

To: Missouri Public Service Data Center

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**COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO  
COMPLAINANT'S MOTION TO RECONSIDER DISMISSAL PURSUANT TO  
THE ORDER OF THE COMMISSION DATED OCTOBER 31, 2006** to each  
Member of the Missouri Public Service Commission A.S.A.P. Thank you.

**FILED<sup>2</sup>**  
DEC 11 2006  
Missouri Public  
Service Commission

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

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'S RESPONSE TO  
COMPLAINANT'S MOTION TO RECONSIDER DISMISSAL  
PURSUANT TO THE ORDER OF THE COMMISSION  
DATED OCTOBER 31, 2006**

Comes now Complainant with *Complainant's Reply to Respondent's Response to Complainant's Motion to Reconsider Dismissal Pursuant to the Order of the Commission Dated October 31, 2006*, and states:

1. The Commission on October 31, 2006 entered an order dismissing this case and allowing only until November 10, 2006 for any further response. On or about said November 10 date, Complainant filed *Complainant's Motion to Set Aside the Dismissal*. If the Complainant's Response to the Dismissal Order was filed slightly late, it is as a result of excusable neglect; the Complainant was ill and was simply unable to file the *Motion* earlier. The minor delay should be excused, under the circumstances. 4 CSR 240-2.050(b). The Commission may waive its Rules and Orders for good cause. 4 CSR 240-2.015.

2. The *Complainant's Motion to Set Aside* the Commission's Dismissal speaks for itself and indicates overwhelming and multiple reasons and good cause why the dismissal should be set aside if this Commission wishes to be fair to this *pro-se* litigant. This fairness includes a correction of the manifest unfairness exhibited by the Commission's apparent "rubber stamping" of the *Dismissal Order*--an order which is and was improper, incompetent, unjust, legally insupportable, and factually incorrect. Orders apparently have been thrust before the Commission members heretofore by a possibly poorly trained Administrative Law Judge who has not been involved in the actual practice of law and who does not even know the proper procedure and considerations relating to a Motion for Summary Judgment--and more importantly, when and how to apply proper judicial consideration when such a motion is involved. The Administrative Law judge in this case has manifested her extreme and unprecedented unfairness by *even ordering* the Commission staff, *sua-sponte*, in this case to NOT fax any documents to the Complainant! This Order, allegedly entered, by a trained, competent, and fair Administrative law judge!

3. For years since November 2003, the Respondent failed and refused to provide the Complainant with a single factual or legal reason why it was denying the Complainant's right to a waiver of the monthly charge for Complainant's non-published telephone number terminating only with a non-voice data terminal, to wit: a fax machine. The Complainant ultimately, in frustration in trying to deal with an intransigent utility, Respondent, ATT, filed a formal complaint and thereafter, a **Motion for Summary Judgment** with attached affidavits in support--all in accordance with 4 CSR 240-2.117.

4. Despite all of the aforesaid, the Respondent *claimed* it could not "respond" without extensive discovery. The Administrative law judge fell pray to Respondent's meritless plea despite the Respondent's having presented no "good cause" as required by the Commission's own rules for discovery under such circumstances. Neither the Administrative law judge, nor the Commission Members, ever inquired of the Respondent why any further time was necessary if, in two years prior thereto, Respondent was unable to provide even the Complainant with any reason why it was denying relief to the Complainant pursuant to General Exchange Tariff, §6.12.6(c) and why it could only claim prior thereto that it "did not agree" with the application of the tariff! Thereafter, Respondent inundated the poor residential customer, the Complainant, with multiple data requests having nothing to do with whether a fax machine is a data terminal and/or whether Complainant had used voice communication on the same line as the fax machine at any time since November 2003. All of this, however, had *already been fully answered* after the propounding of the Respondent's data requests--in the affidavits attached to the *Complainant's Motion for Summary Judgment!*

5. Whether the Complainant used smoke signals, someone else's cell phone, or a payphone for alternate oral communications or if the Complainant merely communicated with letters during the period from November 2003 to the present or whether the Complainant had a summer home elsewhere, would have no effect and were irrelevant and immaterial to the two fundamental issues in this case---1) a fax machine is a data terminal 2) No voice communications was contemplated or used on the telephone line since November 2003.

