

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

FILED²

OCT 25 2006

Missouri Public
Service Commission

R. Mark,)
Complainant)
v.)
ATT a/k/a SBC a/k/a Southwestern)
Bell Telephone Company,)
Respondent)

Cause No. TC-2006-0354

**COMPLAINANT'S MOTION TO COMPEL ANSWERS TO DATA
REQUESTS PROPOUNDED TO THE RESPONDENT**

Comes now Complainant with *Complainant's Motion to Compel Answers to data Requests propounded to the Respondent*, and states:

1. That the Complainant propounded data requests 1-16 to the Respondent in June 2006. That the data requests propounded and the responses of Respondent, Southwestern Bell Telephone d/b/a AT&T "Objections to Complainant's Data Requests, is attached as **Exhibit "A."**
2. That in the attached document, the Respondent indicated that it *would provide* responses to DRs. 001, 002, 005, 006, 008, 009, 010, and 014. To date, the Complainant has no record of receipt of any of the aforesaid data request responses which the Respondent indicated in the attached **Exhibit A** that *it would provide!*

ADDITIONALLY:

3. **DR. 003.** The objection stated: not reasonably calculated to lead to the discovery of admissible evidence, and overly broad. Further objection: "protected by work product." All of the aforesaid objections are not well taken. The data requests request merely the **names** of the states in which Respondent does business, whether prior approval or consideration of valuation is currently required by any state agency/division/entity prior to ATT's/SBC's being authorized, permitted, or sanction to charge (tariff) monthly charge *for residential unpublished service.*¹ This information is not "work product" and was **not** prepared for the purpose of litigation and may very likely lead to the discovery of admissible evidence. This data requests should be ordered by the Commission as being relevant, material, and likely to lead to the discovery of

¹ This is the situation that existed BEFORE the current law which prohibited the Mo.P.S.C. from reviewing the cost basis of proposed tariff charges to be charged to telephone customers by the Respondent.

admissible evidence. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to lead to the discovery of admissible evidence.

4. **DR. 004's** objection is that it irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to both scope and time. These objections are not well taken. This data request simply asks for the charge by ATT's (SBC's/ATT's) Cingular telephone service for unpublished service in **Missouri** and in each state in which SBC's Cingular operates. The **time frame is limited** to June 19, 1996 to the present. The response will lead to the discovery of admissible evidence, is not overly broad and burdensome in scope and time, and is relevant and material. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to lead to the discovery of admissible evidence.

5. **DR. 007.** This data request requests each and every *difference of service(s)/features(s)* rendered or not rendered for the Respondent's *unpublished monthly residential service charge* in Missouri compared to California and to each state in which ATT (SBC) charges a residential monthly unpublished service charge. Such request is relevant and material, is definitely likely to lead to the discovery of admissible evidence, and is not overly broad. The Respondent's objections are not well taken. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to led to the discovery of admissible evidence.

6. **DR. 011** Requests the Respondent to state each state in which any state agency, division, or entity **requires** the Respondent to *obtain prior approval or consideration* before the Respondent may charge any *specific amount* for **unpublished residential telephone service**. Respondent objects simply by saying that it is irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome. Further, Respondent objects "claiming" that it is "protected" by "work product privilege." The latter is not applicable since it was not prepared heretofore for the purpose of litigation. This data request does not request a period of time of any substantial length or request that the Respondent provide a response for any company or subsidiary other than the Respondent. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to led to the discovery of admissible evidence.

7. **DR. 012.** The amount of revenue provided to Respondent for non-published telephone numbers and the effect, if any, on this revenue by the Respondent's arbitrarily and capriciously denial of relief pursuant to G.E.T. §6.12.6(c) is **certainly** relevant and material and likely to lead to the discovery of admissible evidence. This data request is limited to a period from June 1, 1966 through June 1, 2006 and is limited to charges to *residential customers only in Missouri* for *unpublished telephone service* and to each state in which the Respondent charges a monthly

charge to residential customers **for unpublished line charges**. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to led to the discovery of admissible evidence.

8. **DR. 013** The net worth of the Respondent as of June 1, 2006 **or** at the last time such information was available **or** the furnishment of copies of net worth statements since the last time that such were available is entirely relevant and material and likely to lead to the discovery of admissible evidence. The effect on the Respondent of any arbitrary and capricious denial of relief to the Complainant as well as to residential telephone customers under G.E.T. §6.12.6(e) and under other comparable state tariffs is very likely to lead to the discovery of admissible evidence. It is limited in scope and time and is not overly broad and/or burdensome. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to led to the discovery of admissible evidence.

