# BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
# STATE OF MISSOURI

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| R. Mark, Complainant | ) | |
| v. | ) | Cause No. TC-2006-0354 |
| ATT a/k/a SBC a/k/a Southwestern Bell Telephone Company, Respondent | ) | |



## COMPLAINANT'S REPLY TO RESPONDENT AT&Ts RESPONSE TO COMPLAINANT'S MOTION TO MODIFY PROTECTIVE ORDER AND COMPLAINANT'S SUGGESTIONS FOR NEW RULE ADOPTION

Comes now Complainant with *Complainant's Reply to Respondent AT&Ts Response to Complainant's Motion to Modify Protective Order and Complainant's suggestions for new Rule Adoption*, and states:

1. The oppressive conduct of the Respondent is once again apparent in its Response! Knowing that the Complainant is not represented by an attorney, knowing that the amount of money involved is only several hundred dollars, knowing that the Commission's Rules are manifestly unfair to a *pro-se* litigant, (even one acting in manifestly **good faith**), the Respondent cites various rules of procedure and time limits.

2. Woefully absent in **any** of the four pages of Respondent's dialog is a *single* word that the Respondent has been ***prejudiced*** in any way! Not one single word appears throughout its four page Response relating to any prejudice!

3. The Respondent incredibly would have the Commission believe that the Complainant has not demonstrated that there is any good cause for the Commission to modify its protective order. One would have thought that with FOUR attorneys of record, the Respondent would have been able to have at least one of them read the *Complainant's Motion!* The protective order entered by the Commission provides that "highly confidential material" and "proprietary" material is to be provided **ONLY** to an attorney or to an expert for a party—neither of which is present in this case relating to the Complainant. The Protective Order is manifestly unfair and denies this *pro-se* litigant and semblance of constitutional due process. Such a litigant is absolutely **entitled** to all information and facts that any other litigant were entitled to receive if he were represented by an attorney or had retained an expert. In this country, one is entitled to represent himself cannot be penalized under our Constitution for that!

4. The Commission must recognize that its Rules are blatantly unfair to a lowly

residential telephone customer who has sought only enforcement of a tariff, arbitrarily and capriciously denied by Respondent repeatedly since November 2003, pursuant to which the Complainant is entitled to relief in an amount of only several hundred dollars; hiring an attorney familiar with all of the Rules of the Commission is economically out of the question. Unlike Missouri Small Claims Court Proceedings, the Commission has never adopted Rules to prevent the type of oppression exhibited throughout by the Respondent in this case: an all-powerful Respondent with unlimited financial resources and not one, not two, not three, but **four attorney's** of record in this case seeking to overwhelm and to oppress a poor *pro-se* Complainant with recitations of the rules, time limits, etc.!

5. The Respondent conveniently fails to indicate to the Commission that it never even answered the data requests propounded by the Complainant in **June 2006**! It responded to some of those data requests that it "would respond," but incredibly, **never did**! To one or more other data requests, it responded that the material was "highly confidential" or "proprietary," knowing full well that the Rules of the Commission and its Protective Order would bar the Complainant from ever seeing such answers, **even if** they were filed by the Respondent! In view of this, any request for any consideration by this Respondent should be promptly denied because of Respondent's *laches*, its unclean hands!

6. With regard to the current Complainant's data requests propounded subsequent to June, this is now subject to a *Complainant's Motion to Compel*. Once again, relating to some of the data requests, the Respondent has used the same stratagem: indicate it "would respond" and then do not ever respond! The answers are required by the Complainant if the Complainant is to prepare for the hearing set for only weeks away, December 12, 2006--that is, unless such hearing is cancelled or postponed or unless there is a settlement (*very* unlikely since the Respondent has made it clear that it is willing to spend tens of thousands of dollars to **WIN** at all costs and has adamantly refused since 2004 to even agree that no further non-published charges will be charged to Complainant despite his entitlement to it under G.E.T. §6.12.6(E)), or rendered moot by the Commission's grant of the *Complainant's Motion for Summary Judgment*.

7. Since the Respondent has "replied" to the most recent Complainant's data requests, and since it refuses to answer, by its own admission, such is now "ripe" for consideration by the Commission.

8. The Respondent cannot be allowed to hide behind "highly confidential information" or "proprietary" material under the guise of: "the Complainant is not entitled to personally identifiable information about other ATT customers." WHY NOT? The Complainant can be ordered to keep such information confidential and not to disclose it to any other person--just as an attorney and/or expert would be bound to do. The Complainant is entitled to such information which may lead to the discovery of admissible evidence. How many other customers have been victimized by the Respondent's policy of arbitrarily, capriciously, and irrationally denying

waivers under G.E.T. §6.12.6(E) and other general exchange tariff's knowing that the lowly residential telephone customer has no *practical* recourse? Why should not a *pro-se* litigant be placed on the same playing field as the Respondent?

