

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

R. Mark,)	
)	
Complainant,)	
)	
vs.)	Case No. TC-2006-0354
)	
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 STRIKE**

Comes now Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (“AT&T Missouri”) and files this Motion to Strike paragraphs 12, 13, 15 and footnote 6, of the Complaint, as well as paragraphs B, C, D and E of Complainant’s Prayer set forth in the Complaint. In support thereof, AT&T Missouri states as follows:

1. On or about March 15, 2006, Complainant R. Mark filed a Complaint against AT&T Missouri with the Missouri Public Service Commission (“Commission”).

2. Complainant’s Complaint contains references to settlement offers that are privileged under 4 CSR 240-2.090(7), inadmissible for any reason and should be stricken.

Specifically, Complainant’s Complaint states:

12. That the General Counsel-Mo/Ks for the Respondent offered the Complainant a “one-time credit” to settle the matter. Such minuscule “pittance” settlement offered, however, was further subject to, and provided that, if such settlement were accepted by the Complainant, ‘. . .the non-published number charge would continue to apply both retroactively and prospectively!’ The pittance offered by Respondent’s General Counsel Mo-Ks was notwithstanding the fact that he was fully cognizant of the fact that Complainant’s use of the aforesaid residential P.O.T.S. line was exclusively with a data terminal and that no voice use was contemplated.

13. That Complainant refused to accept Respondent’s ‘one-time’ token “pittance” offer coupled with its unconscionable restrictions and conditions as set

forth by the Respondent's General Counsel-Mo/KS in paragraph twelve hereinabove. (footnotes omitted)

3. Because paragraphs 12 and 13, as well as the footnotes contained therein, violate 4 CSR 240-2.090(7), AT&T respectfully requests that the Commission grant its Motion to Strike.

4. In addition to violating 4 CSR 240-2.090(7), paragraphs 12 and 13 also violate established Missouri case law wherein the courts have uniformly held that settlement offers and the negotiations concerning them are inadmissible because the law favors the settlement of disputes. Daniel v. Indiana Mills & Manufacturing, Inc., 103 S.W.3d 302, 316 (Mo. App. 2003); O'Neal v. Pipes Enterprises, Inc., 930 S.W.2d 416, 423 (Mo. App. 1995). The courts have explained that: "[a]bsent special circumstances, admission of a settlement at trial serves no purpose and, if customarily done, would deter parties from settling and frustrate the public policy of encouraging settlements. Rodgers v. Czmanske, 862 S.W.2d 453, 460 (Mo. App. 1993). Settlement agreements are highly prejudicial and should not be admitted in evidence unless there is a clear and cogent reason to do so." Daniel v. Indiana Mills & Manufacturing, Inc., 103 S.W.3d 302, 316-317 (Mo. App. 2003).

5. AT&T Missouri further moves to strike paragraph 15, including footnote 6, and paragraphs B, C, D and E of Complainant's prayer (i.e., "Wherefore" clause). The Commission has no authority to consider purported class actions, nor does it have the authority to award damages or grant equitable relief. Straube v. Bowling Green Gas Co., 360 Mo. 132, 227 S.W.2d 666 (Mo. 1950); State of Missouri, ex rel. Fee Fee Trunk Sewer, Inc. v. The Hon. Arthur Litz, 596 S.W.2d 466, 468 (Mo. App., 1980); see also, Shaffer Lombardo Shurin v. Xspedius, Case No. TC-2005-0266, Order Dismissing Complaint and Closing Case (June 2, 2005). Moreover, the claims that AT&T Missouri is "gauging the Missouri telephone service public" (basic local telephone service rates in Missouri are actually lower today than they were in 1984) and that the

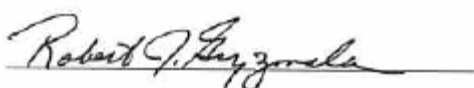
“Missouri Public Service Commission has become helpless and powerless to do other than the Respondent’s bidding” are inflammatory and are not appropriately part of a Complaint. The Commission may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Rule 55.27(e). The Commission should strike these allegations as they are clearly impertinent and scandalous.

5. Because paragraphs 12, 13, 15 and footnote 6 violate established Commission rules and/or Missouri law, AT&T Missouri respectfully requests that the Commission grant its Motion to Strike.

Wherefore, Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, prays that the Missouri Public Service Commission grants its Motion to Strike paragraphs 12, 13, 15 and footnote 6 of the Complaint, as well as paragraphs B, C, D and E of the Prayer set forth in said Complaint, together with any further relief the Commission deems just and proper.

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 e-mail or U.S. Mail on May 1, 2006.


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