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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Prehearing Conference

8

September 13, 2006

Jefferson City, Missouri

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Volume 3

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R. Mark,

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Complainant,

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v.

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) Case No. TC-2006-0354

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Southwestern Bell

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Telephone, L.P. d/b/a

)

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AT&T Missouri,

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)

17

Respondent.

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CHERLYN D. VOSS, Presiding,

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REGULATORY LAW JUDGE

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REPORTED BY:

24

PAMELA FICK, RMR, RPR, CCR #447, CSR

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MIDWEST LITIGATION SERVICES

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FOR: Himself

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1 P R O C E E D I N G S

2 JUDGE VOSS: Good morning. I'm
3 regulatory law judge Cherlyn Voss. We're here for a
4 prehearing conference today in Case Number
5 TC-2006-0354, Mr. R Mark's complaint against
6 Southwestern Bell, L.P., d/b/a AT&T Missouri. We'll
7 begin by taking entries of appearance.

8 Mr. Mark, will you go first, please?

9 MR. MARK: Yes. My name is R. Mark.
10 I'm the complainant in this case, and I'm
11 appearing -- or representing myself.

12 JUDGE VOSS: Thank you. AT&T.

13 MR. GRYZMALA: Good morning, your Honor.
14 Bob Gryzmala on behalf of Southwestern Bell
15 Telephone, L.P., doing business as AT&T, Missouri.
16 My address is One AT&T Center, Room 3516, St. Louis,
17 Missouri 63101.

18 JUDGE VOSS: Staff?

19 MR. HAAS: Good morning. My name is
20 William Haas. I represent the Staff of the Public
21 Service Commission in this matter. My address is
22 Post Office Box 360, Jefferson City, Missouri 65102.

23 JUDGE VOSS: Thank you. And for the
24 record, I'll note that no one from the Office of
25 Public Counsel is in attendance.

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1 Okay. This is a prehearing conference
2 to discuss some of the discovery issues and pending
3 motions and to give the parties a chance to set a
4 date for an evidentiary hearing in this case. And
5 Mr. Mark, I know that you're probably not inclined to
6 come to Jeff City where we normally have hearings,
7 and we can try to do something where you can
8 participate from St. Louis.

9 There'll be some --

10 MR. MARK: First of all, if I may, a
11 point of order, Judge?

12 JUDGE VOSS: No. I'm not finished yet.
13 One moment.

14 MR. MARK: All right. I'm sorry.

15 JUDGE VOSS: There will be some issues
16 around getting it set up, but then you would not have
17 to attend. And I'm sorry, go ahead.

18 MR. MARK: Yes. I have a Motion for
19 Summary Judgment. Now, the Staff of the Commission
20 has indicated, if I am correct, that my Motion for
21 Summary Judgment in two aspects should be granted. I
22 don't understand why this motion has not been ruled
23 upon.

24 And I am -- you know, this matter,
25 Judge, involves \$2.49 per month. Now, we can make a

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1 federal case out of this and spend huge amounts of
2 time on it, or I request my Motion for Summary
3 Judgment be considered. I mean, the facts are there,
4 they're set forth, the Staff report has been filed.
5 To drag this matter on for such a small amount just
6 seems to me oppressive.

7 JUDGE VOSS: Mr. Mark, I will address
8 your comments briefly. First, before a Motion for
9 Summary Judgment would be addressed, we need to make
10 sure all discovery issues are settled one way or the
11 other, and I want to clarify one thing for you
12 regarding the Staff report.

13 The Staff is the Staff of the
14 Commission, but like you and AT&T, Missouri, it's
15 simply a party before the Commission. The Commission
16 is not Staff. Basically, in fact, quite often, they
17 don't side with their Staff and they make an
18 independent decision based on one of the other
19 parties' positions.

20 So because Staff filed a report
21 indicating, that does not mean that would ultimately
22 be the Commission's decision. They still have
23 questions regarding this issue that they need to
24 address.

