

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

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

**STAFF REPORT**

COMES NOW the Staff of the Missouri Public Service Commission and for its report states:

1. R. Mark filed a complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri. The complaint involved a billing dispute over AT&T Missouri charging R. Mark to omit his name and telephone number from the white pages of the telephone directory.
2. The Commission had directed the Staff to conduct an investigation and to file a report concerning the results of that investigation by June 30, 2006.
3. In the attached Memorandum, the Staff reports on its investigation. AT&T Missouri's tariff provides that no monthly service charge is applicable for a non-published telephone number when a customer has service which involves data terminals where there is no voice use contemplated. R. Mark filed a notarized affidavit on May 25, 2006, in which he states that his telephone line is used only for a fax machine. In the Staff's opinion, (1) a fax machine is a data terminal, and (2) R. Mark's verified statement shows that no voice use is contemplated.

Therefore, the Staff recommends that the Commission rule that R. Mark qualifies under the tariff for the rate exception for non-published numbers.

4. R. Mark's complaint requests, *inter alia*, that the Commission order AT&T Missouri to credit R. Mark for the amounts, with interest, that he has paid for non-published telephone service since November 1, 2003. This request is beyond the jurisdiction of the Commission. The Commission has no power to determine damages, award pecuniary relief, or declare or enforce any principle of law or equity. *State ex rel. Fee Fee Trunk Sewer v. Litz*, 596 S.W. 2d 466 (Mo. App. E.D. 1980).

WHEREFORE, the Staff submits its report.

Respectfully submitted,

/s/ William K. Haas

William K. Haas

Deputy General Counsel

Missouri Bar No. 28701

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360

Jefferson City, MO 65102

(573) 751-7510 (Telephone)

(573) 751-9285 (Fax)

[william.haas@psc.mo.gov](mailto:william.haas@psc.mo.gov)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30<sup>th</sup> day of June 2006.

/s/ William K. Haas

# MEMORANDUM

**To:** Missouri Public Service Commission Official Case File  
Case No. TC-2006-0354  
R. Mark, Complainant vs. Southwestern Bell Telephone L.P.,  
d/b/a AT&T Missouri, Respondent

**From:** William Voight  
Telecommunications Department

**Subject:** Staff's Investigative Report in Response to the  
Commission's April 18, 2006 Directive

**Date:** June 30, 2006

**Syllabus:** This memorandum concludes that facsimile machines are, by definition and practical application, "data terminals". This memorandum concludes that a technological and competitive evolution has expanded the list of those items meeting the criteria for "data terminals" beyond that which was originally envisioned when tariff sheets became effective in 1973. This memorandum concludes that, by virtue of verified statements, no voice use is contemplated by R. Mark on his telephone line. Lastly, this memorandum recommends that the Commission grant the relief that Mr. Mark requests in Issues 1 and 3 of his Complaint, but deny the relief requested in Issues 2, 4, 5, 6 and 7.

## **Background:**

On March 15, 2006, R. Mark filed a formal complaint against Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (AT&T).<sup>1</sup> Mr. Mark's complaint was subsequently docketed as Case No. TC-2006-0354. Reduced to the nub, Mr. Mark objects to AT&T's practice of charging a fee to customers who do not want their name and telephone number published in the white pages of the telephone directory. Ordinarily, customers with a "primary line" and an "additional line" are not charged the non-published fee for the additional line. However, in this instance, Mr. Mark's primary line is a wireless cellular telephone and he bases his fee exemption claim largely on verified statements that he uses his AT&T landline service solely for data purposes, and in particular, a facsimile machine. Mr. Mark exhorts the Commission to compel AT&T to include Mr. Mark among those subscribers qualifying for an exemption to AT&T's monthly recurring charge for non-published telephone number service. Among other matters, Mr. Mark requests the Commission apply the exemption retroactively to November 1, 2003. The particular exemption in question applies to residential service only, and is stated in Section 6, 17<sup>th</sup> revised sheet 11, of AT&T's P.S.C. Mo. No. 35 General Exchange Tariff as follows:

---

<sup>1</sup> AT&T operates under four names in Missouri. AT&T Missouri is the incumbent local exchange telecommunications company, as defined in Section 386.020(22) RSMo.

