri municipality than those set forth herein, the party so settling shall promptly notify the other party of such agreement, and that party shall, at its discretion, have the right to amend this Agreement to be consistent with such more favorable terms. In such case, AT&T shall be entitled, or required, on a going forward basis to make payments under Section 70-452 on the same terms as those applicable to such other provider or Missouri municipality.

21. Pass Through. Springfield agrees that whether or not AT&T passes through sums being paid hereunder to its subscribers is a matter that Springfield has no standing to dispute.

22. Hancock Amendment. Nothing in this Settlement Agreement is intended to broaden any pre-existing Business License Tax base in violation of the Hancock Amendment to the Missouri Constitution.

23. Injunctive Relief. The parties, and each of them, covenant that this Settlement Agreement may be used as a basis for a temporary restraining order, preliminary injunction, or permanent injunction against any breach of this Agreement. The parties judicially admit hereby for all purposes that time is of the essence as to all terms and conditions of the Settlement Agreement and that damages for a breach of this Settlement Agreement would be inadequate.

24. Signature, Executed and Authorizations. Separate copies of this document shall constitute original documents which may be signed separately but which together will constitute one single agreement. Facsimiles of signatures are as valid as originals. Each party hereto warrants that it is duly authorized to enter into this Agreement and that all necessary approvals to execute this Agreement have been obtained. Each signator hereto warrants that s/he has read the Agreement, understands its terms, and has been duly authorized to sign this Agreement on behalf of the party for which s/he is signing.

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AGREED TO AND ACCEPTED BY:

CITY OF SPRINGFIELD

By: [Signature]
Name: Greg Burris
Title: City Manager

January 5, 2010

STATE OF MISSOURI)

ss.

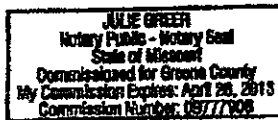
COUNTY OF GREENE)

On this 5th day of January, 2010, before me personally appeared Greg Burris who being duly sworn by me, to me known to be the person described herein and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Signature]
Notary Public

My Commission Expires: 4-28-13

[SEAL]



Approved as to form: [Signature]

Assistant City Attorney

AGREED TO AND ACCEPTED BY:

AT&T

By: [Signature]
Name: John J. Stephens
Title: Senior Vice President and Controller

January 10, 2010

STATE OF TEXAS)
) ss
COUNTY OF DALLAS)

On this 12th day of January, 2010, before me personally appeared John J. Stephens who being duly sworn by me, to me known to be the person described herein and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Kathy Owens
Notary Public

My Commission Expires: 05/04/2013

[SEAL]

