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IN THE CIRCUIT COURT
OF ST. LOUIS CITY, MISSOURI

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 SBC MISSOURI and AT&T MISSOURI;
and SBC LONG DISTANCE, LLC;

Defendants.

ENTERED

FEB 21 2007

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

FILED
FEB 14 2007
MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Cause No. 044-02645

Division No.

**CONSOLIDATED MASTER PETITION FOR DECLARATORY JUDGMENT AND
OTHER RELIEF**

COME NOW Plaintiffs,¹ on behalf of themselves and all others similarly situated, and for
their Consolidated Master Petition for Declaratory Judgment and Other Relief, state as follows:

¹ Unless otherwise stated or indicated, the words "Plaintiff" or Plaintiffs" as used herein shall refer to cities, municipalities and/or municipal corporations, either individually or collectively as the case may be, and shall further include the City Collectors of each to the extent necessary or warranted. The words "city," "cities," "municipality," "municipalities," "municipal corporation," and "municipal corporations" likewise shall include the City Collectors of each to the extent required by law. With respect to the third and fourth class cities named herein, the City Collectors are: Janice Triggs (Wellston) and Barbara Beckett (Winchester).

EXHIBIT

7

COUNT I – DECLARATORY JUDGMENT, INJUNCTION AND ACCOUNTING
(LICENSE TAXES)

Parties

1. Plaintiff City of University City, Missouri (“University City”) is a lawfully existing Missouri municipal corporation and constitutional charter city within the meaning of Article VI, § 19 of the Missouri Constitution, §82.010, RSMo, and all other applicable laws, and has been at all times during the preceding five years and at all other times relevant to this action. University City is located within St. Louis County, Missouri.

2. Plaintiff City of Wellston, Missouri (“Wellston”) is a lawfully existing Missouri municipal corporation and city of the third class within the meaning of § 72.030, RSMo, § 77.010, RSMo, and all other applicable laws, and has been at all times during the preceding five years and at all other times relevant to this action. Wellston is located within St. Louis County, Missouri.

3. Plaintiff City of Winchester, Missouri (“Winchester”) is a lawfully existing Missouri municipal corporation and city of the fourth class within the meaning of § 72.040, RSMo, § 79.010, RSMo, and all other applicable laws, and has been at all times during the preceding five years and at all other times relevant to this action. Winchester is located within St. Louis County, Missouri.

4. Defendant SBC Communications, Inc. n/k/a AT&T, Inc. is an active Delaware corporation in good standing, which does business in Missouri, and has been such at all times during the preceding five years and at all other times relevant to this action.

5. Defendant SBC Long Distance Inc., f/k/a SBC Communications Services, Inc., is

an active Delaware corporation in good standing, which does business in Missouri, and has been such at all times during the preceding five years and at all other times relevant to this action. It is now known as SBC Long Distance, LLC.

6. Defendant Southwestern Bell Telephone, L.P. is an active Texas limited partnership registered to do business in the State of Missouri, and has been at all times during the preceding five years and at all other times relevant to this action. Southwestern Bell Telephone, L.P. does, or during said period has done, business as SBC Missouri and AT&T Missouri. Southwestern Bell Telephone, L.P. was formerly known as Southwestern Bell Telephone Company, a Missouri corporation, and/or Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, and is the successor thereto. Southwestern Bell Telephone, L.P. acquired the assets and obligations, including any tax obligations at issue in this action, from Southwestern Bell Telephone Company, a Missouri corporation, and/or Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company.

7. Venue is proper pursuant to §508.010(3) RSMo in that there are several Defendants, some residents and others nonresidents of the State, and suit may be brought in any county in which a Defendant resides. In the alternative, in the event that all Defendants are nonresidents of this State, then venue is proper pursuant to §508.010(4) RSMo and suit may be brought in any county in the State. In the alternative, venue is proper pursuant to §508.040 RSMo, because Southwestern Bell Telephone, L.P. keeps an office or agent for the transaction of its usual and customary business in this county.

