

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

DeLana Smith-Sattarin,)	
Complainant,)	
v.)	File No. TC-2015-0205
)	
Southwestern Bell Telephone Company,)	
d/b/a AT&T Missouri,)	
Respondent)	

AT&T MISSOURI'S MOTION TO DISMISS

AT&T¹ respectfully moves the Commission² to dismiss this complaint for lack of jurisdiction. AT&T also respectfully declines further Commission-supervised mediation, as AT&T has exhausted its efforts to address the matters raised in the complaint and during the initial mediation, and believes there is nothing further it can do.

I. Motion to Dismiss

AT&T requests the Commission to dismiss this complaint, which makes billing and quality of service claims, as beyond the Commission's jurisdiction. Section 392.611. 1 RSMo., in pertinent part, states:

A telecommunications company certified under this chapter or holding a state charter authorizing it to engage in the telephone business shall not be subject to any statute in chapter 386 or this chapter (nor any rule promulgated or order issued under such chapters) that imposes duties, obligations, conditions, or regulations on retail telecommunications services provided to end-user customers, except to the extent it elects to remain subject to certain statutes, rules, or orders by notification to the commission. Telecommunications companies shall remain subject to general, nontelecommunications-specific statutory provisions other than those in chapter 386 and this chapter to the extent applicable . . .

¹ Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as "AT&T."

² AT&T makes this filing in response to the Commission's April 27, 2016, Order Setting Deadline for Filing in Case No. TC-2015-0205.

Commission Staff concurs that the Commission lacks jurisdiction here and that the Complainant should be dismissed:

Staff references Section 392.611, RSMo, which in summary states that telecommunications providers have no duty to provide a specific level of quality of phone service and due to the deregulation of the telecommunications industry, the Missouri Public Service Commission does not have authority to order a specific level of quality. Additionally, Staff has conducted a thorough investigation of this matter and finds no available remedy for the complainant beyond the actions AT&T has already performed.³

The Public Service Commission is an agency of limited jurisdiction and has only such powers as are conferred upon it by statute and powers reasonably incidental thereto.⁴ Because the claims raised in the complaint are outside its statutory jurisdiction, the Commission must dismiss the complaint.⁵

II. Response to Request for Further Mediation.

While AT&T believes the mediation conducted to date has assisted in resolving many of the matters listed in the complaint, it does not see further mediation as being productive and respectfully declines further Commission-supervised mediation.

As reflected in Staff's report to the Commission, AT&T has exhausted its efforts to address the matters raised in the complaint and believes there is nothing further it can do to satisfy the Complainant. In concluding the Commission should "consider this complaint remedied to the extent possible,"⁶ Staff described AT&T's efforts, which included numerous premise visits by its

³ Staff Status Report, filed March 30, 2016, in Case No. TC-2015-0205, at p. 2. *See also* Staff statement at p. 6 of the transcript from the March 23, 2016, Prehearing Conference ("The bottom line is that we believe the Commission does not have jurisdiction to proceed in this matter.").

⁴ *Inter-City Beverage Co., Inc. v. Kansas City Power & Light Co.*, 889 S.W.2d 875, 877 (Mo. App., W.D. 1994); *State ex. rel. and to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 168 S.W.2d 1044, 1045 (Mo. 1943).

⁵ *In the Matter of Springfield City Utilities' Surcharges on Nonresidents of Springfield, Missouri*, Case No. AC-2003-0526, 2004 Mo. PSC LEXIS 198, issued February 10, 2004 ("The Commission finds that under the current statutory scheme, it does not have jurisdiction over the natural gas or electric rates that City Utilities charges its nonresident customers. Therefore, the petition, insofar as it pertains to natural gas or electric rates, should be dismissed").

⁶ Staff Status Report, filed December 7, 2015, in Case No. TC-2015-0205, at p. 3.

technicians and the replacement of facilities and equipment from the Company's serving terminal to the customer's premises (despite previous tests showing the service met technical parameters⁷):

Following Staff's additional investigation into Ms. Smith-Sattarin's complaint since its August 26 Report and Motion, it has learned that AT&T recently took an action known as "gold plating" Ms. Smith-Sattarin's phone service. This equates to complete replacement of the lines and connection components leading from the community phone lines to Ms. Smith-Sattarin's house. AT&T has reported no complaints from Ms. Smith-Sattarin following this action . . . Staff is unable to assess any additional steps the utility could take to remedy the Complainant's problems. Staff's considers the actions of the utility to have exhausted all possible avenues.

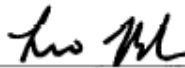
AT&T does not see anything further that can be achieved in mediation to improve Complainant's service. AT&T therefore believes further Commission-supervised mediation would not be a productive use of Commission's or the parties' resources and respectfully declines further mediation.

III. Conclusion.

WHEREFORE, AT&T respectfully requests the Commission to dismiss this Complaint on the grounds set out in Section I of this filing.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY  _____

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⁷ Staff Report and Motion, filed August 26, 2015, in Case No. TC-2015-0205, Attachment A ("Staff visited the complainant's residence on August 20, 2015. Staff was assisted by AT&T's Technician . . . who used his test equipment to measure the complainant's telephone line. The technician found, at that moment in time, all the technical parameters of the line were well within acceptable ranges such as noise and balance and Staff concurs with that assessment.")

CERTIFICATE OF SERVICE

Copies of this document were served on the following by either US Mail or e-mail on May 11, 2016.



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