

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

R. Mark,)	
)	
Complainant,)	
)	Case No. TC-2006-0354
vs.)	
)	
Southwestern Bell Telephone, L.P.,)	
d/b/a AT&T Missouri,)	
)	
Respondent)	

**SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A AT&T MISSOURI'S
MOTION TO DISMISS FOR COMPLAINANT'S FAILURE TO COMPLY
WITH THE COMMISSION'S ORDER**

Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri ("AT&T Missouri") hereby moves to dismiss Complainant's Complaint for his failure to comply with the Commission's October 12, 2006, Order Granting in Part Motion to Compel Responses to Data Requests. In support thereof, AT&T Missouri states as follows:

1. On October 12, 2006, after approximately five months in which Complainant steadfastly refused to respond to most of AT&T Missouri's May 11, 2006 nine Data Requests, and following AT&T Missouri's August 4, 2006 Renewed Motion to Compel Responses to Data Requests, the Commission entered its Order Granting in Part Motion to Compel Responses to Data Requests ("Order"). In its Order, the Commission granted AT&T Missouri's motion regarding six of the nine Data Requests, but determined that three had been sufficiently answered. The Commission also ordered that that Complainant respond to the six Data requests "on or before October 23, 2006." Ordering Clause 4.

2. Given the circumstances surrounding the long-outstanding Data Requests,¹ the Commission made certain that its Order would have teeth: “R. Mark is advised that failure to comply with this order by fully answering the data requests, as set out in the body of this order, could result in his complaint being dismissed.” Ordering Clause 5. (emphasis added).

3. As of the date and time on which this Motion is being filed with the Commission, AT&T Missouri still has not received all of the responses to the Data Requests which are the subject of the Commission’s October 12, 2006, Order.

4. Complainant has subsequently filed a Request that the Commission Reconsider its October 12, 2006 Order *Nunc Pro Tunc* Granting Respondent’s Motion to Compel (“Request”). Complainant’s late filed Request does not excuse his refusal to comply with the Commission’s Order, as 4 CSR 240-2.160(3) specifically provides that the filing of a motion for reconsideration does not excuse any party from complying with a commission order, nor does it operate to stay or postpone enforcement.

5. In his filing, Complainant expressly admits that he has not fully complied with the Commission’s October 12, 2006 Order. Request, para. 28. AT&T Missouri has received no response at all to three of the six Data Requests to which the Commission’s Order was directed (i.e., Data Requests 2, 3 and 9). The responses which Complainant provided regarding two of the remaining three (i.e., Data Requests, 1, 7 and 8) were essentially non-responsive and incomplete. Nevertheless, the Commission need not focus on Complainant’s non-responsive and incomplete responses as its basis for dismissal, despite the Order’s clear admonition that dismissal could follow for “failure to comply with the order by fully answering the data requests.” Ordering Clause 5. Complainant’s failure to provide any responses to three of the six

¹ As the Order noted, “[t]he Commission has addressed several discovery disputes and service issues in this case through a variety of orders.” Order, p. 1.

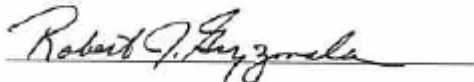
Data Requests to which he was ordered to respond is reason alone to dismiss his complaint for noncompliance with the Commission's Order.

6. Complainant has demonstrated a contumacious refusal to comply with the requirements of Commission rules and orders. Dismissal is now appropriate.

For the foregoing reasons, AT&T Missouri respectfully moves that the Commission dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454

Attorneys for Southwestern Bell Telephone, L.P.
One AT&T Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)/314-247-0014 (Facsimile)
robert.gryzmala@att.com (E-Mail)

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via e-mail or U.S. Mail on October 25, 2006.


Robert J. Gryzmala

William Haas
Missouri Public Service Commission
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102
William.Haas@psc.mo.gov

Lewis Mills
Office of the Public Counsel
200 Madison Street, Suite 650
P O Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Richard Mark
9029 Gravois View Court, #C
St. Louis, Missouri 63123