9. **DR. 015** requests the case number, parties, dates, and each state in which a person or entity has filed a formal or informal petition or complaint with any agency in any court at any time between June 1996 and the present indicating that the Respondent has failed to abide by any tariff related in whole or in part, directly or indirectly, to unpublished line charges is very relevant, specific, and material. A brief summary of the contentions, the response, and the final disposition is also requested. This data request relates only to unpublished residential line charges (just as in the case at bar), and is limited in time and scope. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to led to the discovery of admissible evidence.

10. **DR 016**, although slightly broader than **DR 015**, again has not been answered and has been objected to by the Respondent *even though* the data request is limited in time and scope: June 1, 1996 to the present. This data request seeks to learn the instances in which there have been formal or informal proceedings in which it is alleged, as in this case at bar, that the Respondent "failed to abide by any tariff." The Respondent's boiler-plate response that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and is overly broad and burdensome as to scope and time is not well taken. A RESPONSE TO THIS DATA REQUEST SHOULD BE ORDERED BY THE COMMISSION as relevant, material, and likely to led to the discovery of admissible evidence.

11. That without the aforesaid responses, full and complete responses, Complainant cannot receive a full, fair, and competent hearing in this case.

WHEREFORE, Complainant prays that the Commission will immediately order that the Respondent, *instantur*, provide responses to data requests numbered: 001, 002, 005, 006, 008, 009, 010, and 014 which it has *already indicated it would provide* and that the Commission, after consideration of the objections and the comments of Complainant as well as the facts in the instant case, order full and complete responses and disclosure by the Respondent to

Complainant's Data Requests numbered: DR.003, DR.004, DR.007, DR.011, DR.012, DR.013, DR.014, DR.015, and DR.016 and enter such other and further orders as the Commission may find to be just and proper in the premises.

Respectfully,



Complainant

October 24, 2006

Copies faxed to the Public Service Commission,
General Counsel's Office, 573-751-9285;
Lewis R. Mills, Jr., Office of Public Counsel,
573-751-5562, and mailed to the Attorneys for
AT&T Missouri, Respondent.

9029 Gravois View Ct. #C
St. Louis, Missouri 63123



**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)	

COPY

**SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A AT&T MISSOURI'S
OBJECTIONS TO COMPLAINANT'S DATA REQUESTS**

Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri ("AT&T Missouri"), pursuant to 4 CSR 240-2.090(2), states the following Objections to the Data Requests ("DRs") submitted by Complainant, R. Mark, to AT&T Missouri:¹

GENERAL OBJECTIONS

AT&T Missouri objects to all of the DRs to the extent that they purport to be directed to "AT&T," "SBC" or "Cingular" on the grounds that these terms are vague, overbroad and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objection, AT&T Missouri will respond to the DRs on its own behalf.

AT&T Missouri objects to each DR which relates to or otherwise references the term "unpublished" on the grounds that it is vague and overbroad. Subject to and without waiving its objection, AT&T Missouri will respond to each such DR on the assumption that it relates to or otherwise references the term "non-published."

¹ These data requests, while entitled "Complainant's Data Requests (Nos. 1-16) Directed to ATT (SBC) on June 8, 2006," were received by AT&T Missouri via regular U.S. mail on June 13, 2006.

DR No. 001: Please state the name, address, and telephone number(s) of each of Respondent's residential customers who have requested waiver of the Respondent's unpublished monthly charge, based in whole or in part on the customer's advisement to Respondent that said customer's telephone line(s) were/are used for data purposes with no voice use contemplated. Said DR applies to request at any time from January 1, 1996 to the present

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to both scope and time. Subject to and without waiving its objections, AT&T Missouri will provide a response.

DR No. 002: Please state the current monthly charge charged by ATT (SBC) for unpublished service to residential customers in Missouri, California, and in each state in which Respondent, ATT (SBC) operates or does business.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome. Subject to and without waiving its objections, AT&T Missouri will provide a response.

DR No. 003: Please state each and every state in which ATT (SBC) operates and/or does business. State whether prior approval or consideration or evaluation is currently required by any state agency/division/entity prior to ATT's (SBC's) being authorized, permitted, or sanctioned to charge a monthly charge for residential unpublished telephone service.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome. AT&T Missouri further objects to this Data Request on the ground that it requests AT&T Missouri to undertake research on Complainant's behalf that would be protected by the work product privilege even if such efforts were undertaken.

DR No. 004: State the charge for unpublished service, if any, charged by ATT's (SBC's) Cingular for unpublished service in Missouri and in each state in which ATT's (SBC's) Cingular operates. This request is applicable to the period from June 1, 1996 to the present date.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to both scope and time.