6. Respondent assigned not one, not two, not three, **but four (4) learned and experienced attorneys** including the Respondent's General Counsel for Mo-Ks to the matter and **even retained a prominent St. Louis law firm** on its behalf to conduct a deposition of the hapless Complainant--all involving this small claim case of several hundred dollars in charges that the Complainant was absolutely entitled to receive as a refund since November 2003 pursuant to G.E.T. §6.12.6(e)!

7. The *only* wise and fair act of this Commission was that it ordered the Commission's Staff to investigate and to file a report. A sworn report was filed by the Staff thereafter. **Even the Commission's own Staff agreed** with the Complainant and recommended that the Commission find in

favor of the Complainant on the key issues. WHAT DID THE MEMBERS OF THE MISSOURI PUBLIC SERVICE COMMISSION THEN DO, IT SIMPLY IGNORED ITS OWN STAFF REPORT and instead, it rubber stamped an incompetent Administrative law judge's order allowing "discovery" despite the fact that the Complainant had submitted affidavits which were not refuted in any way by the Respondent at any time! And, it allowed the Respondent to thereafter go on a "fishing expedition" without limitation in order to overwhelm and to harass the Complainant with data requests and an outside-retained law firm's demand for a deposition! NO "GOOD CAUSE," let alone any cause, was shown by the Respondent for ANY need to conduct discovery. The Administrative Law judge made no inquiry of the Respondent and the Respondent did not volunteer any reason, let alone good cause why it could not respond to the Complainant's affidavits! ANY competent judge, at that point, would have indicated to the Respondent, unless you can refute the affidavits of the Complainant, the Complainant is legally entitled to the entry of Summary Judgment!

8. At no time was the Respondent even able to indicate why, for years prior to the filing of this formal complaint, it was unable to give the Complainant ANY reason why it was denying the Complainant's request for relief pursuant to G.E.T. §6.12.6(e) other than that it "did not agree with the application of the tariff."

9. If the Respondent would not, and could not, since November 2003 present any factual or legal reasons to the Complainant why it was denying the Complainant's request for waiver of the monthly fee pursuant to G.E.T. §6.12.6(c), NO AMOUNT OF ADDITIONAL TIME would ever allow the Respondent time to refute the Complainant's affidavits that only a data terminal was used since November 2003 and that not only was no voice use "contemplated" on the Complainant's telephone line after said date, but no voice use was utilized.

10. Even the Commission's own staff was critical of the Respondent's claims in its STAFF Report; it opined that there were no facts which would thereafter change the Staff's recommendation that the Commission should grant the relief requested by the Complainant. The staff indicated that nothing could probably ever satisfy the Respondent! Yet, the Commission ignored the Report and let its allegedly competent Administrative Law Judge grant the Respondent anything and everything it wanted --she granted its desire to harass the Complainant and possibly wear the Complainant down or unmercifully take advantage of the *pro-se* Complainant's lack of knowledge of the Commission's Rules and Procedures.<sup>1</sup>

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<sup>1</sup> Which they now even do in their Response by indicating that the Complainant should be held to the same degree of knowledge of Rules and Procedures as a licensed attorney practicing before a Circuit Court in Missouri!

11. Thereafter, the apparently incompetent Administrative Law Judge in this case was presented, *inter-alia*, with numerous Motions of the Complainant including his request for a subpoena of the Respondent's employee who had personally refused to advise Complainant of any legal or factual reason why the waiver was not granted; the Complainant also moved to be entitled to receive all highly confidential material submitted by the Respondent (despite the fact that he was *pro-se* and not an attorney or expert, entitled to the information as provided by the Commission's Rules); further, the Complainant filed a *Motion to Compel* since the Respondent openly and egregiously, **was in violation of the Rules** by failing to furnish the Complainant its **promised responses** to the **Complainant's** data requests!

