BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of a Proposed Rescission and Consolidation of Commission Rules Relating to Telecommunications	)))	Case No. TX-2015-0097

AT&T'S COMMENTS

AT&T[1] commends Missouri Public Service Commission Staff's collaborative effort in working with the industry to consolidate and simplify the Commission's telecom, video and IVoIP rules. Staff's open workshop approach narrowed the areas of disagreement in advance of the formal rulemaking, resulting in material savings of Commission resources, as well as those of the participating parties. This very significant and necessary undertaking would not have been accomplished without Staff's hard work and leadership.

AT&T supports the Commission's proposed rescission of rules that no longer make sense or are no longer within the Commission's jurisdiction (as set out in several statutory sections including the most recently added Section 392.611 RSMo.). AT&T also supports the Commission's proposed consolidation of its remaining rules into the proposed new Chapter 28 and the streamlining of those rules. Within this context, AT&T has the following comments and suggestions for certain of the proposed rules and respectfully request the Commission to adopt them:

1. Concurrence with MTIA Comments. AT&T concurs in the comments filed by the Missouri Telecommunications Industry Association ("MTIA").

2. Comments concerning Reporting Requirements. AT&T questions the need and authority for rules requiring outage reports (4 CSR 240-28.040(5)), disaster recovery plans (4 CSR

[1] Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as "AT&T."

240-28.040(6)), and bankruptcy notifications (4 CSR 240-28.040(6)). AT&T suggests the rules could be further streamlined by eliminating these requirements which are now beyond the Commission's authority to impose. AT&T intends to continue working with the State Emergency Management Agency ("SEMA") during state emergencies, where it provides information on the status of its wireless and wireline networks. However, imposing outage reporting and disaster plan requirements for such a small segment of today's communications marketplace (i.e., legacy TDM services like plain old telephone service ("POTS")), which are a rapidly shrinking portion of wireline-only networks, makes no sense, is discriminatory, and beyond the Commission's authority. The outage reporting requirements proposed by Staff go well beyond anything SEMA would find necessary and, in fact, require reporting of incidents that fall well short of being considered a state emergency. Furthermore, the reporting of TDM network outages provide no real sense of the status of communications networks, which are now primarily wireless and broadband networks. The proposed outage and disaster recovery requirements simply impose legacy type obligations on legacy providers using legacy networks – a discriminatory and unlawful requirement. While the proposed outage reporting requirements are unnecessary and of very limited practical use, the Commission is also barred, at a minimum under 392.461(1), from imposing such requirements because the FCC already has outage reporting requirements.

3. Comments concerning Service Standards. AT&T questions the need and authority for rules pertaining to safety standards (4 CSR 240-28.060(1)) and the termination of IVoIP calls (4 CSR 240-28.060(2)) and recommends their elimination. The proposed safety standards are duplicative of federal safety standards and are, therefore, unnecessary and beyond the Commission's authority to impose (Section 392.611 RSMo). Federal regulations already impose the duty to terminate calls so the proposed rule regarding the termination of calls is unnecessary and beyond the Commission's authority to impose. See Sections 392.461(1) and 392.611 RSMo.

AT&T understands that 4 CSR 240-28-060(5), which creates a state-level requirement to comply with the federal anti-slamming rules, has been proposed to comply with a statutory requirement that the Commission maintain an anti-slamming rule (Section 392.540 RSMo.). However, under other state statutes, companies are not required to follow such a requirement. In order to alleviate the conflict, AT&T suggests the Commission make the anti-slamming requirement optional for those companies electing to follow such a rule with the following language:

> For telecommunications companies electing to be subject to requirements associated with changes in preferred telecommunications service providers, such telecommunications companies shall comply with federal requirements associated with changes in preferred telecommunications service providers as identified in 47 CFR Part 64 Subpart K.

While AT&T intends to continue working with Commission Staff to informally resolve customer disputes and appreciates Staff's assistance, AT&T suggests slight modifications to the requirements set out in 4 CSR 240-28-060(6). First, from a procedural perspective, the 30 day response time set out in 4 CSR 240-28-060(6)(A) is too short in that it may not provide carriers sufficient time to investigate and respond to some Staff inquiries. AT&T recommends extending the response time to 45 days. Second, 4 CSR 240-28-060(6)(B) should be amended to recognize that some service terms and conditions now provide for binding arbitration. In order to align this proposed rule with service terms and conditions, AT&T recommends amending 4 CSR 240-28-060(6)(B) to state:

> If the matter remains unresolved after the company's final response, the commission staff shall advise the customer of his/her right to file a formal complaint with the commission pursuant to rule 4 CSR 240.2.07(4) <u>or to invoke binding arbitration if available under the service's terms and conditions.</u>

4. <u>Comments concerning interconnection agreement rule changes</u>.

