

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of AT&T Communications)
of the Southwest, Inc., to Expand Its Certificate of Basic) **File No. CA-2010-0115**
Local Exchange Telecommunications Service Authority) **Tariff No. JC-2010-0269**
to Include Windstream Missouri's Exchanges.)

ORDER APPROVING EXPANSION OF CERTIFICATE OF SERVICE AUTHORITY

Issue Date: November 25, 2009

Effective Date: November 27, 2009

Syllabus: This order expands AT&T Communications of the Southwest, Inc.'s certificate of service authority to provide basic local telecommunications services, continues to classify those services and the company as competitive, waives certain statutes and regulations, and approves tariff sheets.

Procedural History

AT&T Communications applied to the Missouri Public Service Commission on October 13, 2009, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in the exchanges of Windstream Missouri, Inc. AT&T Communications also sought to remain classified as a competitive company and asked the Commission to grant the "standard waivers"¹ as well as a waiver of Section 392.300.1, RSMo, 4 CSR 240-3.550(4) and (5)(A), 32.060, 32.070, 32.080, 33.040 (except not 33.040(4)), 33.045, 33.080(1), and 33.130(1), (4), and (5).

¹ The "standard" waivers include waiver of the Revised Statutes of Missouri Sections 392.210.2; 392.240.1; 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340; and Commission rules 4 CSR 240-3.550(5)(C); 4 CSR 240-10.020; and 4 CSR 240-30.040.

On October 21, 2009, the Commission issued a Schedule of Applicants for Basic Local and Nonswitched Local Exchange Service Authority and Opportunity to Intervene. The notice told parties who wished to intervene to file their requests by November 5, 2009. No parties responded to the notice. The Staff of the Missouri Public Service Commission filed its Recommendation on November 20, 2009.

Findings of Fact

The Missouri Public Service Commission has considered all of the relevant factors and makes the following findings of fact. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

1. AT&T Communications is a corporation organized under the laws of the state of Delaware.²
2. The Commission previously granted AT&T Communications a certificate to provide basic local telecommunications services in the state of Missouri.³ AT&T Communications is currently providing basic local exchange services as a competitive telecommunications company in the Missouri exchanges of Southwestern Bell Telephone Company, L.P., d/b/a AT&T Missouri, and the former GTE Midwest, Inc.⁴
3. That certificate also classified AT&T Communications and its services as competitive and granted certain Commission waivers.

² *Application for Expanded Authority to Provide Local Exchange Telecommunications Service Authority*, (filed October 13, 2009), hereinafter "*Application*," para. 1.

³ The certificate was granted in Commission File No. TA-96-322.

⁴ *Application*, p. 1.

4. AT&T Communications applied to the Missouri Public Service Commission on October 13, 2009, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in the exchanges currently served by Windstream Missouri.
5. AT&T Communications is qualified to do business in the state of Missouri and is registered with the Missouri Secretary of State.⁵
6. AT&T Communications provided names and addresses for contact purposes.⁶
7. AT&T Communications has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court involving customer service or rates.⁷
8. AT&T Communications filed its amended tariff including the expanded service area, Commission Tariff File Number JC-2010-0269, with an effective date of November 27, 2009.⁸
9. AT&T Communications was previously found to be financially, managerially, and technically qualified to provide telecommunications services in the state of Missouri.⁹
10. AT&T Communications has successfully provided telecommunications services in the state of Missouri since its original certificate was granted.¹⁰

⁵ *Application*, para. 1.

⁶ *Application*, para. 2.

⁷ *Application*, para. 12.

⁸ *Application*, para. 6.

⁹ File No. TA-96-322; and *Application*, pp. 2-3.

¹⁰ *Application*, para. 3.