The rate [\$2.49 monthly for non-published directory service] will not apply in the following case(s):

E. When a [residential] customer who has service which involves *data terminals* where there is *no voice use contemplated* (emphasis added).

**Summary of the Relief Requested by Mr. Mark:**

**Issue 1** – Mr. Mark asks the Commission to find that his facsimile machine is a “data terminal” and that his telephone line is not used for “voice purposes”.

**Issue 2** – Mr. Mark asks the Commission order AT&T to credit his account with interest in an amount equal to all charges for non-published number service since November 1, 2003.

**Issue 3** – Mr. Mark asks the Commission order AT&T not to charge for his non-published service in the future.

**Issue 4** – Mr. Mark asks the Commission order AT&T not to charge similar customers in similar circumstances in the future.

**Issue 5** – Mr. Mark asks the Commission order AT&T to notify all of its Missouri customers that they may be entitled to a refund or credits and interests if they use their telephone line in a manner similar to Mr. Mark.

**Issue 6** – Mr. Mark asks the Commission order AT&T to credit with interest all of its Missouri customers that are similarly situated as Mr. Mark.

**Issue 7** – Mr. Mark asks the Commission order AT&T to reduce from \$2.49 to \$0.28 its monthly charge for residential non-published number service or, alternatively, order AT&T to eliminate the charge altogether.

**Summary of Assertions and Response:**

**Mr. Mark’s Assertions:** Mr. Mark contends that a facsimile machine qualifies as a data terminal, and has submitted a verified statement attesting that the line in question is used “only” for the purposes of a “stand-alone fax machine”; is not used for personal computer usage; and has not been used for voice communications since November 1, 2003. Mr. Mark contends that there are no material facts in dispute in this case.<sup>2</sup> Further, Mr. Mark

---

<sup>2</sup> Complaint’s May 25<sup>th</sup> Motion for Summary Judgment and Affidavit. Also, Complaint’s Response to Staff Data Request No. 2.

contends that AT&T's responses fail to provide any factual or legal support for its continued refusal to charge for non-published service.<sup>3</sup>

**AT&T's Response:** Conversely, AT&T submits that the exemption being sought by Mr. Mark has been in existence since 1973, and is limited only to instances when a user self-identifies as a user of "TTY" or "TDD" equipment<sup>4</sup>. Consequently, AT&T has denied Mr. Mark's request for the exemption.

### **Summary of Relevant Technology, Historical Background, and Operational Description:**

To understand the items in dispute, it is necessary to discuss the relevant technology. The technology involved in this case involves a POTS (Plain Old Telephone Service) line provided by AT&T (the Respondent) to Mr. Mark (the Complainant) in the greater St. Louis area. The electrical signals carried over POTS telephone lines are easily capable of accommodating speech conversations. POTS lines are also capable of accommodating certain forms of information, commonly referred to simply as "data". Data is any representation, such as characters, to which meaning might be assigned. Perhaps the most recognizable form of data occurring over a POTS line are the sounds heard emulating from a personal computer modem or facsimile machine modem. Modems are connected with other modems over POTS lines in a process encompassing a "dial-up connection". Modems are used for converting "data" into transmission signals which are sent over POTS lines to a distant modem location, and for reconvertng signals back into "data" when signals are received from a companion modem at the distant location. Through a sequence of events known as "handshaking", modems synchronize in an agreed upon set of parameters prior to the actual transfer of data. A "terminal" is a point at which a circuit element (such as a telephone "jack" and the devices plugged into a telephone jack) may be directly connected to one or more other elements. A "data terminal" is defined as "[T]he equipment connected to the end of a transmission line to provide a terminal for the transmission or reception of data."<sup>5</sup>

A facsimile machine is essentially an image scanner, a modem, and a computer printer combined into a specialized package. The scanner converts the content of a physical document into a digital image, the modem sends the image data over a POTS phone line, and the printer at the other end makes a duplicate of the original document. Although facsimile machines of some sort or another have existed since the mid-late 19<sup>th</sup> century, modern "fax" technology became feasible only in the mid-1970s as the sophistication improved to a reasonable level, and as the cost of the three underlying technologies

---

<sup>3</sup> Complainant's May 25<sup>th</sup> Motion for Summary Judgment and Affidavit.

