

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

ST. LOUIS COUNTY, MISSOURI,

Plaintiff,

v.

Cause Number 08SL-CC00125

AT&T INC. f/n/a SBC  
COMMUNICATIONS, INC.;  
SOUTHWESTERN BELL TELEPHONE  
COMPANY f/n/a SOUTHWESTERN BELL  
TELEPHONE, L.P.; SBC LONG DISTANCE, LLC  
f/n/a SBC LONG DISTANCE, INC. and SBC  
COMMUNICATIONS SERVICES, INC.;  
AT&T MESSAGING LLC f/n/a/  
SOUTHWESTERN BELL MESSAGING  
SERVICES, INC.;  
Defendants.

Division Number 12

**SECOND AMENDED PETITION FOR DECLARATORY JUDGMENT  
AND OTHER RELIEF**

COMES NOW Plaintiff and for its Petition for Declaratory Judgment and other Relief,  
states as follows:

**COUNT I - DECLARATORY JUDGMENT, INJUNCTION, ACCOUNTING**

1. Plaintiff St. Louis County, Missouri ("County") is and was at all times hereafter mentioned a body corporate and politic and a political subdivision of the State of Missouri, duly organized under a special charter in accordance with the provisions of Article VI, Section 18 of the Constitution of the State of Missouri.
2. County is and was at all times hereafter mentioned, a county having a population of over six hundred thousand inhabitants.
3. Defendant AT&T Inc. is an active Delaware corporation in good standing, and has been at all times during the preceding eight years and at all other times relevant to this action. Defendant

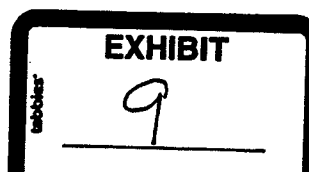


Exhibit A

AT&T Inc.. was formerly known as SBC Communications, Inc. and is the successor thereto.

4. Defendant Southwestern Bell Telephone Company is an active Missouri corporation and has been at all times during the preceding eight years and at all other times relevant to this action. Defendant Southwestern Bell Telephone Company was formerly known as Southwestern Bell Telephone, L.P. and is the successor thereto. Southwestern Bell Telephone Company does, or during said period has done, business as SBC Missouri and AT&T Missouri.

5. Defendant SBC Long Distance, LLC is an active Delaware limited liability company in good standing, and has been at all times during the preceding eight years and at all other times relevant to this action. SBC Long Distance, LLC was formerly known as SBC Long Distance, Inc. and/or Southwestern Bell Communications Services, Inc. and is the successor thereto. SBC Long Distance, LLC does, or during said period has done, business as AT&T Long Distance and SBC Long Distance.

5A. Defendant AT&T Messaging LLC is an active Delaware limited liability company in good standing, and has been at all times during the preceding eight years and at all other times relevant to this action. AT&T Messaging LLC was formerly known as Southwestern Bell Messaging Services, Inc. and is the successor thereto. AT&T Messaging LLC does, or during said period has done, business as AT&T Messaging and Southwestern Bell Messaging.

6. Defendants keep an office or agent in St. Louis County, Missouri for the transaction of their usual and customary business.

7. Pursuant to Section 508.010 R.S.Mo. venue is proper in this Court.

8. In bringing this action, County does not waive any rights it has with respect to tolling any statute of limitations against any Defendants as a result of being a putative class member in *City of*

*Wellston, Missouri, et al., v. SBC Communications, Inc., et al*, St. Louis City Circuit Court Cause Number 044-02645 and *State of Missouri, at the relation and to the use of the City of Wellston, Missouri et al., v. SBC Communications, Inc. et al.*, St. Louis City Circuit Court Cause Number 054-1930.