11. AT&T Communications will comply with all applicable Commission rules, except those that are waived, including, but not limited to, tariff filing and maintenance in a manner consistent with the Commission's requirement for incumbent local exchange carriers with whom AT&T Communications seeks to compete.¹¹
12. AT&T Communications will continue to offer basic local service as a separate and distinct service and will give due consideration to the equitable access for all Missourians.¹²
13. AT&T Communications will compete directly with Windstream Missouri in each of its exchanges.
14. The services AT&T Communications will offer in the Windstream Missouri exchanges have previously been classified as competitive services.¹³
15. Granting the expansion of the certificate into the Windstream Missouri exchanges will benefit the public by creating and enhancing competition, expanding customer service options, and expanding the availability of reliable telecommunications services.¹⁴
16. Staff recommended that the Commission expand AT&T Communications' current basic local certificate, grant competitive classification, grant the waivers requested, and approve the tariff sheets.¹⁵
17. Staff recommended that the Commission grant AT&T Communications' expanded basic local certificate subject to the following conditions:

¹¹ *Application*, para. 9.

¹² *Application*, para. 8.

¹³ *Application*, para. 7; *see, also*, the Report and Order granting AT&T Communications a certificate and competitive classification in File No. TA-26-322.

¹⁴ *Application*, para. 14.

¹⁵ *Staff Recommendation* (filed Nov. 20, 2009).

- A. The applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370, RSMo.
 - B. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.
18. AT&T Communications agreed in its application that it will not exceed the corresponding exchange access rates in effect for Windstream Missouri. AT&T Communications also agreed that if Windstream Missouri decreases its current originating and/or terminating access service rates, in accordance with the Commission's Report and Order in File No. TO-99-596 and pursuant to Section 392.361.6, RSMo, as amended August 28, 2008, AT&T Communications will file a tariff amendment to reduce its corresponding access rates in that service area within thirty days.¹⁶
19. AT&T Communications is not delinquent in filing an annual report or in paying the PSC assessment, the Missouri Universal Service Fund, and Relay Missouri surcharges.¹⁷

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

¹⁶ *Application*, para. 11.

¹⁷ *Staff Recommendation*, Memorandum p. 2; See also, *Application*, para. 13.

1. The requirement for a hearing is met when the opportunity for a hearing was provided and no proper party requested the opportunity to present evidence.¹⁸ Notice was issued in this case and no hearing has been requested.
2. AT&T Communications is a “local exchange telecommunications company” as that term is defined by Section 386.020, RSMo.
3. The Commission is authorized to create a process by which to certify new entrants to provide local exchange telecommunications services in Missouri as common carriers, and is further authorized to grant or modify such certificates where it is in the public interest.¹⁹
4. AT&T Communications was certificated to provide basic local telecommunications service prior to August 28, 2008.
5. AT&T Communications has requested that the Commission grant it an expansion of its certificate to provide basic local exchange telecommunications services to include all exchanges in Missouri served by Windstream Missouri. AT&T Communications has satisfied the requirements of the Commission’s regulations and of Section 392.455, and consequently, the Commission concludes that AT&T Communications has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.
6. The Commission shall modify the existing certificate of service authority to provide basic local telecommunications service to any alternative local exchange telecommunications company which was certificated to provide basic local telecommunica-

¹⁸ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

¹⁹ Sections 392.430, 392.450 and 392.455, RSMo.

tions service as of August 28, 2008, as long as the alternative local exchange company is in good standing, in all respects, with all applicable Commission rules and requirements.²⁰ AT&T Communications “is in good standing, in all respects, with all applicable commission rules and requirements.”²¹ Therefore, the Commission shall grant the certificate expansion.

7. AT&T Communications requests that it and its basic local services continue to be classified as competitive. The Commission may classify a telecommunications service as competitive if the Commission determines that it is subject to a sufficient degree of competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest.²² The Commission may classify a telecommunications carrier as competitive if the Commission finds that a majority of its services are so classified.²³
8. AT&T Communications has been found to be a competitive company in prior Commission cases. Furthermore, the services to be provided by AT&T Communications in the Windstream Missouri exchanges will be competitive. The Commission also found that the expansion of AT&T Communications’ certificate will benefit the public and will be in direct competition with the incumbent basic local provider. Considering these findings, the Commission concludes that AT&T Communications will be subject to a sufficient level of competition to justify a lesser degree of regulation and its services and the company shall continue to be classified as competitive.