<sup>4</sup> AT&T's Combined Motion to Compel Responses to Data Requests; Response to Complainant's Motion to Extend Time to Respond to AT&T's Data Requests; and Motion for Extension of Time Within Which to Respond to Complainant's Motion for Summary Judgment. Also, AT&T's Response to Staff Data Request No. 5.

<sup>5</sup> Telephony's Dictionary Defining 14,500 Telecommunications Words and Terms; Graham Langley; First Addition, June, 1982.

declined.<sup>6</sup> Over time, “faxing” gradually became affordable, and by the mid-1980s, facsimile machines were very popular around the world. The facsimile market has evolved much the same way computers have. Faxes are embedded into the workflow of many business processes. Information technology, including the use of email and the Internet, have greatly expanded the benefits of facsimile technology. Facsimile technology maintains some appeal with consumers, and is commonly incorporated into the personal computers used by the general public. Consumers may also use a facsimile machine on a “stand-alone” basis; that is, independent of “voice” communications or personal computer applications.

All modern facsimile machines are equipped with a telephone dial pad, permitting the operator to “key in” the desired telephone number to which a facsimile is to be delivered. Most facsimile machines come equipped with features such as “speed-dial” and “automatic redial”. Some facsimile machines are also equipped with a telephone handset, enabling the operator to lift the handset to make or receive a standard voice telephone call. Facsimile machines and standard telephones may each be connected to the same POTS line or, depending on the user’s choice, a separate POTS line may be established for each device. Irrespective of whether or not a facsimile machine comes equipped with a telephone handset, it is important to understand two fundamental principles when a facsimile machine and a telephone are connected to the same POTS line: 1) despite modernity of “Group 3” facsimile machines<sup>7</sup>, a voice conversation cannot occur simultaneously with a facsimile transmission because the modems inherent to facsimile machines act to disrupt normal speech conversations, and 2) a “voice” telephone call can be placed or received on the POTS line at any time a facsimile transmission is *not* occurring. It is also noteworthy that facsimile machines are frequently programmed to automatically answer after a predetermined number of “rings”, thus allowing the owner an opportunity to check if the incoming call is a voice call or a facsimile call.

In 1964, Robert H. Weitbrecht, a deaf scientist, invented a modem that connected POTS lines with a teletypewriter to facilitate the process of converting sounds to text. A teletypewriter is a telegraph instrument having the ability to automatically send and receive messages. Dr. Weitbrecht’s invention, known as the Weitbrecht Modem, enabled people who are deaf to use the telephone for the first time. In 1967, a group of volunteers was formed in Saint Louis whose function was to collect and modify obsolete teletypewriters for deaf users. Rather than discard the obsolete teletypewriters, AT&T agreed to donate them to deaf-related organizations. As the availability of teletypewriters dwindled during the 1970s, several electronic companies developed portable teletypewriter devices, which were eventually called “TDD” (Telecommunications

---

<sup>6</sup> In 1843, a Scottish clockmaker, Alexander Bain, patented the “automatic electromechanical recording telegraph” which, when joined to a wire, was able to reproduce writing on an electrically conductive surface. In 1966, Xerox introduced a 46-pound facsimile machine that could be connected to any telephone line. Using the Xerox machine took about six minutes to transmit a letter-sized document. See generally, [www.smithsonianeducation.org](http://www.smithsonianeducation.org).

<sup>7</sup> There are several different indicators of facsimile machine capabilities: Group, class, data transmission rate and conformance with ITU-T (formerly CCITT) recommendations. Group 3 facsimile machines take between six and fifteen seconds to transmit a single page.