DR No. 005: State the name, address and telephone number of each of Respondent's residential customer in Missouri who has been refused a waiver or cancellation by Respondent of Respondent's unpublished monthly service charge subsequent to the customer's request for waiver/cancellation of the monthly unpublished line charge, at any time during the period from June 1, 1996 through the present.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to both scope and time. Subject to and without waiving its objections, AT&T Missouri will provide a response.

DR No. 006: Please state all unpublished features and/or attributes and/or service(s) provided by Respondent to a residential telephone customer in Missouri in return for the payment of an unpublished monthly line charge. State the same information applicable for California and for each state, other than Missouri, in which the Respondent does business and/or operates and provides unpublished residential service.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome. Subject to and without waiving its objections, AT&T Missouri will provide a response.

DR No. 007: Please state, if applicable, each and every difference of service(s) and /or feature(s) rendered or not rendered for the Respondent's unpublished monthly residential service in Missouri, in California, and for each state in which ATT (SBC) charges unpublished service.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome.

DR No. 008: Please state the monthly service charge charged by ATT (SBC) in Missouri for unpublished telephone service on the following dates: June 1 of each year commencing in 1996 through June 1, 2006.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to both scope and time. Subject to and without waiving its objections, AT&T Missouri will provide a response.

DR No. 009: Please state whether Missouri G.E.T. 6.12.6(E), in the opinion of Respondent, requires a residential telephone customer to do, or to advise, anything more (in order to obtain a waiver/cancellation of the monthly unpublished service charge).

other than advisement by the customer to the Respondent that the customer is using a terminal for the reception/transmission of data and that no further voice use is contemplated? If Respondent contends that anything else or more is required by the customer, (in the opinion of Respondent), state each and every other item and the factual and/or legal basis for such contention.]

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections stated above, AT&T Missouri will provide a response.

DR No. 010: Please state the difference, if any, between data received/transmitted (with no voice use possible) by: a) a computer with software installed to send/receive facsimiles, b) a facsimile machine used for sending/receiving facsimiles, c) any other device for sending/receiving facsimiles.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome. Subject to and without waiving its objections, AT&T Missouri will provide a response.

DR No. 11: Please state each state in which any state agency, division, or entity requires the Respondent to obtain prior approval or consideration before the Respondent may charge any specific amount for unpublished residential telephone service.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome. AT&T Missouri further objects to this Data Request on the ground that it requests AT&T Missouri to undertake research on Complainant's behalf that would be protected by the work product privilege even if such efforts were undertaken.

DR No. 012: Please state the total amount of gross revenue received by the Respondent for each year commencing June 1, 1996 through June 1, 2006 for charges to residential customers in Missouri for unpublished telephone service. State the same information for each state in which the respondent charges a monthly charge to residential customers for unpublished line charges.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to both scope and time.

DR No. 013: Please state the net worth of the Respondent as of June 1, 2006 or if such is not available as of June 1, 2006, state the net worth of the Respondent at the last occasion such was available; alternatively, furnish copies of all net worth

statements prepared and/or filed and/or provided by Respondent to any individual, agency, or entity, at the latest time available since January 1, 2000.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to scope and time.

DR No. 014: Please state whether or not a facsimile machine (~~where no voice use is technically possible~~), can be used for anything other than the transmission and/or reception of data. If you contend that a facsimile machine (~~where no voice use is technically possible~~), i.e., can be used for anything *other than* the transmission and/or reception of data, state any and all legal and/or technical bases for such contention.

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome. Subject to and without waiving its objections, AT&T Missouri will provide a response.

DR No. 015: Please state the case number, the parties, the date, and each state in which any person or entity has filed a formal or informal petition or complaint with any agency or in any court at any time between June 1, 1996 and the present, alleging that the Respondent has failed to abide by any tariff related in whole or in part, directly or indirectly, to unpublished line charges. (With the exception of this case). [Additionally, for each such case, provide a brief summary of the Complainant's/Plaintiff's/Petitioner's contention(s), the Respondent's response(s), and the final disposition of said case.]

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to both scope and time.

DR No. 016: Please state the case number, the parties, the date, and each state in which any person or entity has filed a formal or informal petition or complaint with any agency or in any court at any time between June 1, 1996 and the present, alleging that the Respondent has failed to abide by any tariff (other than the tariff related to DR.015) [For each such case, provide a brief summary of the Complainant's/Plaintiff's/Petitioner's contention(s), the Respondent's response(s), and the final disposition of said case].

AT&T Missouri's Objection: In addition to its General Objections stated above, AT&T Missouri objects to this Data Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is overly broad and burdensome as to scope and time.