

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

[illegible]

AT&T Missouri,<sup>1</sup> pursuant to 4 CSR 240-2.070(8), respectfully submits this Answer and Affirmative Defenses to the Complaint filed by Complainants.<sup>2</sup>

## Procedural History

<sup>1</sup> Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as “AT&T Missouri.”

<sup>2</sup> Concurrent with this Answer and Affirmative Defenses, AT&T Missouri is separately filing a Motion for Summary Disposition.

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.” AT&T Missouri denies all other allegations in this unnumbered paragraph.

### Allegations

#### **Nature of the Case**

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

2. AT&T Missouri admits that it was a party to settlement agreements in certain lawsuits (Complaint Ex. G – Wellston Settlement; Complaint Ex. H. – St. Louis County Settlement; and Complaint Ex. I – Springfield Settlement), which settlements speak for themselves. AT&T Missouri denies the remaining allegations of Paragraph 2.

3. AT&T Missouri admits that on November 10, 2008, the Commission issued an Order Concerning Election of Waivers wherein the Commission acknowledged as received the August 28, 2008, notification from AT&T Missouri that it elected to waive certain Commission rules and statutory provisions pursuant to § 392.420 RSMo., including the Commission’s customer billing rules. AT&T Missouri denies the remaining allegations of Paragraph 3.

4. AT&T Missouri is without information or belief sufficient to answer the allegations of Paragraph 4 and therefore denies the same.

5. AT&T Missouri admits that Complainant Barry Road Associates, Inc. is its landline telephone customer but denies the remaining allegations of Paragraph 5.

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

7. AT&T Missouri admits that Complainant The Main Street Associates, Inc. is its landline telephone customer but denies the remaining allegations of Paragraph 7.

8. AT&T Missouri admits the allegations of Paragraph 8.

9. AT&T Missouri admits that Complainant Harry Mark Wooldridge is its landline telephone customer but denies the remaining allegations of Paragraph 9.

10. AT&T Missouri admits that it is a Missouri corporation that conducts business in Missouri as AT&T Missouri, with its corporate headquarters and principal place of business in Texas. AT&T Missouri denies the remaining allegations in Paragraph 10.

11. AT&T Missouri admits the allegations in Paragraph 11.

### **Common Facts**

With respect to the numbered allegations of the Complaint contained under the heading “Common Facts,” AT&T Missouri states:

12. AT&T Missouri admits the allegations made in the first sentence of Paragraph 12. AT&T Missouri states that the invoice referenced in Paragraph 12 is the best evidence of what language is contained therein but to the extent an answer is required, denies the remaining allegations in Paragraph 12 to the extent they are inconsistent with the referenced invoice.

13. AT&T Missouri admits the allegations made in the first sentence of Paragraph 13. AT&T Missouri states that the invoice referenced in Paragraph 13 is the best evidence of what language is contained therein but to the extent an answer is required, denies the remaining allegations in Paragraph 13 to the extent they are inconsistent with the referenced invoice.

14. AT&T Missouri admits the allegations made in the first sentence of Paragraph 14. AT&T Missouri states that the invoice referenced in Paragraph 14 is the best evidence of what

language is contained therein but to the extent an answer is required, denies the remaining allegations in Paragraph 14 to the extent they are inconsistent with the referenced invoice.

15. AT&T Missouri admits the allegations made in the first sentence of Paragraph 15. AT&T Missouri states that the invoice referenced in Paragraph 15 is the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 15 to the extent they are inconsistent with the referenced invoice.

16. AT&T Missouri states that the invoices referenced in Paragraph 16 are the best evidence of what language is contained therein, but to the extent an answer is required, denies the allegations in Paragraph 16 to the extent they are inconsistent with the referenced invoices.

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

18. AT&T Missouri denies the allegations in Paragraph 18.

19. 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 Exhibits 1 and 2, authorizes AT&T Missouri to collect these surcharges from its subscribers who reside in municipalities that received a back tax payment by participating in the Wellston, St. Louis County, 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 in order to make the surcharge more manageable for customers. AT&T Missouri will not collect more from its customer than the amount of back taxes owed to the participating municipalities as a result of those settlements. AT&T Missouri denies the remaining allegations of Paragraph 19.

20. AT&T Missouri denies the allegations in Paragraph 20.

21. AT&T Missouri denies the allegations in Paragraph 21.

22. AT&T Missouri denies the allegations in Paragraph 22.
23. AT&T Missouri denies the allegations in Paragraph 23.
24. AT&T Missouri denies the allegations in Paragraph 24.
25. AT&T Missouri denies the allegations in Paragraph 25.
26. Paragraph 26 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies the allegations in Paragraph 26.
27. AT&T Missouri denies the allegations in Paragraph 27.
28. AT&T Missouri admits the allegations in Paragraph 28.
29. AT&T Missouri denies the allegations in Paragraph 29.
30. AT&T Missouri denies the allegations in Paragraph 30.
31. AT&T Missouri denies the allegations in Paragraph 31.
32. AT&T Missouri states that the settlement agreements referenced in Paragraph 32 are the best evidence of what language is contained therein. AT&T Missouri denies the remaining allegations in Paragraph 32.
33. AT&T Missouri denies the allegations in Paragraph 33.
34. AT&T Missouri states that the settlement agreement referenced in Paragraph 34 is the best evidence of what language is contained therein. AT&T Missouri denies the remaining allegations in Paragraph 34.
35. AT&T Missouri admits that the referenced quotations may be found in the referenced exhibits, but denies the remaining allegations in Paragraph 35.
36. Paragraph 36 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies the allegations in Paragraph 36.
37. AT&T Missouri denies the allegations in Paragraph 37.