Device for the Deaf).<sup>8</sup> At one time the Federal Communications Commission promoted the term “Text Telephone” to apply to all devices used to communicate in text over POTS lines. In doing so, the FCC recognized that TDD was an inappropriate acronym because deaf people were not the only ones using the device. The term “Text Telephone” quickly fell into disfavor and today, the official acronym used to apply to all devices used to communicate in text over POTS lines is “TTY”. In this context, TTY does not stand for “teletypewriter” but rather, “Text TelephonY”.

Just as technological advances in facsimile transmission have provided enormous benefits to businesses and consumers, so too has modern technology made it possible to build advanced microprocessor devices designed to make telephone calling just as simple for people who are deaf or hard of hearing as it is for everyone else. In a TTY application involving a process known as “voice carry over” a Captioned Telephone (CapTel) user can hear the speaker’s voice with whatever residual hearing they have, plus read written captions of everything that is said.<sup>9</sup> Another application, known as “Internet Protocol Relay” (IP Relay) allows people who have difficulty hearing or speaking to communicate with anyone in the world through an Internet connection. IP Relay is accessed using a personal computer and the Internet, rather than a TTY and a standard telephone line.

### **Summary of the Core Items in Dispute:**

In the Staff’s opinion, the dispute between Mr. Mark and AT&T primarily involves whether the term “data terminal” should be defined according to technology as it existed thirty-three years ago, or whether the term should be defined by technology as it exists today. If the Commission determines that the term “data terminal” should not be expanded beyond its original intent, it will have generally decided in AT&T’s favor. If the Commission determines that the term “data terminal” should include technology as it exists today, it will have generally sided with Mr. Mark. If deciding in AT&T’s favor, the term “data terminal” would be technologically limited to TTY equipment. If deciding in Mr. Mark’s favor, the term “data terminal” would embrace a technological and competitive evolution which now includes items such as modern facsimile machines and personal computers - items that did not exist when AT&T’s tariff was originally written.

In the Staff’s opinion, if the Commission decides exclusively in AT&T’s favor, it will have decided to uphold the original intent of the tariff language. But in so doing, the Staff respectfully suggests that the Commission will have ignored a “plain reading” as well as the definitional meaning of the term “data terminal”. If the Commission decides exclusively in favor of Mr. Mark, it will have upheld a plain reading of the term “data terminal”, but will have discounted the historical application of the tariff exclusion, which clearly was meant to have applied only to those with hearing disabilities. If the Commission decides exclusively in Mr. Mark’s favor, any residential subscriber with a facsimile machine or personal computer could potentially be eligible for the tariff exclusion, irrespective of disabilities, or a lack thereof, - a circumstance which in the Staff’s view was clearly not originally envisioned.

---

<sup>8</sup> *Evolution of TDI* (Teletypewriters for the Deaf, Inc.) 2003. [www.tdi-online.org](http://www.tdi-online.org)

<sup>9</sup> *The Captioned Telephone* by Robert Engelke; [www.tdi-online.org](http://www.tdi-online.org).



If, as the Staff recommends, the Commission determines that facsimile machines are within the meaning of “data terminal”, a question arises as to whether Mr. Mark uses his telephone line exclusively for that purpose. Mr. Mark has submitted a verified statement indicating that his telephone line is used exclusively for facsimile purposes, and that no voice use is contemplated on his line. Based on his verified statement, the Staff has no reason to doubt Mr. Mark’s assertions.

### **“Data Terminal” - Defined**

Although central to this dispute, the term “data terminal” is not defined in AT&T’s tariff. In response to Staff Data Request No. 19, AT&T defines “data terminal” as consisting of “the devices through which information enters and leaves a communications system.”

In support of his position that facsimile machines are “data terminals”, Mr. Mark cites to a decision by the United States District Court, N.D. Illinois, Eastern Division, which stated in relevant part: “The data signal carries either the voices that one hears in the receiver or data sent to a fax machine or computer...”<sup>10</sup> Thus, according to Mr. Mark, facsimile machines are “data terminals.”