9. Section 66.300 R.S. Mo. 2000 (L. 1967, 1st Ex. Sess., p. 871, §1. Amended by L. 1991, S.B. 34, §A) provides:

The county council or other legislative authority of any first class county having a population of over six hundred thousand inhabitants is hereby authorized to impose a license tax whereby every public utility engaged in the business of supplying or furnishing electricity, electrical power, electrical service, gas, gas service, water, water service, sewer service, telegraph service or exchange telephone service in the part of the county outside incorporated cities shall pay to the county, as a license or occupational tax, an amount not in excess of five percent of the gross receipts derived from such business within the unincorporated areas of the county.

10. On October 23, 1969 County enacted Ordinance 5,214. A true and accurate copy of St. Louis County Ordinance 5,214 is attached as Exhibit A and incorporated by reference as if fully set forth herein. Except to the extent amended by Ordinance 12,108, Ordinance 5,214 is in full force and effect and has been at all times hereafter mentioned. Ordinance 5,214 provides in relevant part:

SECTION 2. The following terms wherever used or referred to in Sections 502.150 to 502.157 shall have these respective meanings unless a different meaning clearly appears from the context:

"Public utility" means every individual, firm, corporation, partnership, joint venture, business trust, receiver and any other person, group, combination or association of any of them who shall be engaged in the business of supplying or furnishing electricity, electrical power, electrical service, gas, gas service, water, water service, telegraph service or exchange telephone service in the unincorporated areas of St. Louis County.

"Gross receipts" means the aggregate amount of all sales and charges of the commodities or services described in (1) made by a public utility in the unincorporated areas of St. Louis County during any period less discounts, credits, refunds, sales taxes and uncollectible accounts actually charged off during the period.

"Director of Revenue" means the Director of Revenue of St. Louis County.

SECTION 3. Every public utility shall pay to St. Louis County an annual license or occupational tax in the amount equal to five (5) percent of the gross receipts derived from such business.

SECTION 4. Every public utility shall, on forms designed and furnished by the Director of Revenue, make and file a verified quarterly return with the Director of Revenue on or before the twentieth day following each quarterly period of three months and at that time shall pay the tax for the quarter covered by the return.

SECTION 5. Should the Director of Revenue be not satisfied with the accuracy of a quarterly return, or any statement required in support thereof, he may require the officers and employees of the public utility concerned to submit themselves and its books and records to his examination. Should he ascertain that the gross revenue herein taxed on the public utility during the time specified is greater than the amount stated, such public utility, notwithstanding its return, shall pay the license tax on its gross revenues as ascertained by the Director of Revenue.

11. On June 14, 1985 County enacted Ordinance 12,108, which ordinance is in full force and effect and has been at all times hereafter mentioned. A true and accurate copy of St. Louis County Ordinance 12,108 is attached as Exhibit B and incorporated by reference as if fully set forth herein. Ordinance 12,108 provides in relevant part:

**502.152 Return Form--When Filed.** --Every public utility shall, on forms designed and furnished by the Director of Revenue, make and file a verified quarterly return with the Director of Revenue on or before the twentieth day following each calendar month and at that time shall pay the tax for the month covered by the return.

12. Defendants are engaged in the business of furnishing or supplying telephone services in the unincorporated area of County which both originate and terminate within a telephone exchange, and the business of furnishing or supplying subscribers with the capability of communicating with other subscribers in that exchange, and are furthermore in the business of furnishing or supplying telephone services in the unincorporated area of County which originate in one telephone exchange

and terminate in another telephone exchange. Defendants derive gross receipts from such business, and they have done so at all times during the preceding eight years and all other times relevant to this action.

13. Defendants are engaged in the business of furnishing or supplying exchange telephone service in the unincorporated area of County within the meaning of Section 66.300 RSMo. and County Ordinance 5,214, and Defendants derive gross receipts from such business, and they have been engaged in such business and have derived gross receipts therefrom at all times during the preceding eight years and all other times relevant to this action.

14. County has informed Defendants of their license tax ordinances and demanded compliance therewith. Defendants have failed and refused to file the required returns and pay all required license taxes at all times during the preceding eight years and all other times relevant to this action. Accordingly, they owe County license taxes for said period.