Class Action Allegations

8. This action is brought by Plaintiffs pursuant to Missouri Supreme Court Rule 52.08 on behalf of themselves and on behalf of all other Missouri municipal corporations and political subdivisions similarly situated, to wit: all cities or other political subdivisions which have adopted an ordinance in effect that imposes a business or occupational license tax on any person engaged in the business of supplying or furnishing telephone service (including exchange telephone service) in the city or political subdivision, or who is otherwise engaged in a telephone business (including a telephone utility business) therein.

9. The proposed class should include at least 230-240 cities, many of which are small with very limited resources. Approximately 100 of the proposed class members have a population of under 3,000. These and many other cities in the proposed class generally have a very small staff and budget, with little or no funds available for litigation of this nature. The class is so numerous that joinder of all members is impracticable.

10. The claims asserted by Plaintiffs on behalf of themselves and on behalf of members of the class present questions of law or fact common to the class, including, *inter alia*, whether said license tax ordinances apply to the gross receipts derived by Defendants from exchange access, interexchange access, special access, interconnection facilities and equipment for use, toll or long-distance, reciprocal compensation arrangements, and possibly other sources.

11. The claims asserted by Plaintiffs on behalf of themselves are typical of the claims of the class in that their license tax ordinances are similar and the laws that apply thereto also are similar.

12. Plaintiffs will fairly and adequately protect the interests of members of the class

in that their license tax ordinances are similar, and Plaintiffs have been working closely in this matter with the Missouri Municipal League, a voluntary association of cities with approximately 98% of the total municipal population in the State of Missouri, as well as the St. Louis County Municipal League, a voluntary association of cities in St. Louis County, Missouri.

13. The prosecution of separate actions by individual members of the class would create a risk of: a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendants; and b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Furthermore, Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Defendants have maintained that said license tax ordinances do not apply to the business(es) in which they engage or the gross receipts derived by Defendants from exchange access, interexchange access, special access, interconnection facilities and equipment for use, toll or long-distance, reciprocal compensation arrangements, and possibly other sources, so they have refused to pay the license taxes despite demands therefor.

Claims for Relief

14. Winchester has compiled ordinances. It has adopted and codified them in the Winchester Municipal Code. Relevant provisions include the following:

- A. § 640.010 of the Code provides as follows: "Pursuant to the laws of Missouri, every firm, person or corporation now or hereafter

engaged in the business of supplying or furnishing telephone or telephone service in the City of Winchester, Missouri, shall pay to the said City as a license or occupational tax six percent (6%) of the gross receipts derived from such business within the said City."

- B. § 640.020 of the Code provides as follows: "Every person, firm or corporation engaged in the business hereinbefore set forth in the City of Winchester is hereby required to file with the City Clerk of said City, on or before the last day of each calendar month, a sworn statement showing the gross receipts derived from such business during the preceding calendar month; and at the same time pay to the City Treasurer the tax hereinbefore set forth."
- C. § 640.030 of the Code provides as follows: "The City Clerk and such other persons as may be designated by the Board of Aldermen from time to time, is and are hereby authorized to investigate the correctness and accuracy of the statement so filed and for that purpose shall have access at all reasonable times to the books, documents, papers and records of any person making such return in order to ascertain the accuracy thereof."
- D. § 640.050 of the Code provides as follows: "Each and every offense and each day such violation continues shall be deemed a

separate offense." (See Winchester Municipal Code, Chapter 640,
a copy of which is attached hereto and incorporated by reference
herein as Exhibit "1.")

15. The other class members have license tax ordinances similar to those in Winchester, with gross receipts statement filing requirements, auditing or document inspection rights, and interest and penalty provisions for failure to pay the taxes or to otherwise comply with the ordinances. (See, e.g., the Wellston Code of Ordinances and the University City Municipal Code, copies of which are attached hereto and incorporated by reference herein as Exhibits "2" and "3," respectively.) Most of the other class members also have compiled ordinances which they have adopted and codified in their codes.

16. Defendants are engaged in the business of furnishing or supplying telephone service (including exchange telephone service) in Plaintiffs or are otherwise engaged in a telephone business (including a telephone utility business) therein within the meaning of Plaintiffs' license tax ordinances, and Defendants derive gross receipts from such business, and they have engaged in such business and have derived gross receipts therefrom at all times during the preceding five years and at all other times relevant to this action.

