

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

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|------------------------------------|---|-----------------------|
| 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
RENEWED MOTION TO COMPEL RESPONSES TO DATA REQUESTS.**

Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri ("AT&T Missouri"), pursuant to Commission Rule 2.090(8) (4 CSR 240-2.090(8)), respectfully renews its June 20, 2006 Motion to Compel Responses to Discovery Requests ("Motion"), and requests that AT&T Missouri's renewed Motion be ruled on as soon as possible, but in no event later than the August 15, 2006 Second Prehearing Conference. AT&T Missouri's discovery requests have been outstanding for almost three months, yet after two failed attempts to forestall responses, Complainant R. Mark ("Mark") still refuses to respond to virtually any of them. Absent these responses, AT&T Missouri is unable to prepare a full and fair defense to the complaint and to Complainant's motion for summary judgment.

AT&T Missouri requests that the Commission an order (a) requiring that Complainant respond fully to all such requests, (b) requiring that Complainant certify in a written document filed with the Commission that he has done so, and (c) that unless Complainant files such certification, the case shall be regarded as dismissed without further order of the Commission. In support of this motion, AT&T Missouri states as follows:

1. AT&T Missouri detailed the procedural posture of this case, including Mark's failure to respond to AT&T Missouri's May 11, 2006 data requests, in its June 20, 2006 Motion to Compel Responses to Discovery Requests, a copy of which is attached hereto and incorporated fully herein by reference (Exhibit 1). As AT&T Missouri there explained in detail, these data requests seek information reasonably calculated to lead to the discovery of admissible evidence.¹

2. In its June 22, 2006 Order,² the Commission rejected Mark's "cart before the horse" view that the case be disposed of summarily, without his being made to respond to AT&T Missouri's data requests. On the other hand, the Commission declined to issue an order compelling Mark to respond to the requests, based on its determination that "[t]here is no evidence, at this time, that Mr. Mark is unwilling to respond to AT&T Missouri's data requests."³ The Commission's Order allowed Mark through July 22, 2006 in which to respond to the requests and deferred the due date for AT&T Missouri's response to Mark's Motion for Summary Judgment until "thirty (30) days from the date it receives responses to the nine (9) data requests attached to its June 20, 2006 motion."⁴

3. Mark's "Responses to Respondent's Data Requests Including Objections Thereto," received July 24, 2006 (and attached hereto as Exhibit 2) are not in fact "responses." Rather, the document leads with three "notes" espousing Mark's view of the case, and then follows with a series of objections to all of the requests. Of the nine data requests submitted by AT&T Missouri, Mark provided no information whatsoever as to four of them (Requests 1, 2, 3

¹ Motion, pp. 4-7.

² Order Regarding Complainant's Motion for Extension of Time to Respond to Respondent's Data Requests, Complainant's Supplemental Motion in Support of Summary Judgment, and Respondent's Motion to Compel Responses to Data Requests and For Extension of Time to Respond to Motion for Summary Judgment, issued June 22, 2006 ("Order").

³ Order, p. 2.

⁴ Order, p. 3.

and 9) and incomplete information as to three others (Requests 5, 7 and 8). Mark's responses to the remaining two were provided subject to his objections taken to both of them (Requests 4 and 6). The Commission should overrule all of Mark's objections and direct that he provide full and complete responses to AT&T Missouri's requests, free from objection.

4. First, Mark's objections – provided over two months after the requests were issued – have been long since waived. AT&T Missouri's Data Requests were issued on May 11, 2006, and objections were due by Monday, May 22, 2006, pursuant to Commission Rule 2.090(2)). None were received by AT&T Missouri. Moreover, when (on June 19, 2006), Mark moved for “additional time,” he did so in a pleading captioned “Complaint's [sic] Motion, For Good Cause Shown, To Extend Time To Respond To Respondent's DRs.” The pleading represented (at p. 2) that Mark needed thirty additional days to “thoroughly review and adequately respond” to AT&T Missouri's requests. It did not ask for additional time in which to present objections (a request that would have been untimely in any case). For this reason alone, the Commission can and should rule that all of Mark's objections have been waived.

5. Second, in its initial Motion (at pp. 4-7), AT&T Missouri fully explained why its data requests were calculated to lead to the discovery of admissible evidence and otherwise appropriate. None of Mark's July 24, 2006 “responses” challenge these reasons.

6. AT&T Missouri respectfully requests that the Commission waive, for good cause, the requirements of Commission Rule 2.090(8), which contemplates a conference among the parties to resolve discovery disputes before they are brought to the Commission. In compliance with the rule, the undersigned sent to Mark on July 25, 2006 a letter, both by facsimile and by first-class mail, asking that Mark contact him in an attempt to resolve this dispute (attached hereto as Exhibit 3). Mark did not do so. Notably, Mark similarly had declined to contact the

undersigned, though asked to do so, before AT&T Missouri filed its initial Motion. (see, Exhibit 1, p. 11). Mark has refused to provide his wireless telephone number which would allow oral communications. In any case, Mark's pleadings leave no doubt that an attempt to resolve the matter of AT&T Missouri's data requests short of a motion to compel would be fruitless.

7. For the foregoing reasons AT&T Missouri respectfully moves the Commission to enter an order (a) requiring that Complainant respond fully to all of AT&T Missouri's May 11, 2006 data requests, (b) requiring that Complainant certify in a written document filed with the Commission that he has done so, and (c) that unless Complainant files such certification, the case shall be regarded as dismissed without further order of the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via e-mail or U.S. Mail on August 4, 2006.


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