12. The Administrative Law Judge was apparently overwhelmed, and thereafter presumably decided to simply dispense with this case in any way she could; she allegedly prepared a false and misleading dismissal order indicating that, *inter-alia*, the Complainant had failed to furnish an "alternate" address despite the record of this case indicating he **did respond** and he did indicate to the Commission that the address listed for him was correct; through no fault of the Complainant, the U.S. Post Office previously returned mail to the Commission because someone else in the neighborhood had the same surname and had moved without a forwarding address. The postal carriers had been confused as to which was which!

13. The insult, injury, and burdens placed upon the Complainant, an individual residential telephone customer, by the Members of the Commission in their apparently blind "rubber stamping" of the legal gobbledegook placed before them by an apparently poorly trained Administrative law judge, is unpardonable and inexcusable.

14. If The Members of this Commission, have one iota of integrity, a scintilla of ability to obtain from someone, anyone, some good, sound, **competent**, legal advice, and if they have a spoonful of honesty, each would immediately vote to:

- A. Reconsider and then set aside the dismissal order of October 31, 2006;
- B. Accept the Commission's Staff's Recommendation and sworn Report;
- C. Reconsider and grant *Complainant's Motion for Summary Judgment*
- D. Consider compensation for the Complainant in view of the outrageous conduct of the Respondent in failing and refusing to provide any reasons for denial of his right of waiver and to compensate in some small way for the volumes of pleadings required in this case of the Complainant just to obtain several hundred dollars of relief pursuant to G.E.T. §6.12.6(e) for years. The Commission members should seriously consider the injury in time, trouble and expense (after reviewing the file in this case) caused directly by the Respondent. Reasonable compensation considered might be the value of the services of the four (4) attorneys utilized by the Respondent, itself, in "defending" this several-hundred dollar claim; such would be poetic justice!

- E. Find and rule that the Complainant has materially complied with all data requests propounded by the Respondent.
- F. Adopt Rules similar to those of the *Small Claims Act of Missouri*, §482.340, so that this all-powerful Respondent and other such Respondents cannot further oppress an individual complainant with multiple attorneys, multiple data requests, hearings, and demands for a deposition--all of which are not allowed in Small Claims Courts in Missouri and should not be allowed in any case of a *pro-se* Complainant without an attorney before the Commission.<sup>2</sup>
- G. And, adopt Rules and Orders that henceforth, a utility Respondent is not allowed in any case where the amount involved is less than \$5,000, to utilize attorneys (just as in small claims cases in Missouri). If the Complainant prevails, then the Commission shall order the Respondent to pay for the legal representation of the Complainant should the Respondent appeal to any Circuit Court.
- H. Rule in such Small Claims proceedings before the Commission, that attorneys shall not be allowed if the Complainant is not represented by an attorney.
- I. Adopt Rules that a Respondent must pay the value of a complainant's time, effort, and energy (as determined by the Commission), if it unjustly and/or unfairly denies a claim of a Complainant under any G.E.T. *provided that* the Commission's own Staff agrees with the Complainant that such action was unjustified and unwarranted or the Complainant is entitled to relief. Such monetary amount, should be a minimum of \$10,000, not as a penalty, but as fair and just compensation for the time, trouble, and effort of a Complainant to put forth a matter before the Commission when a Respondent, such as the one in this case, refuses and fails to abide by its own filed tariffs without just cause. Such will prevent this Respondent and others from the oppression and unfair tactics that have been overwhelming evident in this case --all instituted and done by this Respondent without any fear of any financial cost or detriment. The Commission should realize that it CAN make its own Rules, 4 CSR 240-2.180(2), et. al. and that it has the authority and power to waive its own rules. 4 CSR 240-2.015.
- J. Institute rules that if a Complainant is *pro-se* and not represented by an attorney, he shall have equal access to all confidential and highly confidential filings, just as an attorney or expert would have. Simply because he is not an attorney or an expert should not force him to be denied legitimate discovery and to be on an equal footing with a Respondent who is represented by one or more attorneys and has one or more experts.
- K. Adopt a Rule that a Respondent utility MUST, within thirty (30\_ days of denying a customer relief under any General Exchange Tariff, furnish the customer (Complainant) with the legal and/or factual reason(s), in layman's terms, why the tariff is not being followed by the Respondent. This document shall be