9. The Respondent admits that two data requests answers included "highly confidential" responses. One pertains to the total **number** of non-published customers in Missouri and the other, to **total revenue** for each customer." These matters DO have relevance as to the motivation for Respondent's arbitrarily denying legitimate requests for waivers under General Exchange Tariffs. Further, why would the Respondent refuse to provide this information, after all, it has no competition in Missouri! If it claims otherwise, I have a bridge in Brooklyn that I will quit claim and sell to the Respondent, cheap! Once again, such information can be ordered to be held in the strictest confidence by the Commission upon surrender of such information by the Respondent to the Complainant. **Query:** Is the Respondent now going to demand "strict proof" that the Complainant can keep a secret as it has *un*justifiably done with regard to the sworn affidavits of the Complainant in this case? Further, the Respondent is entitled to investigate all instances of the granting and/or denial of waivers under general exchange tariffs and to seek patterns of non-compliance; to prevent this information from being provided to the Complainant denies the Complainant constitutional due process and the right to all information which may lead to the discovery of admissible evidence.

10. As to the Complainant's suggestion that the Commission adopt a rule with regard to the VALUE of a *pro-se* litigant's time, trouble, and effort to bring a legitimate formal complaint because a Respondent has arbitrarily and capriciously refused to abide by its own G.E.T., the Complainant believes that such **IS** within the power and authority of the Commission. Such would be not a penalty, but in fairness and to level the playing field so that any Missouri residential telephone customer would know that in the event that such a customer prevails, he will not be forced to lose overwhelming time, energy, and effort. Additionally, it would serve to give notice to this Respondent that it better "think twice" before it arbitrarily and capriciously denies a customer a waiver to which the customer is absolutely entitled under a General Exchange Tariff.

11. Likewise, the Commission has the power and authority to institute a new Rule: henceforth: **no** attorneys, **no** depositions, and adoption and incorporation of all the Rules currently in effect for the Missouri Small Claims Courts in all proceedings before the Commission when less than $5,000 is involved and when the Complainant is not represented by an attorney. Further, it can adopt Rules that provide in such a case, that as long as a *good faith effort* is expended by a *pro-se* litigant, no procedural rule shall bar the case or any aspect of it in any respect. The Commission should recognize the power and authority it still has in order to prevent the blatant oppression of a lowly residential telephone exchange customer (a David with a sling shot), who is up against a Goliath--a Respondent with unlimited financial resources, multiple attorneys of record, and which is determined to WIN at all costs, no matter what the

sacrifice, no matter what the financial cost, and no matter how oppressive and unfair it must be in order to achieve its goal of winning the battle!

12. It is interesting, *albeit* amusing to note that the Respondent cites from the Staff's Report, yet it refuses to acknowledge and/or to recognize that the Staff Report indicated that the Staff has accepted, and does not question, the affidavits of the Complainant in support of his *Motion to for Summary Judgment!* Respondent refuses to recognize the Staff's finding that no further information (i.e., to be garnered by data requests and/or depositions), would make any difference to the Staff's recommendations that the Commission should rule in favor of the Complainant. Apparently the Respondent picks and chooses what it wishes to adopt from the Staff's Report! Notwithstanding the aforesaid, the Staff Report did not address the Complainant's suggestion that $25,000, or a fair and equitable amount be provided, to a *pro-se* litigant that prevails in a "failure to comply with tariff" case. Perhaps a rule should be adopted by the Commission that a *pro-se* litigant would be entitled to an amount equal to that which is expended by the Respondent while it "defends" the indefensible! Such amount would not be "damages," per se, but would be in the interest of fairness and equity and to affirmatively demonstrate that the Commission recognizes that in a case involving only several hundred dollars and a *pro-se* litigant, it MUST act by adopting new Rules and Regulations to protect the *pro-se* litigant from the manifest oppression which has been exhibited by the Respondent so well in this case.[1]

13. Once again, if there is to be a forthcoming hearing next month, the Complainant must receive and have access to all the information requested in his data requests originally propounded in June, all those that were propounded by the Staff, and those that were propounded in September. Respondent must be ordered to furnish and provide all "highly confidential material" and "proprietary" information along with providing the Complainant with sufficient time to investigate further. The *Complainant's Motion* IS *very* ripe for consideration and IS relevant.

For the foregoing reasons, the Commission should find that the Complainant has acted in good faith and the Respondent has not; the Respondent has not shown or demonstrated **any prejudice** to it in any way, there is a *very real need* for the Complainant to be furnished and provided the "highly confidential" and "proprietary" information sought and, in fact, in order to afford the Complainant constitutional due process, he MUST have the information--information which is relevant, material, and may lead to the discovery of admissible evidence. The Commission should recognize that the Commission has the power and authority to consider the Complainant's suggestions in order to prevent the oppression that has been manifest in this case by the Respondent, to wit: awarding some compensation to a *pro-se* litigant IF the Staff finds

[1] The Commission might find it applicable **ONLY IF** the Staff found that a pro-se litigant was entitled to the relief sought.

that the Commission should find in the Complainant's favor. Further, the Commission should find that the Respondent's responses to the Staff's data requests classifying certain information as "highly confidential' and "proprietary" are inappropriate in the first instance; in any event, the Commission has the power and authority to enter orders protecting the material once it is turned over to this *pro-se* Complainant who must currently prepare for the hearing to take place within a matter of weeks.

Respectfully,

Complainant

November 7, 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.

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