

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED<sup>2</sup>

MAR 15 2006

Missouri Public  
Service Commission

R. MARK,

Complainant

v.

Case No. \_\_\_\_\_

ATT a/k/a SBC a/k/a Southwestern  
Bell Telephone Company,

Respondent

COMPLAINT

Comes now Complainant with Complainant's cause of action and claim for relief, and states:

1. That Complainant subscribes to a residential, plain ordinary telephone service line, "P.O.T.S.," in St. Louis, Missouri. Said telephone service has been, and is, provided by the Respondent for in excess of ten years.

2. That Respondent is a utility regulated by the Missouri Public Service Commission and is required to follow, and abide by, General Exchange Tariffs on file with said Commission.

3. That the Complainant's non-published telephone number which is the subject of this Complaint is unlisted; the telephone number, however, was furnished to, and is known to, the Respondent based on Complainant's previous correspondence with the Respondent's *General Counsel-Mo/Ks*.

4. That a fax machine is a data terminal for the reception and/or transmission of data where no voice use is contemplated.

5. That on or about November 1, 2003, Complainant advised Respondent that henceforth, Complainant's residential P.O.T.S. line indicated hereinabove would be used exclusively with a data terminal (fax machine) for non-voice communication and that no further voice communication was contemplated.<sup>1</sup>

6. That from and after November 1, 2003, the Complainant's residential P.O.T.S. line indicated above has been used exclusively for non-voice data: transmission/reception of faxes.<sup>2 3</sup>

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<sup>1</sup> Use of *cellular* telephone service (other than and not ATT a/k/a S.B.C. a/k/a Southwestern Bell Telephone Company), by Complainant and others, has replaced the need for any land-line based "voice-contemplated" telephone service.

<sup>2</sup> That Complainant has not used the Complainant's residential P.O.T.S. for any other purpose, i.e., Internet. Like many other Missourians, Complainant utilizes dedicated Internet broadband [other than with a telephone line and other than any service supplied by ATT/SBC/ Southwestern Bell Telephone Company]), for Internet purposes.

7. That Complainant paid, prior to the aforesaid November 1, 2003 notification, a supplementary monthly charge to the Respondent for unpublished (voice use *contemplated*), telephone service pursuant to General Exchange Tariff "G.E.T." 6.12.4, 15th Revised, Sheet 11.

8. That in accordance with Sec. 6.12.6(E) of *Southwestern Bell Telephone's General Exchange Tariff*, on or about November 1, 2003, Complainant requested that Respondent discontinue and cease any further *non-published monthly supplementary charge*, effective as of the date of the Complainant's notification to the Respondent, for the aforesaid Complainant's *non-published* "non-voice contemplated" residential P.O.T.S. line.

9. That Respondent, thereafter, *repeatedly refused* to discontinue its monthly non-published billing charge despite having being advised that a data terminal was being used exclusively on the aforesaid telephone line and that no further voice use was contemplated.

10. That subsequent to November 1, 2003, *under protest*, the Complainant has continued to pay the unpublished telephone supplementary charge billed by Respondent despite the Complainant's advisement to the Respondent, as indicated hereinabove in paragraph five, that the residential P.O.T.S. line was being used, and would continue to be used *exclusively* for data only: *non-voice*.

11. That the applicable Missouri General Exchange tariff is *clear and unambiguous* relating to the fact that "no monthly service charge" is applicable or may be charged for non-published telephone service **when** a telephone line is used with a data terminal and there is "no voice use contemplated." The *G.E.T.* states that there is no monthly unlisted service charge . . .

***"6.12.6(E): When a customer who has service which involves data terminals where there is no voice use contemplated."***

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!"<sup>4</sup> 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 Complaint 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.<sup>5</sup>

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<sup>3</sup> Cellular telephone service today, universally and additionally, (*regardless of carrier*), **incurs no monthly charge** for a non-published telephone line, *even where* voice use is contemplated.

<sup>4</sup> **Note:** Respondent has recently **increased** its monthly Missouri residential charge to its customers for non-published service to an **incredible** \$2.49/month!

<sup>5</sup> Complainant considered Respondent's offer to be incredibly unrealistic and totally absurd. Respondent has refused to reconsider its "offer" as of the date of the filing of this Complaint. Complainant refuses to agree that Respondent should continue to blatantly ignore and willfully and wantonly disregard and disobey G.E.T. 6.12.6(E).

14. That Respondent, despite being requested to do so, has failed and refused to provide Complainant with *any* reason why the Respondent has, and continues to, willfully, wantonly, and contemptuously refused to comply with, (and flagrantly and openly disregards and disobeys), G.E.T. 6.12.6(E); the aforesaid Respondent's *General Counsel-MO/KS* has merely stated in a letter to Respondent that he simply "continues to believe that the charge for non-published service is appropriately assessed."<sup>6</sup>

15. That upon information and belief, Respondent has improperly and unlawfully charged, and continues to charge, Respondent's *other* Missouri telephone customers for monthly non-published service despite the fact that such *other* customers have advised the Respondent that data terminals are being used exclusively on said customer's telephone line and that "no voice use is contemplated" in accordance with G.E.T. 6.12.6(E).