As previously discussed on page three, the Staff accepts the definition of “data terminal” as defined by Graham Langley in Telephony’s Dictionary as “[T]he equipment connected to the end of a transmission line to provide a terminal for the transmission or reception of data.”

In the Staff’s view, there is no inconsistency among the definitions of “data terminal” supplied by AT&T, Mr. Mark, or the Staff. Irrespective of Mr. Mark’s claims or the Staff’s or AT&T’s definition of “data terminal”, the Staff submits that a plain reading and common understanding of the term “data terminal” would apply to facsimile machines (or personal computers). In this regard, the Staff recommends that the Commission determine that a facsimile machine is a data terminal.

### **“No Voice Use Contemplated” - Discussion**

AT&T has demanded that Mr. Mark provide “strict proof” that “no voice use is contemplated” on his telephone line.<sup>11</sup> The Staff is uncertain of how much proof is required to meet AT&T’s criteria. AT&T disagrees that the tariff exemption applies to the manner Mr. Mark claims he uses his telephone line. AT&T claims that it should not be forced to accept Mr. Mark’s statement that his voice communications needs are met by a wireless telephone merely because Mr. Mark makes that assertion. AT&T insists that it is entitled to corroborate untested claims by Mr. Mark that his landline telephone is not

---

<sup>10</sup> Oneac Corporation v. Raychem Corporation, 20 F Supp. 2d 1233; 1998 U.S. Dist. LEXIS 15750

<sup>11</sup> AT&T’s May 1<sup>st</sup> Answer to R. Mark’s Complaint, paragraph 14.

used for voice purposes.<sup>12</sup> Mr. Mark counters by pointing out that he has submitted a verified statement that he does not use his telephone line for any voice purpose.

### **AT&T's Tariff Interpretation:**

In response to Staff Data Request No. 5, AT&T has confirmed that it interprets its tariff provision as applying only to those who self identify as users of TTY and TDD equipment. The Staff also notes that in Oklahoma, AT&T has previously removed from its General Exchange Tariff wording similar to Missouri's current wording. In Oklahoma, AT&T has substituted the following wording for the qualifying exemption: "When a customer has Telecommunications for the Deaf (TDD) Service."<sup>13</sup>

The Staff has no reason to doubt AT&T's claim that it has traditionally interpreted its tariff provision exclusively to subscribers employing TTY and TDD equipment. Given that the tariff sheet in question dates to 1973, the Staff submits that there can be no other explanation. Peripheral devices such as modern facsimile machines, personal computers, and similar equipment simply had not experienced a competitive and technological evolution in 1973. Plainly stated, modern versions of "data terminals", such as that employed by Mr. Mark, were not even in existence in 1973.

For clarity, an explanation of directory publishing options (i.e., "white page listings") for TTY and TDD customers is provided as follows:

### **Current Directory Listing Options Provided by AT&T for Subscribers who are Deaf or Hearing-Impaired:**

Pursuant to Section 6 of AT&T's PSC Mo. No. 35 General Exchange Tariff, AT&T currently provides five directory options for subscribers who are deaf or hearing-impaired as follows: 1) AT&T will list the number in its white pages without differentiation among other subscribers; 2) Upon request, AT&T will, at no charge, denote the number as "TDD Only" next to the number; 3) Upon request, AT&T will, at no charge, denote the number as "TDD & Voice" next to the number; 4) Upon request, AT&T will not publish the number in its directory and; 5) Upon request, AT&T will omit the number from the directory but will list the number in Directory Assistance records maintained by telephone company operators.