17. Plaintiffs have informed Defendants of their license tax ordinances and have demanded compliance therewith. Defendants have failed and refused to file the required statements and to pay all required license taxes during the preceding five years and at all other times relevant to this action. Accordingly, Defendants owe Plaintiffs license taxes, interest and penalties for said period.

18. Defendants are "telephone companies" within the meaning of Plaintiffs' license

tax ordinances, §§ 94.110, 94.270, and 94.360, RSMo, and applicable charters, and they have been such at all times during the preceding five years and at all other times relevant to this action.

19. Defendants are "public utilities" and they furnish or supply public utility service in Plaintiffs within the meaning of Plaintiffs' license tax ordinances, and such has been the case at all times during the preceding five years and at all other times relevant to this action.

20. Defendants are utilities and they furnish or supply utility service in Plaintiffs within the meaning of Plaintiffs' license tax ordinances, and such has been the case at all times during the preceding five years and at all other times relevant to this action.

21. Defendants furnish or supply telecommunications service in Plaintiffs within the meaning of Plaintiffs' license tax ordinances, and Defendants have done so at all times during the preceding five years and at all other times relevant to this action.

22. Defendants are engaged in business in Plaintiffs and they derive gross receipts therefrom, and such has been the case at all times during the preceding five years and at all other times relevant to this action, in connection with their business(es) or service(s) which are the subject of this action.

23. Defendants do not pay any license taxes to Plaintiffs, or do not pay the required license taxes on gross receipts derived from exchange access, interexchange access, special access, interconnection facilities and equipment for use, toll or long-distance, reciprocal compensation arrangements, and possibly other sources, and such has been the case at all times during the preceding five years and at all other times relevant to this action, in connection with their business(es) or service(s) in Plaintiffs which are the subject of this action.

24. Defendants' failure to pay the required license taxes is not based on a good faith

belief on the part of any Defendant that:

- A. it was not a telephone company covered by the municipal business license tax ordinance, or the statute authorizing the enactment of such taxing ordinance, or did not provide telephone service as stated in the business license tax ordinance, and therefore owed no business license tax to the municipality; or
- B. that certain categories of its revenues did not qualify under the definition or wording of the ordinance as gross receipts or revenues upon which business license taxes should be calculated.

25. A justiciable controversy exists between Plaintiffs and Defendants.

26. Plaintiffs do not have an adequate remedy at law. Defendants' violations of Plaintiffs' license tax ordinances are continuing or are being constantly repeated, so that Plaintiffs would be required to bring successive actions to enforce the ordinances.

27. Unless Defendants are enjoined from violating Plaintiffs' license tax ordinances, Plaintiffs will suffer irreparable harm or injury. Plaintiffs are being deprived of revenues necessary for the public health, safety and welfare. In all probability, unless Defendants are so enjoined, Plaintiffs will continue to be deprived of such revenues in that Defendants refuse to pay the required license taxes, but intend to continue engaging in their telephone business(es) in Plaintiffs and deriving gross receipts therefrom.

28. Defendants have a legal and fiduciary duty to keep and maintain accurate accounts and records of the gross receipts they derive from their telephone business in Plaintiffs, and to file statements showing the amount(s).

29. By definition, Plaintiffs stand in a fiduciary relationship to Defendants. Schwartz

v. Urban Redevelopment Auth. of Pittsburgh, 192¹ A.2d 371, 374 (Pa. 1963) ("a public body...stands in a fiduciary relationship to the public and to taxpayers"); Frederick v. City of Butler, 374 A.2d 768, 770-71 (Pa.Comm. 1977) (same); City of Philadelphia v. Southeastern Penn. Transp. Auth., 271 A.2d 504, 508 (Pa.Comm. 1970) (same); Bogie v. Town of Barnet, 270 A.2d 898, 900 (Vt. 1970) ("The relationship of the taxing authority to the taxpayer stands, equitably, on a different footing. The relationship is not truly arms-length, but has fiduciary aspects.")