15. Defendants furnish or supply their subscribers with access by phone: to emergency services including emergency 9-1-1 service; to basic local and long distance operator services; and to basic local and long-distance directory assistance; and Defendants have done so at all times during the preceding eight years and at all other times relevant to this action, in connection with their business or service which is the subject of this action.

16. Defendants furnish or supply their subscribers with custom calling features including call waiting, call forwarding, three-way calling, speed dialing, caller identification and voice mail, and Defendants have done so at all times during the preceding eight years and at all other times relevant to this action, in connection with their business or service in the unincorporated area of St. Louis County which is the subject of this action.

17. Defendants furnish or supply their subscribers with access to a nationwide telephone network, and Defendants have done so at all times during the preceding eight years and at all other times relevant to this action, in connection with Defendants' business or service which is the subject of this action.

18. Defendants place, construct and modify their facilities in the unincorporated area of County, including within County's public right-of-way, and Defendants have done so at all times during the preceding eight years and at all other times relevant to this action, in connection with their business or service which is the subject of this action.

19. County's license tax ordinance imposes a license or occupational tax on public utilities for the privilege of engaging in the business of supplying or furnishing exchange telephone service in the unincorporated area of County, and such has been the case at all times within the preceding eight years and at all other times relevant to this action.

20. Defendants' services are designed, marketed and operated to furnish or supply telephone service, including exchange telephone service, and such has been the case at all times during the preceding eight years and all other times relevant to this action.

21. Defendants sell their service and accessories to customers in the unincorporated area of County, and Defendants have done so at all times during the preceding eight years and at all other times relevant to this action, in connection with their business or service which is the subject of this action.

22. Defendants are public utilities engaged in the business of supplying or furnishing exchange telephone service in the part of County outside incorporated cities within the meaning of Section 66.300 RSMo. and County Ordinance 5,214 and they have been such at all times during the

preceding eight years and all other times relevant to this action.

23. As part of Defendants' conduct of its exchange telephone service, Defendants derive revenues from end user common line charges (also known as subscriber line charges), toll and long distance charges, messaging service (also known as Callnotes), exchange access, interexchange access, special access, interconnection facilities and equipment for use, toll or long-distance, reciprocal compensation arrangements and possible other sources, and such has been the case at all time during the preceding eight years and at all other times relevant to this action, in connection with their business(es) and service(s) in County which are the subject of this action.

24. Despite deriving revenues from such sources, Defendants do not pay the required license taxes on gross receipts derived from end user common line charges (also known as subscriber line charges), toll and long distance charges, messaging service (also known as Callnotes), 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 eight years and at all other times relevant to this action, in connection with their business(es) or service(s) in County which are the subject of this action.

25. A justiciable controversy exists between County and Defendants concerning whether County's license tax ordinance applies to the businesses in which Defendants engage in the unincorporated area of County and the gross receipts derived therefrom.

26. County does not have an adequate remedy at law. Defendants' violations of County's

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license tax ordinances are continuous or are being constantly repeated, so that County would be required to bring successive actions to enforce the ordinances.

27. Unless Defendants are enjoined from violating County's license tax ordinances, County will suffer irreparable harm or injury. County is being deprived of substantial revenue necessary for the public health, safety and welfare. In all probability, unless Defendants are so enjoined, County will continue to be deprived of such revenue in that Defendants refuse to pay the license taxes but intend to continue engaging in their telephone business in County 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 County, and to file statements showing the amounts. An accounting is necessary to show the amount due to County from Defendants. Extensive and complicated discovery is expected. Upon such an accounting, there will be found due to County a very large sum of money.

WHEREFORE, County prays that this Court.

A. Declare and adjudge that Defendants supply or furnish telephone service (including exchange telephone service) within the meaning of County's license or occupation tax ordinances, Ordinances 5,214 and 12,108.