Any AT&T subscriber may request Option 4, and residential customers are charged \$2.49 monthly along with a one-time charge of \$6.00, unless the line in question is an "additional line". Pursuant to the manner in which AT&T applies its tariff, these charges are waived for TTY and TDD subscribers through a self certification process. Any AT&T subscriber may request Option 5, and residential customers are charged \$1.87 monthly with a one-time charge of \$6.00. As to Option 5, there are no provisions for waiving the

---

<sup>12</sup> AT&T's Combined Motion to Compel Responses to Data Requests; Response to Complainant's Motion to Extend Time to Respond to AT&T's Data Requests; and Motion for Extension of Time Within Which to Respond to Complainant's Motion for Summary Judgment; pages 5-6.

<sup>13</sup> 2<sup>nd</sup> Revised Sheet 14, General Exchange Tariff; AT&T Oklahoma

charge for TTY and TDD subscribers who merely want their number “listed” --but not published-- in the telephone directory.

### **Staff Rebuttal to Presumptive Arguments of AT&T and Mr. Mark:**

Mr. Mark maintains that the Staff has been “mislead” and that AT&T has “put one over” on the Commission because, as the basis of its tariff exemption, AT&T references TTY and TDD.<sup>14</sup> The Staff expects Mr. Mark will continue to maintain that the only basis for the Commission’s evaluation of his complaint are the terms “data terminal” and “no voice use contemplated.” Mr. Mark has also claimed that there would be no legitimate reason for a residential customer to have his or her telephone number published in a telephone directory when such number is used solely as a “data terminal.”<sup>15</sup> Mr. Mark may assert that the fee should be waived for all residential customers making a claim that their line is dedicated solely to facsimile, personal computer, or similar usage, where no voice use is contemplated. Mr. Mark may also be expected to point out that business subscribers are not charged the non-published fee, and that the Commission permits AT&T to charge residential subscribers too much for the service, irrespective of whether or not such charges are appropriate in the first instance. In the Staff’s view, these claims may be in line with Mr. Mark’s comparisons to the customer privacy maintained by wireless carriers, whose subscribers do not have to pay any fee to maintain such privacy.<sup>16</sup>

With regard to Mr. Mark’s presumptive arguments, the Staff has no reason to disagree with Mr. Mark’s assertions that residential users have little incentive to publish telephone numbers that may be used exclusively for a facsimile or personal computer. However, Mr. Mark’s interpretation of the tariff exemption is clearly inconsistent with the tariff’s original intent and purposes. It is only because of definitional meaning and because the term “data” includes “information” and because the term “terminal” refers to the “extremity of something” that the Staff is able to acquiescence to a “plain reading” of the term “data terminal” in Mr. Mark’s favor.<sup>17</sup> Moreover, the Staff cannot accept that the solution to this dispute lies in the Commission ordering AT&T to extend the exemption to all those merely claiming to have a line used exclusively for data purposes. The Staff is unclear if Mr. Mark would acquiesce to the notion that AT&T be permitted to insist on a verified statement for those claiming a “data terminal” exemption, or if telephone companies, such as AT&T, should simply permit “self certification” in a manner consistent with AT&T’s current policy towards the deaf community. The Staff is equally unclear as to whether or not Mr. Mark believes the exemption should apply to all telephone companies, or merely to AT&T.

---

<sup>14</sup> Complaint’s June 23<sup>rd</sup> Response to AT&T’s Combined Motion to Compel, Opposition to Complaint’s Motion to Extend Time, and Motion to Extend Time to Respond to Complainant’s Motion for Summary Judgment, page 1.

<sup>15</sup> *Id.*

<sup>16</sup> R. Mark’s March 15<sup>th</sup> Complaint, footnote 9.

<sup>17</sup> Webster’s New World Dictionary; Second College Addition, 1980.

The Staff has analyzed Mr. Mark's various points of view and, with the exception of a "plain reading" of the term "data terminal", the Staff simply finds Mr. Marc's arguments unpersuasive. According to its most recent annual report, AT&T has 1,373,870 residential access lines in Missouri. The notion of accepting statements of "data terminal use only" from among this general body of rate-payers strikes the Staff as an unwieldy and unmanageable approach. When balanced with the interests of the general body of rate-payers and AT&T, the Staff does not agree that a "data terminal use only" exemption process, whether verified or not, is the proper foundation upon which the Commission should implement a public policy. The Staff is not opposed to the idea of AT&T re-examining its business policy in this regard. However, the Staff recommends the Commission not require telephone companies to grant non-published waiver requests to those who simply claim to use their line for facsimile machine or personal computer purposes.