(a) <u>Adoption of Expired Agreements</u>. Proposed rule 4 CSR 240-28.080(2) adds new language that would allow the adoption of expired interconnection agreements ("ICAs"). This new

provision should not be added to the consolidated rules. First, this addition exceeds the stated scope of the proceeding to "consolidate and simplify the Commission's telecommunications rules."[2] The new provision injects into this proceeding a complex and substantive new policy issue that will require the application and interpretation of the federal Telecommunications Act and FCC rules. AT&T is not aware of any actual disputes between itself and other carriers in the state meriting Commission action on this issue. In the event such a dispute occurs, it should be handled by the Commission on a case-by-case basis. This proposed addition unnecessarily complicates this rulemaking, and raises matters best left to individual proceedings where facts can be presented in the context of a concrete dispute between carriers - - in the event one arises - - rather than in the hypothetical context of a rulemaking.

Second, the proposed provision conflicts with federal law. FCC rules do not require an incumbent LEC to make an interconnection agreement available for adoption indefinitely. Rather, the rules require an agreement to be available only "for a reasonable period of time after the approved agreement is available for public inspection."[3] The Sixth Circuit explained:

> The right to adopt an existing interconnection agreement contains several limitations, one of which is time. Under a regulation promulgated by the Federal Communications Commission (FCC), an entrant seeking to adopt an approved agreement must do so within 'a reasonable period of time after the approved agreement is available for public inspection,' 47 C.F.R. § 51.809(c), which is to say a reasonable time after the state commission has approved the underlying agreement, 47 U.S.C. § 252(e)(1), (h).[4]

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[2] In its Order opening the Working Case, which was the precursor to this case, the Commission stated "This case is established as a repository for documents and comments regarding Staff's proposal to consolidate and simplify the Commission's telecommunications rules." Order Opening a Working Case, File No. TW-2014-0295, issued April 23, 2014 (emphasis added). The style of the Working Case reflected this very purpose: "In the Matter of a Repository Case in Which to Receive Feedback and Other Suggestions Concerning Staff's Proposed Consolidation and Simplification of the Commission's Telecommunications Rules" (emphasis added). The style of this rulemaking case (No. TX-2015-0097) reflects a similar purpose: "In the Matter of a Proposed Rescission and Consolidation of Commission Rules," as does its Notice of Finding of Necessity, issued October 14, 2014:

> The Commission is opening this file to rescind and consolidate many of the Commission's rules relating to telecommunications. The Commission finds that the rescission and consolidation is necessary to bring the existing rules into compliance with state and federal statutory changes affecting the Commission's jurisdiction over the telecommunications industry. (emphasis added).

[3] 47 C.F.R. § 51.809(c), entitled "Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act," states:

> Individual interconnection, service or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for inspection under section 252(f) of the Act.

[4] *BellSouth Telecomms., Inc. v. Universal Telecom, Inc.*, 454 F.3d 559, 560 (6th Cir. 2006).

Applying this rule, state commissions have held adoption requests exceeded the bounds of a "reasonable period of time" where agreements at the time of the request had only approximately ten months remaining before expiration;[5] and seven months remaining before expiration respectively.[6] While the Commission may have some discretion in determining a "reasonable period of time" for an adoption, the proposed rule allowing adoption of an already expired agreement clearly falls outside the bounds of its discretion.

To the extent the Commission determines it is appropriate to promulgate a rule permitting the adoption of an expired ICA, AT&T proposes the following procedure as an alternative to proposed rule 4 CSR 240-28.080(2) that would be more neutral in application. By not prejudging the appropriateness of such adoptions in all cases, any disputes would be considered on a case-by-case basis taking into account the facts and circumstances in that particular case. AT&T believes that this alternative provides a process for carriers to seek adoption of expired agreements, while taking into account carriers' rights to decline to allow such adoption in appropriate circumstances:

> (2) An adoption of an ~~approved~~ interconnection agreement ~~or amendment~~[7] ~~that has been~~ previously approved by the commission can be requested by either company by submitting a letter to the secretary of the commission. ~~Approved interconnection agreements whose original term has expired, but which remain in effect pursuant to term renewal or extension provisions, will be subject to adoption for so long as the interconnection agreement remains subject to the renewal or extension provision. The~~ Unless subject to an objection pursuant to section 2(D) below**,** the adoption will become effective on the date it is properly submitted to the commission.
>
> (A) The letter shall include:
>
> 1. The case number in which the adopted agreement was previously approved by the commission;

[5] *In Re: Global NAPs South, Inc.,* 15 FCC Rcd. 23318 (August 5, 1999) (Global NAPs sought adoption of the ICA in August 1998, when the ICA was to expire on July 1, 1999. The Virginia Corporation Commission denied the adoption request because of the limited amount of time remaining under the ICA. As a result, Global NAPs petitioned the FCC for an order preempting the Virginia Commission. The FCC denied Global NAPs' petition).