²⁰ Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²¹ Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²² Section 392.361.2 and 4, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²³ Section 392.361.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

9. In addition to the Commission's "standard waivers," AT&T Communications requests that the Commission waive all of Section 392.300, RSMo.²⁴ The Commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of Subsection 2 of Section 392.210, Subsection 1 of Section 392.240, and Sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340, RSMo.²⁵ In accordance with Section 392.420, RSMo, the Commission shall grant the requested waivers.
10. An applicant for a basic local certificate must meet the minimum service standards that the Commission requires of the competing incumbent local exchange carriers.²⁶ AT&T Communications has agreed to provide services that will meet the minimum basic local service standards required by the Commission. The Commission concludes that AT&T Communications has met the requirements of Section 392.450.2(2).
11. AT&T Communications has complied with each of the Commission's application requirements. AT&T Communications has successfully operated as a telecommunications company since 1998 and the Commission has examined AT&T Communications' qualifications in a previous certificate case.
12. The Commission may also "require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement."²⁷ Staff recommends that AT&T

²⁴ *Application*, para. 10.

²⁵ Subsection 392.420, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²⁶ Section 392.450.2(2), RSMo.

²⁷ Section 392.361.6, RSMo.

Communications' application be granted subject to the conditions set out above. AT&T Communications has agreed to these conditions. The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and shall be adopted.

13. AT&T Communications has filed a proposed tariff authorizing it to provide service in the expanded areas. Staff has reviewed the tariff and recommends its approval. The Commission has reviewed the tariff and the recommendation of Staff and concludes that the tariff is in compliance with the provisions of this order. Therefore, the Commission shall approve the tariff to become effective as directed below.
14. The certificate of service authority granted in this order becomes null and void one year from the date of this order unless AT&T Communications has exercised its authority under that certificate.²⁸
15. The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:
 - A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
 - B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.

²⁸ Section 392.410.5, RSMo Cum. Supp. 2008.

- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.
- D) The obligation to keep the Commission informed of its current address and telephone number.

THE COMMISSION ORDERS THAT:

1. AT&T Communications of the Southwest, Inc., is granted an expansion of its certificate of service authority to provide basic local telecommunications services to include the exchanges of Windstream Missouri, Inc., subject to the conditions of certification set out below and to all applicable statutes and Commission rules except as specified in this order.
2. AT&T Communications of the Southwest, Inc., and its telecommunications services are classified as competitive.
3. AT&T Communications of the Southwest, Inc.'s originating and terminating access rates shall be no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area AT&T Communications seeks authority to provide service, unless authorized by the Commission under to Sections 392.220 and 392.230, RSMo 2000.
4. If the directly competing incumbent local exchange company in whose service area AT&T Communications of the Southwest, Inc., is operating decreases its originating and/or terminating access service rates, AT&T Communications shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the

directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

5. With regard to AT&T Communications of the Southwest, Inc., the application of the following statutes and Commission regulations is waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240(1) - just and reasonable rates
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300 - transfer of property and acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-3.550(5)(C) - exchange boundary maps
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-3.550(5)(A)1. - service quality reporting
- 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 - separate identification of charges on customer bills
- 4 CSR 240-33.080(1)
- 4 CSR 240-33.130(1), (4), (5)

6. That the tariff filed by AT&T Communications of the Southwest, Inc., on October 13, 2009, (tariff file number JC-2010-0269), is approved to become effective on November 27, 2009. The tariff sheets approved are:

P.S.C. Mo. No. 21

Index, 1st Revised Sheet 1, Replacing Original Sheet 1

Section 3, 1st Revised Index Sheet 1, Replacing Original Index Sheet 1

Section 3, 1st Revised Sheet 1, Replacing Original Sheet 1

Section 3, Original Sheet 10

7. This order shall become effective on November 27, 2008.
8. This case may be closed on November 28, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Nancy Dippell, Deputy Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 25th day of November, 2009.