Lastly, the Staff is mindful that *rates* for telephone service in Mr. Mark's area are no longer regulated by the Commission. To the extent that Mr. Mark believes the rates he pays for telephone service are too high, including the rates paid for non-published directory service, the Staff respectfully suggests that Mr. Mark explore opportunities with other local exchange carriers.

AT&T will undoubtedly contend that Staff misapplies the term "data terminal". As noted by AT&T in its response to Staff Data Request 19, the tariff reference to "data terminals" may be traced to 1973, which was a time prior to Divestiture of AT&T. Staff expects AT&T to contend that TTYs were originally used to communicate and print typed messages on both "voice-grade" and "private" telephone lines, and that the modern versions of these devices are still in use by the deaf in the form of "text telephones" ("TTY") or TDDs. In a response to Staff Data Request 19, AT&T has also stated that its tariff would have used the term "CPE" had it intended to refer to facsimile machines and similar equipment. Lastly, AT&T should be expected to continue to demand "strict proof" that Mr. Mark is not using his telephone line for voice purposes.

The Staff has analyzed AT&T's responses to Mr. Mark and found them unpersuasive when held to the light of a definitional and plain reading of the term "data terminal." The Staff does not disagree that teletypewriters once constituted the only offering of data terminal equipment; nor does the Staff disagree that in the 1960s, AT&T donated such devices to deaf-related organizations so that they could be modified for deaf users. However, AT&T seems to be saying that because these events occurred prior to the advent of Customer Premises Equipment and regulatory and legal reform, its tariff must be interpreted as if such reforms and technological advances had not occurred.<sup>18</sup> AT&T also seems to be saying that because "station equipment" was taken out of its rate base and replaced with the term "Customer Premise Equipment", the term "data terminal" should somehow be redefined.<sup>19</sup> Moreover, the Staff would note its opinion that --

---

<sup>18</sup> To the contrary, AT&T is likely to argue that deregulation of CPE is the basis for not including facsimile machines under the definition of "data terminal."

<sup>19</sup> The evolution of the legal ability to attach non-telephone company equipment to the telephone network involved numerous decisions by the FCC. Among those included were the 1955 Hush-a-phone Decision;

whether using a definition by the Staff, Mr. Mark, or AT&T -- facsimile machines clearly appear to be included as part of the definition of “data terminal”. In the Staff’s opinion, advances in technology and regulatory and legal reform have simply expanded upon and outpaced AT&T’s original application of the word “data terminal.” The Staff also believes that AT&T has placed an impermissibly high standard of proof upon Mr. Mark to demonstrate that he does not use his telephone line for voice communications. Staff is simply willing to accept Mr. Mark’s verified statement that he uses a cell phone for his voice communication purposes, and a facsimile machine for his data purposes.

**Staff Recommendation:**

**Issue 1** - Should the Commission rule that Mr. Mark qualifies for a non-published rate exemption?

Yes. The Staff recommends the Commission find in Mr. Mark’s favor. Because facsimile machines (and personal computers) fall within the range of items which today are commonly understood to be “data terminals”, the Staff recommends that the Commission apply a “plain reading” and a definitional understanding of the term “data terminal” and rule in Mr. Mark’s favor. Because Mr. Mark has provided a verified statement that he does not use his telephone line for voice purposes, the Staff recommends the Commission find that Mr. Mark qualifies for the tariff rate exemption.

**Issue 2** – Should the Commission order AT&T to credit with interest Mr. Mark’s account retroactively to November 1, 2003?

No. According to Staff counsel, the Commission cannot order monetary relief.