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<sup>2</sup> Let's make the playing field level for everyone in the interest of justice and fairness, if the Members of the Commission even care a whit!

binding on the Respondent in all future proceedings before the Commission and a Respondent may not later be heard to Complaint that it must conduct "discovery" to discover why it has failed and refused to follow and to abide by its own filed tariff!

15. In the *Respondent's Response to Complainant's Motion to Set Aside the Dismissal Order of October 31, 2006*, it attempts to deliberately mislead the Commission by its citation of three cases: *State v Winrod*, *Hardin v. State*, *Wilson Varnahan* and *Portwood-Hurt v Hurt*. (Citations omitted). These cases allegedly support the proposition that a *pro-se* litigant should be held to the same standards and procedures as a licensed attorney. The Respondent fails to indicate to the Commission the fact that these cases are ALL before Missouri Circuit Courts, none were before any administrative tribunals such as the Missouri Public Service Commission or before a Small Claims Court of Missouri! The Commission has the right and authority, in the interest of justice and fairness, to modify and to change its own rules to those utilized in a Small Claims Courts in Missouri and/or to waive or consider its rules with some degree of flexibility when a *pro-se* litigant appears before it.

The Commission has the authority to NOT hold a *pro-se* party to the same standards and procedures as a licensed attorney and if the Commission wants to be fair, it should exercise its authority in favor of fundamental fairness to ALL parties. **Query:** What *pro-se* party before the Commission could possibly afford the money to retain an attorney when the total amount involved and at issue, (other than hundreds of hours required of the Complainant in this case to represent himself), as in this case, amounts to no more than several hundred dollars? **Let's be real, Members of the Commission!** The Commission could adopt a Rule that if the Staff agrees with the Complainant's position, the Commission would order the Respondent utility to pay the Complainant's legal fees so that the Complainant could retain an attorney and be on an equal footing with a Respondent in so far as adherence to Commission Rules and Procedures. The Commission has been grossly negligent in failing to take action and failing to adopt any rules to protect a *pro-se* litigant with a small claim, as in this case, against the overwhelming power, legal talents, expertise, and oppressive conduct of the Respondent in this case.

16. Further, if the Commission still seeks additional legal grounds to overturn its Dismissal Order, it need look no further! The Respondent, SBC a/k/a ATT has acted, not only with overwhelming arrogance, oppression, and manifest outrageous conduct throughout this entire case and prior thereto, but it has now stooped to making materially false and fraudulent representations to the Commission! Attached and made a part hereof is the "Certificate of Service" of the *Respondent's Response to Complainant's Motion to Reconsider*. It is signed and certified by one of the Respondent's four attorneys on behalf of the Respondent. The certification signed by one of the Respondent's attorney of record states that a copy (**Exhibit A**), was mailed to Complainant on:

"November 14, 2006"

Yet, the envelope in which this pleading was mailed, (**Exhibit B**) irrefutably indicates by its postmark that it was not *actually mailed* until:

"November 27, 2006!"

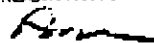
---almost two (2) complete weeks elapsed after the pleading was "certified" to have been mailed by the Respondent's counsel! The level to which the Respondent has now stooped and will apparently stoop in this case is unprecedented--ALL in order to WIN at all costs--ethics and honesty be damned! **And**, this case is only over a matter of several hundred dollars and interest which the Complainant has been legitimately entitled to receive as a refund since November 2003! One cannot wonder what this Respondent has done in other cases and with other parties before the Commission and elsewhere! Such unethical and outrageous practice and conduct on the part of this Respondent should not be condoned and/or "swept under the rug" by the Members of this Commission and should be treated and considered very seriously! The Respondent has failed to provide to the Complainant even fundamental fairness and honesty! There is, and can be, no excuse for a two (2) week delay after a certification has been provided to the Commission of mailing by this Respondent!