### **Relief Requested**

Respondent AT&T Missouri respectfully requests a determination that the back tax payments made by AT&T Missouri pursuant to the settlement agreements described in paragraph 2 of this Answer are to be passed through to AT&T Missouri customers pursuant to § 17.11 General Exchange Tariff 35 or similar and related tariffs.

### **Statement Regarding Prior Contact with Respondent**

AT&T Missouri admits that Complainant's counsel has had direct prior contact with AT&T Missouri's counsel about the subject matter of the Complaint. AT&T Missouri is without sufficient information to admit or deny the remaining allegations contained in the paragraph titled "Statement Regarding Prior Contact with Respondent" and therefore denies the same.

### **The Commission's Jurisdiction**

AT&T Missouri admits that the Commission has jurisdiction to determine whether the settlement payments made by AT&T Missouri are to be passed through to AT&T Missouri customers pursuant to § 17.11 General Exchange Tariff 35 or similar and related tariffs, pursuant to the April 4, 2011 Order of the Circuit Court of Jackson County, Missouri and pursuant to §§ 386.040 and 386.390 RSMo.

### **AFFIRMATIVE DEFENSES**

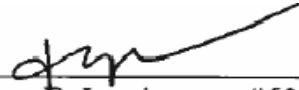
For its affirmative defenses, AT&T Missouri states:

1. To the extent Complainants' 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.
2. The filed rate doctrine bars each of the underlying causes of actions alleged in the Complaint and, pursuant to the terms of § 17.11 General Exchange Tariff ("Tariff"), AT&T

Missouri is required to pass through the settlement payments made by AT&T Missouri to its customers. That Tariff provision 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* Exhibits 1 and 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 Complainants and AT&T Missouri. For decades, AT&T Missouri’s General Exchange Tariffs have contained provisions requiring municipal taxes to be passed through to telephone company customers. The filed rate doctrine requires a determination in AT&T Missouri’s favor because if Complainants’ allegations were true and if AT&T Missouri could not pass the settlement payments on to its customers, then the result would be that the Complainants would pay a rate other than AT&T’s filed tariff rate, which is prohibited. AT&T Missouri complied with the mandatory provisions of its General Exchange Tariff, which has the force of law.

Respectfully submitted,

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



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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on July 27, 2011.

  
\_\_\_\_\_  
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General Exchange Tariff  
Section 17  
Original Sheet 26

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

RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

17.10 TERMINATION OF CONTRACTS-(Continued)

17.10.5 General Provisions-(Continued)

- B. The service is furnished subject to the condition that it 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.
- C. Abandonment of equipment or service by a customer is regarded by the Telephone Company as a voluntary termination of the contract.
- D. 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 nine (9) percent per annum will be paid on deposits held thirty (30) days or more.

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

RECEIVED

DEC 29 1983

MISSOURI

Public Service Commission

FILED

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Public Service Commission

Issued: DEC 29 1983

Effective: JAN 01 1984

EXHIBIT

1

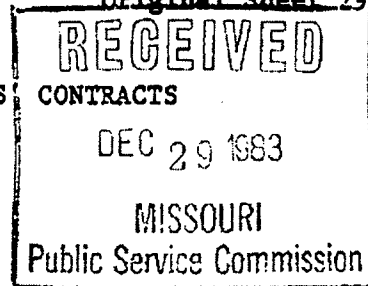
By R. D. BARRON, Vice President-Missouri  
Southwestern Bell Telephone Company  
St. Louis, Missouri

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

General Exchange Tariff

Section 17

Original Sheet 29



RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS

17.12 SPECIAL SERVICE ARRANGEMENTS-(Continued)

17.12.2 Rates-(Continued)

A. Computation-(Continued)

4. In computing the rates for special service arrangements, the Telephone Company will, at its option, use one of the following three rate treatments: (1) a recurring monthly rate and termination contract with or without an installation charge; (2) a recurring monthly rate with an installation charge; (3) an installation charge only.

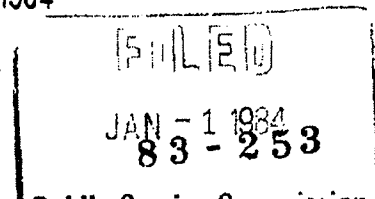
17.12.3 Termination Contract

A Termination Contract may apply in those cases where non-recoverable costs are substantial. Non-recoverable cost is equivalent to the estimated installed cost, plus removal cost less immediate salvage value.

Issued: DEC 29 1983

Effective: JAN 01 1984

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



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 9 1991**

Effective: **OCT 6 9 1991**

**FILED**

**OCT 8 1991**

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

MO. PUBLIC SERVICE COM.

**EXHIBIT**

**2**

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)

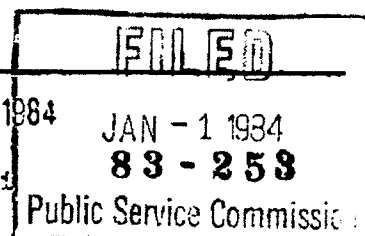
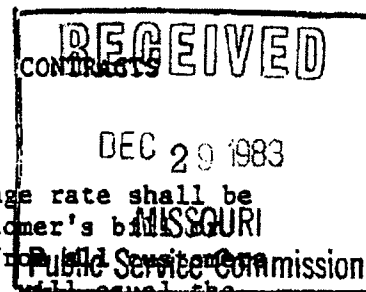
shall be converted to a percentage; the local exchange rate shall be increased by that percentage and applied to the customer's bill as a charge, so that the amount added, when accumulated from all sources and residing in the geographic jurisdiction of the body, will equal the amount of the flat sum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