30. An accounting is necessary to show the amount(s) due Plaintiffs from Defendants. Defendants have received huge amounts of revenue from exchange access, inter-exchange access, special access, interconnection facilities and equipment for use, toll or long-distance, reciprocal compensation arrangements, and possibly other sources.

31. An accounting is necessary because Defendants – on multiple occasions – have (i) resisted efforts to ascertain the amount of license taxes owed, (ii) refused to cooperate in an audit or inspection of their books, and (iii) otherwise impaired the audit and inspection rights guaranteed by the ordinances.

32. An accounting will reveal whether Defendants correctly reported their gross receipts by including all categories of receipts subject to payment of a license tax under Plaintiffs' ordinances, and paid the required license tax thereon.

33. Plaintiffs have incurred and will continue to incur expenses for costs and attorneys' fees necessary for the investigation and prosecution of this action. Those attorneys' fees and other expenditures will result in a benefit to all members of the class.

WHEREFORE, Plaintiffs, on behalf of themselves and all other Missouri municipal

corporations and political subdivisions similarly situated, pray that this Court:

- A. Declare and adjudge that Defendants supply or furnish telephone service (including exchange telephone service) within the meaning of Plaintiffs' business or occupational license tax ordinances, or are otherwise engaged in a telephone business (including a telephone utility business) that is subject to payment of a license tax thereunder.
- B. Declare and adjudge that the gross receipts derived by Defendants from exchange access, interexchange access, special access, interconnection facilities and equipment for use, local, toll or long-distance, reciprocal compensation arrangements, and all other sources, are subject to payment under said ordinances.
- C. Declare and adjudge that Defendants owe Plaintiffs said license taxes for the preceding five years and all other permitted times, together with interest and penalties.
- D. Order an accounting of all monies Defendants owe Plaintiffs under said license tax ordinances, or an audit of Defendants' gross receipts.
- E. Enter judgment in favor of each Plaintiff and against each Defendant for the license tax, interest and penalty due each Plaintiff from each Defendant.
- F. Enjoin and restrain Defendants from violating said license tax ordinances of Plaintiffs by engaging in business subject to the ordinances, but not filing the required statements showing the gross receipts derived therefrom and paying all required taxes thereon.
- G. Award attorneys' fees and costs from the amount(s) recovered for the common benefit of the class.
- H. Order such other and further relief as the Court deems just and proper under the circumstances.

COUNT II - BACK TAXES, INTEREST AND PENALTIES (LICENSE TAXES)

34. Plaintiffs repeat, reallege and incorporate by reference Paragraphs 1-33 of this Petition as if more fully set forth herein.

35. Defendants owe Plaintiffs back taxes, with interest and penalties, as a result of their failure and refusal to comply with Plaintiffs' license tax ordinances.

WHEREFORE, Plaintiffs, on behalf of themselves and all other Missouri municipal corporations and political subdivisions similarly situated, pray that this Court:

- A. Enter judgment in favor of each Plaintiff and against each Defendant for the license tax, interest and penalty due each Plaintiff from each Defendant.
- B. Award attorneys' fees and costs from the amount(s) recovered for the common benefit of the class.
- C. Order such other and further relief as the Court deems just and proper under the circumstances.

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STATE OF MISSOURI

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CITY OF ST. LOUIS

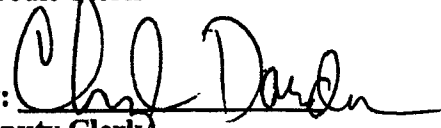
**I, MARIANO V. FAVAZZA, Clerk of the Circuit Court within
and for the City of St. Louis, State of Missouri, do hereby certify that
the foregoing are true copies of original documents on files and
recorded in my office for the following case
PETITION**

St. Louis City case number 044-02645

**WITNESS my hand and SEAL of said Court this 17TH day of
MAY, 2010.**



**Mariano V. Favazza
Circuit Clerk**



**By: Cheryl Darden
Deputy Clerk**



SEAL of the CIRCUIT COURT