B. Declare and adjudge that the gross receipts derived by Defendants from end user common line charges (also known as subscriber line charges), toll and long distance charges, messaging service (also known as Callnotes), exchange access, interexchange access, special access, interconnection facilities and equipment for use, 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 County said license taxes for the preceding eight years and all other permitted times, together with pre-judgment interest and penalties.

D. Order an accounting of all gross receipts derived from the business of furnishing or supplying exchange telephone service in the unincorporated area of County for the preceding eight years and all money Defendants owe to County under said license tax ordinances, or an audit of Defendants' gross receipts.

E. Enter judgment in favor of County and against each Defendant for the license taxes, interest and penalties due to County from each Defendant.

F. Enjoin and restrain Defendants from violating County Ordinances 5,214 and 12,108, including by engaging in business subject to the ordinances but not filing the required statements showing the gross receipts derived therefrom and paying all taxes hereon.

G. Order such other and further relief as the Court deems just and proper under the circumstances.

#### **COUNT II - BACK TAXES, INTEREST, PENALTIES**

29. County restates and realleges paragraphs 1-31 of this petition as if fully set forth herein.

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

WHEREFORE, County prays that this Court:

A. Declare and adjudge that Defendants supply or furnish telephone service (including exchange telephone service) within the meaning of County's license or occupation tax ordinances, Ordinances 5,214 and 12,108.

B. Declare and adjudge that Defendants owe County said license taxes for the preceding

eight years and all other permitted times, together with pre-judgment interest and penalties.

C. Enter judgment in favor of County and against each Defendant for the license taxes, interest and penalties due to County from each Defendant.

D. Order such other and further relief as the Court deems just and proper under the circumstances.

**PATRICIA REDINGTON  
COUNTY COUNSELOR**

Cynthia L. Hoemann

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James H. White by cch

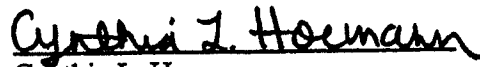
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Special Assistant County Counselor  
953 Alanson Dr.  
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314-995-9742  
fax 314-983-0768  
Attorneys for St. Louis County

**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2008, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Stephen B. Higgins  
Ann Ahrens Beck  
Amanda J. Hettinger  
Sharon B. Rosenberg  
Thompson Coburn LLP  
One US Bank Plaza  
St. Louis, MO 63101

John F. Medler, Jr.  
One AT&T Center, 35<sup>th</sup> Floor  
St. Louis, MO 63101

  
Cynthia L. Hoemann

BILL NO. 298, 1969

ORDINANCE NO. 5214, 1969

Introduced by Councilman LaTourette

AN ORDINANCE

PROVIDING FOR A LICENSE TAX TO BE PAID BY PUBLIC UTILITIES ENGAGED IN THE BUSINESS OF SUPPLYING OR FURNISHING GAS, GAS SERVICE, ELECTRICITY, ELECTRICAL POWER, ELECTRIC SERVICE, WATER, WATER SERVICE, TELEGRAPH SERVICE, TELEPHONE SERVICE AND EXCHANGE TELEPHONE SERVICE IN THE UNINCORPORATED AREAS OF ST. LOUIS COUNTY; AND REPEALING ORDINANCE NO. 4889 RELATING TO THE SAME SUBJECT MATTER.

BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1. Ordinance No. 4889 is hereby repealed.

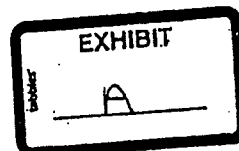
SECTION 2. The following terms wherever used or referred to in this ordinance shall have these respective meanings unless a different meaning clearly appears from the context:

(1) "Public utility" means every individual, firm, corporation, partnership, joint venture, business trust, receiver and any other person, group, combination or association of any of them who shall be engaged in the business of supplying or furnishing electricity, electrical power, electrical service, gas, gas service, water, water service, telegraph service or exchange telephone service in the unincorporated areas of St. Louis County.

