

**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 RESPONSE  
OPPOSING COMPLAINANT’S MOTION TO MODIFY PROTECTIVE ORDER  
AND COMPLAINANT’S SUGGESTIONS FOR NEW RULE ADOPTION**

Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T Missouri”) hereby files this response in opposition to Complainant’s October 20, 2006 “Motion to Modify the Commission’s Protective Order Entered on May 19, 2006 and Suggestions for New Rule Adoption.” (hereinafter, “Motion” and “Suggestion” respectively). For the reasons explained below, both the Motion and Suggestion should be rejected in their entirety.

1. On May 19, 2006, the Commission issued its Order Adopting Protective Order, in which it adopted its standard protective order in this case.<sup>1</sup> That order, and the protective order adopted by it, have been in place for over five months. Pursuant to Commission Rule 2.160(2) (4 CSR 240.2.160(2)), “[m]otions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the [C]ommission.” Complainant’s Motion is thus untimely and must be denied.

2. Even were the Commission to consider a “good cause” argument excusing Complainant’s protracted untimeliness, Complainant does not even attempt to state one. Instead,

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<sup>1</sup> Order Adopting Protective Order, and Attachment A thereto, issued May 19, 2006.

Complainant merely (and once again) expresses his complete disregard and disrespect for this Commission (e.g., claiming the Commission has “either negligently or deliberately” denied him due process) and otherwise merely (and once again) rehashes Complainant’s view of how the Commission should resolve this case. Neither of these constitute new or different circumstances unknown to the Complainant when the Order Adopting Protective Order was issued over five months ago.

3. Nor is there any reason to modify the protective order because, according to Complainant, he “must immediately be provided **ALL** “highly confidential” and “proprietary” material and information filed by the Respondent in response to Complainant’s past and presently-pending-and-outstanding data requests and those provided by the Respondent in response to the Commission’s Staff’s data requests.” Motion, para. 6. (emphasis original). None of AT&T Missouri’s objections to Complainant’s previously submitted data requests rested on the confidential nature of the information sought -- and Complainant does not assert otherwise. Moreover, with respect to Complainant’s newly issued data requests, AT&T Missouri’s due date for objections has not yet arrived. Thus, with respect to the data requests Complainant has directed to AT&T Missouri, there is no reason to even entertain Complainant’s Motion. It is simply not ripe. The Commission should not issue any order concerning these data requests until the record, including objections and responses to any motion to compel, are properly before it. To the extent the data requests concern customer proprietary network information, the Commission should be particularly careful about modifying the protective order. Mr. Mark is not entitled to personally identifiable information about other AT&T Missouri customers.

4. AT&T Missouri’s responses to Staff’s data requests include only two Highly Confidential responses. One has to do with the total number of non-published customers in

Missouri and the estimated total revenues for such customers, matters which have no relevance whatsoever to Complainant's claim that he is entitled to a waiver of the non-published service charge stated in AT&T Missouri's tariff. The other conveys service address (i.e., where telephone service is provided) and billing address (where the bill is sent), the date on which Complainant's service was established, and the fact that the Complainant subscribes to Non-Published Exchange Service. Complainant does not need a modification of the protective order to learn these undisputed items of information of which he has direct knowledge.

5. Nor, despite Complainant's contrary claim, does Subparagraph U of the protective order excuse Complainant's utter untimeliness and failure to demonstrate that any relief is necessary. While that paragraph generally permits the Commission to modify the protective order, still Complainant has shown no reason why the Commission should do so. Moreover, the Commission can take notice that Complainant's Motion follows his own failure – after five months – to provide responses to the AT&T Missouri data requests, despite the Commission's October 12, 2006, Order Granting in part Motion to Compel Responses to Data Requests. Complainant should have directed his attention to complying with that order, rather than chasing perceived discovery ghosts.


6. The Commission need waste no time in rejecting Complainant's Suggestion that the Commission award litigants "reasonable attorneys' fees or \$25,000, which ever is greater" in the circumstances mentioned by Complainant – all of which discussion is confined to a few lines in the Motion's "Whereas" clause. As Staff has correctly noted in this very case, "[t]he Commission has no power to determine damages, award pecuniary relief, or declare or enforce any principle of law or equity." Staff Report, June 30, 2006, para. 4. (further citations omitted).

The analysis ends there, and so too should the Commission's consideration of Complainant's Suggestion.

For the foregoing reasons, the Commission should deny, in their entirety, both Complainant's Motion to Modify the Commission's Protective Order and Complainant's Suggestions for New Rule Adoption.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

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## **CERTIFICATE OF SERVICE**

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

  
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