17. *The Complainant's Motion to Set aside* contains and sets forth a plethora of good reasons for the Commission to set aside its Dismissal Order of October 31, 2006. Once again, if the Members of the Commission have an ounce of fairness in them, a scintilla of integrity, and an iota of intelligence to obtain some *competent* legal counsel, they will take the proper and required action without further delay. If the Members lack any of the aforesaid, no doubt they will simply sweep this case under the proverbial rug and try to pretend that it never existed--just as the Administrative Law Judge in this case appears to have done and wants to do--all to the glee of a Respondent whom the Commission has enabled to congratulate itself on winning--winning at all costs and demonstrating that oppression, unethical conduct, and repression **does pay** AND that in this case, Goliath, ATT--including its formidable four (4) attorneys and outside-retained law firm, triumphed over David with his meager slingshot and desire that truth and justice prevail!

**WHEREFORE**, Complainant prays that the Commission will set aside its Dismissal Order of October 31, 2006, abide by, and adopt, the sworn recommendations of its own Staff in the Staff's Report, find that the Complainant has acted in manifest good faith in responding to Respondent's data requests, grant the *Complainant's Motion for Summary Judgment*, consider compensation to the Complainant to be paid by the Respondent, not as a penalty, but in the interest of fundamental fairness and manifest equity in view of the outrageous refusal of the Respondent to abide by its own tariff's since November 2003 and the overwhelming filings and burdens caused to the Complainant by the Respondent in this case, and enter such further Orders and adopt such other Rules as may be found to be just, proper, and required in the premises.



Respectfully



Complainant

December 10, 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.

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

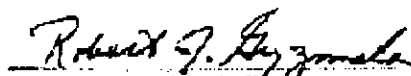


A

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via U.S. Mail on November 14, 2006.

↑

  
Robert J. Grymalak

William Haas  
Missouri Public Service Commission  
P.O. Box 360  
200 Madison Street, Suite 800  
Jefferson City, MO 65102  
William.Haas@psc.mo.gov

Lewis Mills  
Office of the Public Counsel  
200 Madison Street, Suite 650  
P O Box 2230  
Jefferson City, MO 65102  
opcservice@dcd.mo.gov

Richard Mark  
9029 Gravois View Court, #C  
St. Louis, Missouri 63123



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

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

***POSTSCRIPT TO***  
**COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO**  
**COMPLAINANT'S MOTION TO RECONSIDER DISMISSAL**  
**PURSUANT TO THE ORDER OF THE COMMISSION**  
**DATED OCTOBER 31, 2006**

Comes now the Complainant and states as a postscript that:

It appears that the *Complainant's Motion to Reconsider Dismissal Pursuant to the Order of the Commission Dated October 31, 2006* **WAS TIMELY FAXED TO THE COMMISSION** "just before midnight on November 9, 2006!"

Upon further review of the pleadings, footnote #3 of *ATT Missouri's Response to Complainant's Motion to Reconsider* **confirms** that the records of the Commission indicate that the *Complainant's Motion to Reconsider* was timely faxed to the Commission "just before midnight on November 9, 2006." ATT further confirms in its footnote #3 that since the next business day in which the Commission was open was November 13, 2006, that that was the reason why the file stamp on the Complainant's pleading bears a file stamp of November 13, 2006 in lieu of the date of actual fax, to wit: November 9, 2006.

It now appears that despite the Complainant's illness, the Complainant's *Motion to Reconsider* **WAS** timely faxed to the Commission *even prior* to November 10, 2006!

Respectfully,



Complainant

Copies to: ATT attorneys,  
PSC G.C. Office of  
Public Counsel

