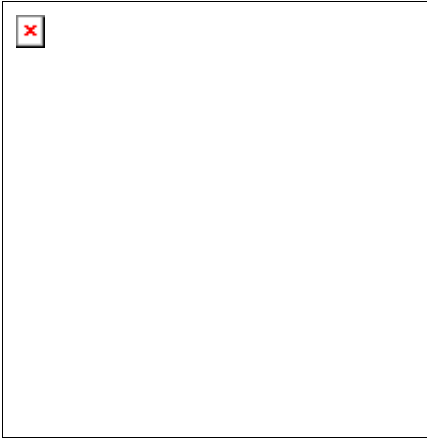


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter AT&T's Tariff Filing ) Case No. TT-2000-  
22

to Introduce an IntraLATA Overlay ) Tariff File No.  
9901018

Plan, PSC Mo. No. 15 )

**REPORT AND ORDER**

**Issue Date: May 2, 2000**

**Effective Date: May 23, 2000**

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OF THE STATE OF MISSOURI**

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**REGULATORY**

**LAW JUDGE: Lewis R. Mills, Jr.**

**REPORT AND ORDER**

**Procedural History**

On June 25, 1999, AT&T Communications of the Southwest, Inc. filed a revised tariff designed to implement a new optional calling plan known as AT&T IntraLATA Overlay Plan (the Overlay Plan). On July 12, 1999, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company (the Missouri Independent Telephone Group, or MITG) filed a motion to suspend, and ultimately reject, that tariff.

On July 14, 1999, the Small Telephone Company Group (STCG) filed a Motion to Suspend Tariff and Application to Intervene. SCTG raised many of the same points as MITG.

On August 2, Southwestern Bell Telephone Company filed an application to intervene. On August 9, Sprint Missouri, Inc. and Sprint Communications Company L.P. filed applications to intervene. The Commission granted intervention to each of these entities.

The parties filed testimony pursuant to a procedural schedule established by the Commission, and an evidentiary hearing was held on December 20 and 21, 1999.

On January 6, 2000, STCG filed Late-filed Exhibit 11. No objections were made to that exhibit, and it will be admitted.

### **Findings of Fact**

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on the issue may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

The issues in this case are primarily legal ones, and many of the pertinent facts are undisputed.

On June 25, 1999, AT&T filed proposed tariff sheet 71.6 designed to implement its Overlay Plan. The Overlay Plan will be available to residential customers in all SWBT exchanges (both urban and rural) who are pre-subscribed to AT&T for both intraLATA and interLATA toll service. The Overlay Plan is an optional calling plan. Customers enrolled in the plan will have all intraLATA direct dialed calls priced at nine cents per minute. Approval of the Overlay Plan will provide AT&T customers in SWBT exchanges additional choices that they would not otherwise have, and will create more competition in the intraLATA market. The Overlay Plan will not be available in any non-SWBT exchanges. Since the Overlay Plan will be available to all customers in SWBT exchanges, regardless of their geographic location, it is available to all similarly situated customers.

The access costs to originate and terminate traffic in non-SWBT exchanges, on average, are significantly higher than the costs in SWBT exchanges. Some evidence suggested that this differential may be as high as 300 percent. Approval of the Overlay Plan will make AT&T's provision

of intraLATA toll in SWBT exchanges more competitive. Allowing AT&T to be more competitive in SWBT exchanges, without incurring losses by offering the same service in other exchanges, will put AT&T in a better position to serve on a statewide basis.

The Commission finds that clear and convincing evidence has been presented that approving the Overlay Plan is in the public interest.

### **Conclusions of Law**

**1. Is the Overlay Plan consistent with the Telecommunications Act of 1996 and the Federal Communications Commission rules promulgated pursuant thereto?**

Public Counsel, STCG, and MITG argue that the Overlay Plan is not consistent

with Section 254(g) of the Telecommunications Act of 1996 (the Act). AT&T and Staff argue that it is consistent with federal law. Section 254(g) directs the Federal Communications Commission (FCC) to adopt rules requiring "the rates charged by providers of interexchange services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to subscribers in urban areas." The FCC adopted rules that use this same language (47 C.F.R. 64.1801).

There are, however, exceptions to the FCC's prohibition against geographic deaveraging. The FCC noted that it would:

forbear from applying Section 254(g), consistent with the intent of Congress, to the extent necessary to permit carriers to depart from geographic rate averaging to offer . . . optional calling plans . . . provided they are available to all similarly situated customers regardless of their geographic location. (CC Docket No. 96-61, FCC 96-331, Report and Order, at ¶ 26.)

Because the Overlay Plan is an optional calling plan available to all similarly situated customers regardless of their geographic location, it effectively is exempted from the federal prohibition against geographic deaveraging. The Commission concludes that the Overlay Plan is consistent with the Act and the FCC rules promulgated pursuant to the Act.

## **2. Is the Overlay Plan consistent with the Missouri statutes?**

Pursuant to Section 392.200.4(1), RSMo Supp. 1999, the Commission must find "clear and convincing evidence" that approval of the Overlay Plan is reasonably necessary to promote the public interest and the purposes and policies of Chapter 392. The Commission has found that approving the Overlay Plan will provide more choices to AT&T customers, and will increase competition in the intraLATA toll market. The Commission has also found that allowing AT&T to offer the Overlay Plan only in SWBT exchanges will put AT&T in a better position to serve statewide. All of these findings support the Commission's conclusion that approving the Overlay Plan will promote the public interest and purposes of Chapter 392. Taken together, these findings constitute clear and convincing evidence.

Since the Commission has determined that the Overlay Plan is prohibited by neither federal nor state law, and has found that approving it will promote the public interest and the purposes of Chapter 392, the Commission will approve AT&T's tariff filing implementing the Overlay Plan.

### **IT IS THEREFORE ORDERED:**

1. That the following tariff sheet, filed June 25, 1999, by AT&T Communications of the Southwest, Inc., and assigned Tariff File No. 9901018, is approved for service on or after May 23, 2000:

**P.S.C. Mo. No. 15**

**Section 1, 18th Revised Index Sheet 2**

**Section 1, Original Sheet 71.6**

2. That late-filed Exhibit 11 is admitted.
3. That this order shall become effective on May 23, 2000.
4. That this case may be closed on May 24, 2000.

**BY THE COMMISSION**

**Dale Hardy Roberts**

**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Murray, Schemenauer,

and Drainer, CC., concur

Crompton, C., absent

Dated at Jefferson City, Missouri,

on this 2nd day of May, 2000.

