

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 16th day  
of November, 2006.

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

**ORDER DENYING APPLICATION FOR REHEARING**

Issue Date: November 16, 2006

Effective Date: November 16, 2006

Syllabus: This order denies the application for rehearing filed by R. Mark as without merit and not timely filed.

On October 31, 2006, the Commission issued an order denying Complainant's Request that the Commission Reconsider its October 12, 2006 Order *Nunc Pro Tunc* Granting Respondent's Motion to Compel and dismissing R. Mark's complaint for failure to comply with an order of the Missouri Public Service Commission. That order had an effective date of November 10, 2006, to allow Mr. Mark the opportunity to timely seek a rehearing before the Commission.

On November 13, 2006, Mr. Mark filed a Motion to Reconsider Dismissal Pursuant to the Order of the Commission Dated October 31, 2006.<sup>1</sup> As the order of the

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<sup>1</sup> Mr. Mark submitted his motion by facsimile over the holiday weekend. Under 4 CSR 240-2.050(2) it was appropriately date-stamped as filed on November 13, 2006.

Commission was a final order in this case, a request for reconsideration is not appropriate. The Commission will take Mr. Mark's filing as an application for rehearing under Section 386.500, RSMo 2000. Section 386.500.2 reads in pertinent part,

No cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, **before the effective date of such order** or decision, an application to the commission for a rehearing. (emphasis added)

Accordingly, the Commission is without statutory authority to consider Mr. Mark's untimely application for rehearing and must deny that application.

In the alternative, under Section 386.500.1, RSMo 2000, the Commission shall grant a timely filed request for rehearing only if in its judgment there is sufficient reason to do so. If Mr. Mark had timely filed his application for rehearing, the Commission would have denied it, because Mr. Mark failed to establish sufficient reason to grant an application for rehearing. In support of his motion Mr. Mark offers another restatement of his theory of the case and the same arguments the Commission addressed and rejected in its October 31, 2006 order. Those arguments will not be addressed again in this order.

Mr. Mark's motion raises a single new argument. Specifically, Mr. Mark contends that the Commission's order dismissing his case, due in part to his repeated refusal to comply with Commission orders compelling discovery, was improper, because AT&T Missouri had likewise refused to comply with his discovery requests. This argument is without merit in that Mr. Mark never properly sought enforcement by the Commission. Mr. Mark did not file a motion to compel AT&T Missouri to respond to his discovery requests until after the Commission had dismissed his complaint for repeatedly refusing to comply with Commission orders. Accordingly, his motions to compel AT&T Missouri to

respond to his data requests were never considered by the Commission, because they were made moot by the dismissal of his complaint.

Mr. Mark also alleges that the Commission's order and its rules are somehow unfair to him because he is a *pro se* litigant. While Mr. Mark declines to offer any basis for this allegation, it is without merit. In proceedings before it, the Commission cannot give one party preferential treatment over another irrespective of whether one such party is appearing *pro se*.<sup>2</sup>

It is the judgment of the Commission that Mr. Mark failed to establish sufficient reason to grant an application for rehearing even if that application had been timely filed.

**IT IS ORDERED THAT:**

1. The application for rehearing filed by R. Mark on November 13, 2006, is denied.
2. This order shall become effective on November 16, 2006.
3. This case may be closed on November 17, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Voss, Regulatory Law Judge

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<sup>2</sup> See: *Hardin v. State*, 51 S. W. 3d 129, 131 (Mo. App. W.D. 2001); *Wilson v. Carnahan*, 25 S. W. 3d 664, 667 (Mo. App. W.D. 2000); and *Portwood-Hurt v. Hurt*, 988 S.W.2d 613, 618 (Mo. App. W.D. 1999).