**Issue 3** – Should the Commission rule that Mr. Mark qualifies for future non-published rate exemptions?

Yes. The Commission should order AT&T to apply the exemption to Mr. Mark as long as his usage and the tariff both remain the same. Should AT&T elect to clarify its tariff in a manner applicable to its original intents and purposes, and in a manner that is technologically neutral, the Staff does not foresee that it would have any objections to it doing so.

**Issue 4** – Should the Commission require AT&T to, “upon notification” extend its rate exemption to all others claiming a “data terminal use only” exemption?

---

the 1969 Carterfone Decision, and the 1975 Controlled Interconnection of Premise Equipment Decision. These events culminated with the FCC’s decision in 1980 to permanently deregulate equipment located at a customer’s premises. As stated in paragraph 9, “We conclude that CPE is a severable commodity from the provision of transmission services and that regulation of CPE under Title II is not required and is no longer warranted.” RE: *In the Matter of Amendment of Section 64.702 of the Commission’s Rules and Regulations*. 77 F.C.C.2d (P &F) 669; 35 P.U.R.4<sup>th</sup> 143.

No. Although AT&T currently utilizes a “self certification” process and accepts the word of deaf users claiming that a TTY is attached to their POTS line, AT&T should not be required to extend a “self certification” process to those claiming the exemption solely on the basis of facsimile or personal computer usage. Staff notes its support of Mr. Mark’s claim to “no voice usage” is conditioned entirely upon the basis of his verified statement.

**Issue 5** – Should the Commission order AT&T to notify all of its Missouri customers of the non-published rate exemption so that they may become aware of potential refunds, credits, and interest?

No. There is no rule or similar requirement necessitating telephone companies to identify all possible discounts to all its customers. Only those who previously requested the discount may be entitled to it. In paragraph 15 of the Complaint, Mr. Mark stated that “upon information and belief” AT&T charges *other* customers for non-published number service despite having being advised by such customers that they use their POTS line exclusively for data purposes. Yet, in responses to Staff Data Request No. 3, Mr. Mark was unable to provide *any* relevant information other than to state his belief that AT&T “should have this information.” The Staff does not expect AT&T to have any record of those who *may have* previously been denied the exemption as Mr. Mark claims. When asked, AT&T was unable to furnish even the names of those currently qualifying for the exemption. In response to Staff Data Request No. 7, AT&T could not distinguish qualifying TTY users from among other subscribers qualifying for the non-published number exemption.

**Issue 6** – Should the Commission order AT&T to credit with interest all of its Missouri customers that are similarly situated as Mr. Mark?

No. As with Issue 5 above, AT&T is unable to identify those among its customer base whose primary line is not used for any voice purpose. As with Staff’s response to Issue 5, both AT&T and Mr. Mark are unable to identify any customer who is similarly situated to Mr. Mark.

**Issue 7** – Should the Commission order AT&T to reduce or eliminate its rate for residential non-published number service?

No. AT&T has complete pricing flexibility in Mr. Mark’s area. Pursuant to Section 392.245 RSMo, the Commission no longer has jurisdiction over the rates AT&T charges for its services.

### **Conclusion:**

As described herein, the Staff recommends the Commission find for Mr. Mark on Issues 1 and 3, and deny relief to Mr. Mark on all other Issues. The Staff is unaware of any other matter that affects, or that would be affected by, these recommendations.



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

R. Mark,

Complainant

v.

Southwestern Bell Telephone, d/b/a  
AT&T Missouri,

Respondent

Case No. TC-2006-0354

**AFFIDAVIT OF WILLIAM VOIGHT**

STATE OF MISSOURI

COUNTY OF COLE

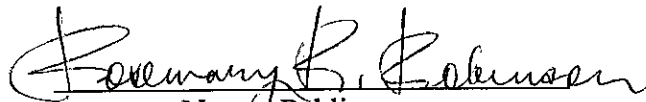
) ss

William Voight, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was given by him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



William Voight

Subscribed and sworn to before me this 30<sup>th</sup> day of June, 2006.

  
Notary Public

My commission expires

9-23-2008