[6] Order 75360, *Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996, No. 8731, 1999 Md. PSC LEXIS 21 at *7 (Md. PSC July 15, 1999).*

[7] Section 4(b) of AT&T's Comments (below) sets out the rationale for striking the words "or amendment."

2. The tracking number or case number of any amendments the parties will adopt; and

3. A copy of the signature page signed by both parties to the adoption.

(B) If both parties have signed the signature page to the adoption the request shall be electronically filed as an Interconnection Agreement Informal Submission in EFIS. Upon receipt of an adoption request signed by both parties, the commission shall open a new file and issue an order expeditiously either approving or rejecting the adoption.

(C) If both parties have not signed the signature page to the adoption the adopting company shall file an application with the commission. The application shall be electronically filed as a new case submission in EFIS. The application shall be submitted and signed by an attorney licensed to practice law in Missouri and shall contain the following:

1. The legal name of the applicant;

2. The type of organization of the applicant (Missouri corporation, foreign corporation, partnership, proprietorship, other);

3. Applicant's mailing address, electronic mail address, fax number and telephone number;

4. A statement that no annual report or assessment fees are overdue; and

5. An explanation of the applicant's inability to obtain the other party's signature on the adoption.

(D) The commission will send notice to the non-signing party allowing twenty (20) days for objection. If no objection is filed, the adoption will be approved by the commission. If an objection is filed, the commission will determine whether the adoption should be approved or rejected.

(b) Amendments. Proposed rule 4 CSR 240-28.080(2) also provides a procedure for either party to an interconnection agreement to seek to have the Commission impose on the other party, even if that party has neither agreed to nor signed it, an amendment previously approved by the Commission from another agreement. Such amendments should only be allowed upon both

parties' specific agreement. Doing so would bring the rule in alignment with the FCC's requirements that no longer allow a CLEC to "pick and choose" elements, including amendments, from another carrier's agreement for inclusion in its own agreement. Under the FCC's "all-or-nothing" rule, CLECs have the right to MFN only into entire agreements within a reasonable time. Explaining, the FCC stated:

> . . . we find that the existing pick-and-choose rule fails to promote the meaningful, give-and-take negotiations envisioned by the Act. Because we find that the current pick-and-choose rule is not compelled by section 252(i) and an all-or-nothing approach better achieves statutory goals, we eliminate the pick-and-choose rule and replace it with an all-or-nothing rule. Under the all-or-nothing rule we adopt here, a requesting carrier may only adopt an effective interconnection agreement in its entirety, taking all rates, terms, and conditions of the adopted agreement.[8]

Similarly, allowing one carrier to impose a previously-approved ICA amendment on another in absence of both parties' agreement does not "promote the meaningful, give-and-take negotiations envisioned by the Act."[9] Moreover, it may also provide rights to change an ICA that would not otherwise exist. Parties to an ICA (or any contract) must abide by its terms. Rights to amend a contract typically arise from the contract itself (e.g., "Change of Law" provisions). Where such a right exists and the parties cannot agree to an amendment, the disagreement should be addressed under the terms of the agreement (e.g., dispute resolution) on a case-by-case basis.

To address this concern, AT&T proposes striking the words "or amendment" from the first line of Section 4 CSR 240-28.080(2), which is reflected in AT&T's proposed re-write of 4 CSR 240-28.080(2) in Section 4(a) of AT&T's' comments (above).

5. Fiscal Impact. AT&T would not expect the proposed rule revisions, as modified herein; to have a significant fiscal impact to the extent the Commission confines them to deleting obsolete or unnecessary rules and relocating the remaining rules to one chapter. But to the extent the

[8] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exch. Carriers*, 19 F.C.C. Rcd. 13494, 13501 (2004).
[9] *Id.*

revisions impose new requirements or re-impose previously waived requirements, further study will be required to determine fiscal impact.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document and all attachments thereto were served on the following by e-mail on June 29, 2015.

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