**WHEREFORE**, Complainant prays that the Missouri Public Service Commission will enter its order requiring that the Respondent:

A. Immediately, forthwith, and fully comply with Southwestern Bell G.E.T. Section 6.12.6(E),

B. Credit Complainant, *with interest, compounded at the legal rate of interest*, all monthly supplementary charges charged to the Complainant since November 1, 2003 for non-published telephone service,

C. Cease and desist from charging the Complainant a non-published monthly supplementary service charge in the future for service pursuant to G.E.T. 6.12.6(E),

D. Order that Respondent, henceforth, comply with, and abide by, G.E.T. 6.12.6(E) upon notification by *any other* Missouri customer that the customer's telephone service is being used with a data terminal where "no voice use is contemplated."

E. Order that the Respondent immediately and forthwith **notify all** of its Missouri customers that such customers may be entitled to a refund/credit plus interest for all supplementary unpublished monthly charges for each and every month in which said customer has used a data terminal on the customer's telephone line where no voice use has been contemplated.

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<sup>6</sup> It should be noted that the Respondent has recently, *and incredibly*, been allowed in Missouri to **raise** its monthly charge for residential non-published service to **\$2.49/month**, whereas the **same Respondent (S.B.C. a/k/a ATT)**, is allowed in California, for example, to charge *only* **\$ .28/month** for the **same** non-published service! Many knowledgeable pundits, consumer advocates, and other Missourians believe that the Respondent is unconscionably gauging the Missouri telephone service public, (despite, and in spite of, Respondent's overwhelming and substantial labor cost reductions due to employee layoffs as a direct and proximate result of its substantial business acquisitions and expansions and cost-savings when Respondent acquires other companies), and that because of the Respondent's ever-increasing national size, prominence, and financial clout coupled with Respondent's all-powerful and effective Missouri lobbyists, the Missouri Public Service Commission has become helpless and powerless to do other than the Respondent's bidding!

F. Credit (plus the legal rate of interest, compounded), all **other** Missouri customers similarly situated, for all monthly supplementary charges improperly charged by Respondent in violation of G.E.T. 6.12.6(E),<sup>7</sup>

G. **And**, enter such other and further orders as the Commission may find to be just and proper in the premises including, but not limited to, *at least* reduction of the current monthly charge charged by the Respondent for non-published Missouri service (currently \$2.49/month) to approximately (\$ .28)--the monthly charge **this same Respondent (ATT a/k/a SBC)**, charges residential telephone service customers in the State of California for the **same non-published telephone service**, there being no legitimate justification for the Respondent to unconscionably charge, (gauge), Missouri telephone customers almost **900%** of the charge that it charges its residential telephone customers **in another state** for the **same** unpublished telephone service, *even when voice use is contemplated*.<sup>8</sup>

*Alternatively*, to order that henceforth, (just as **universally** with **ALL cellular telephone services** including, but not limited to, **Respondent's own ATT/SBC Cingular**), the Respondent shall be prohibited from charging **any** Missouri customer **any** supplementary monthly charge for having a non-published telephone number, whether used with a data terminal where no voice use is contemplated or whether used without a data terminal where voice use is contemplated.<sup>9</sup>

Respectfully,

  
Complainant

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

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<sup>7</sup> The Commission **should consider** requiring the Respondent to notify **all** Missouri customers that if the customer has used, or is using, P.O.T.S. telephone service with a data terminal for non-contemplated voice use, that **each** said customer may be entitled to a refund/credit of such charges plus compounded interest at the legal rate applicable. .

<sup>8</sup> Perhaps the Commission should "take the bull by the horns!" Since no cellular telephone customer, anywhere, is required to pay any monthly charge for having an "unpublished" telephone line, why should the Respondent be allowed to charge *anything* for Missouri unpublished service merely because the telephone service is land-line based instead of wireless? The Missouri Public Service Commission now has a golden opportunity while considering this Complaint to consider setting an example and leading the way in this country to *eliminating completely any* charge for unpublished telephone service, whether used for data where no voice use is contemplated or whether used where voice use is contemplated!

<sup>9</sup> Just as with cellular telephone service, **any** telephone customer is entitled to privacy *without being charged for it!* There is no charge for placing one's telephone number on a federal or state "opt out" list relating to marketing/solicitation purposes, likewise, there is no justification or rationale that can apply to charge a land-line (**only**) telephone customer for his/her privacy. Telephone number privacy should be a guaranteed right of **any** telephone customer, (without any supplementary charge), whether cellular **or** land-line, not an unfair, irrational, and burdensome expense on said customer. The only purpose served of a supplementary monthly charge for **land-line only** unpublished service is to increase *the bottom line profit* of a land-based telephone service provider!