(2) "Gross receipts" means the aggregate amount of all sales and charges of the commodities or services described in (1) made by a public utility in the unincorporated areas of St. Louis County during any period less discounts, credits, refunds, sales taxes and uncollectible accounts actually charged off during the period.

(3) "Director of Revenue" means the Director of Revenue of St. Louis County.

SECTION 3. Every public utility shall pay to St. Louis County an annual license or occupational tax in the amount equal to five percent (5%) of the gross receipts derived from such business.



SECTION 4. Every public utility shall, on forms designed and furnished by the Director of Revenue, make and file a verified quarterly return with the Director of Revenue on or before the twentieth day following each calendar quarterly period of three months and at that time shall pay the tax for the quarter covered by the return.

SECTION 5. Should the Director of Revenue be not satisfied with the accuracy of a quarterly return, or any statement required in support thereof, he may require the officers and employees of the public utility concerned by submit themselves and its books and records to his examination. Should he ascertain that the gross revenue herein taxed of the public utility during the time specified is greater than the amount stated, such public utility, notwithstanding its return, shall pay the license tax on its gross revenues as ascertained by the Director of Revenue.

SECTION 6. The Director of Revenue shall prescribe all incidental rules and regulations for the enforcement of this ordinance.

SECTION 7. In the event that any public utility fails to pay any tax or to discharge any liability in respect thereof, the County Counselor, at the request of the Director of Revenue, may file suit in the name of St. Louis County in any court of competent jurisdiction to enforce the payment of the tax and liability.

SECTION 8. Any person, persons, firm, association or corporation violating any provisions of this Ordinance, or any employee, assistant, agent, or any other person taking part in, joining or aiding in a violation of any provision of this Ordinance may be prosecuted as provided by law for the violations of Ordinances of St. Louis County and upon conviction shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) for any one offense. Each day a violation continues shall constitute a separate offense.

SECTION 9. The revenue received from the license tax levied herein shall be used for police and law enforcement purposes in the

unincorporated areas of the County.

ADOPTED October 23, 1969

Brainerd W. LaTourette, Jr.  
CHAIRMAN, COUNTY COUNCIL

APPROVED November 1, 1969

Lawrence K. Roos  
COUNTY SUPERVISOR

ATTEST: Mildred Huffman  
COUNTY CLERK

BILL NO: 235, 1985

ORDINANCE NO. 12,108, 1985

Introduced by Councilman Breihan

AN ORDINANCE

AMENDING TITLE V, CHAPTER 502 SLCRO 1974, AS  
AMENDED, BY REPEALING SECTION 502.152, RELATING  
TO THE RETURN AND PAYMENT OF THE PUBLIC UTILITIES  
GROSS RECEIPTS TAX, AND ENACTING ONE NEW SECTION  
IN LIEU THEREOF RELATING TO THE SAME SUBJECT.

IT ORDAINED BY THE COUNTY COUNCIL OF ST. LOUIS COUNTY, MISSOURI,  
FOLLOWS:

SECTION 1. Title V, Chapter 502 SLCRO 1974, as amended,  
amended by repealing Section 502.152 and enacting one new  
section in lieu thereof, which new section shall read as follows:

502.152 Return, form, when filed. Every public utility  
shall, on forms designed and furnished by the Director of  
Revenue, make and file a verified monthly return with the  
Director of Revenue on or before the twentieth day  
following each calendar month and at that time shall pay  
the tax for the month covered by the return.

ADOPTED: June 13, 1985

CARL W. BREIHAN  
CHAIRMAN, COUNTY COUNCIL

APPROVED: June 14, 1985

GENE McNARY  
COUNTY EXECUTIVE

TESTED: LELA APPERSON  
DEPUTY ADMINISTRATIVE DIRECTOR

I certify and attest that the above is a true copy of the original record of the Court in case number 08SL-CC00125 as it appears on file in my office.

Issued

5/11/2010



**JOAN M. GILMER**, Circuit Clerk  
St. Louis County Circuit Court

By

Keri Saneegaw

Deputy Clerk