25 MR. MARK: All right. Well, be that as

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1 it may, I think the Commission, I presume, will rule
2 on this request for discovery because I think it's
3 absolutely a fishing expedition. There's a letter in
4 the file from the trial counsel for AT&T admitting --
5 basically admitting the only issue is whether the
6 data terminal is a fax machine, and I think the
7 Commission needs to consider that before setting up
8 any kind of further hearings on this matter.

9 As I said, I have before me the
10 complainant's response to Southwestern Bell
11 Telephone's renewed motion to compel responses to
12 data requests and my motion to terminate all further
13 discovery, and I would request that the Commission
14 consider what was said in those 20 pages before
15 making any decision on this regarding any need for
16 any evidentiary hearing. And this is a fishing
17 expedition, and as far as I'm concerned, it's
18 oppressive to even consider an evidentiary hearing in
19 view of the facts.

20 JUDGE VOSS: Mr. Mark, there is a
21 question as to the facts in this case, which is what
22 the discovery is designed to --

23 MR. MARK: Well --

24 JUDGE VOSS: Will you please let me
25 finish?

1 MR. MARK: Yes.

2 JUDGE VOSS: Which the discover designed to
3 ferret out. Part of why we're here today is to clarify,
4 because honestly, 20 pages to address the issues that
5 are out there makes it more confusing than clear, and
6 I want today to get just a clear objection to what
7 you have. You know, you object to data request 1
8 based on this, or whichever ones, and just give me a
9 clear short statement as to your objections.

10 And then I'm going to give Mr. Gryzmala
11 very brief time to respond just to clarify what you
12 have in your pleadings. Then I will take it to the
13 Commission, and they will make a ruling on it.

14 Following that ruling, it's very likely
15 that they will want to have some type of an
16 evidentiary hearing. It would be minimal, I believe,
17 although I could be mistaken, but really we need to
18 find that out, and that's part of reason we're all in
19 the same room and we're able to talk so there's no
20 misunderstandings and we don't have to worry about
21 things getting to people because no one's here.

22 So to that end, maybe -- actually,
23 Mr. Gryzmala, can you say the data requests you
24 haven't received answers to? Because I know he did
25 respond to some of them. And then, Mr. Mark, I'll

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1 give you an opportunity to state briefly your
2 objections to those, and then I will also refer to
3 your document that you filed.

4 MR. GRYZMALA: Thank you, your Honor.
5 In our motion that is -- excuse me, our renewed
6 Motion to Compel filed August 4, we indicated at page
7 2 and 3 that Mr. Mark had provided no information at
8 all with respect to data requests 1, 2, 3 and 9,
9 incomplete information as to three others which would
10 be 5, 7 and 8, and there were responses that were
11 provided to items 4 and 6, but only after significant
12 objections.

13 So that doesn't suggest to me that the
14 answer was full and complete and unqualified. That's
15 what we indicated in our motion.

16 JUDGE VOSS: But with respect to data
17 request 4 and 6, do you have any reason to believe
18 those are not fully answered other than you just had
19 difficulty --

20 MR. GRYZMALA: Let me take a look for
21 just a moment.

22 JUDGE VOSS: Sorry, Mr. Mark. I know
23 it's confusing on the phone. You can't see. He's
24 shuffling through paper.

25 MR. MARK: That's all right. You're

1 doing a good job.

2 JUDGE VOSS: I'm sorry. Go ahead.

3 MR. GRYZMALA: I'm looking at what
4 appears to be -- well, what is Exhibit 1 to our
5 renewed -- I'm sorry, it's Exhibit 2 to our renewed
6 motion, which is entitled Complainant's Responses to
7 Respondent's Data Requests Including Objections
8 Thereto.

9 And your Honor asked me about item 4 and
10 6 -- items 4 and 6, excuse me. And at page 2 of that
11 exhibit under the caption DR 4, there are seven or
12 eight lines of objections, and then at the very end
13 it states "No! Complainant has provided no services
14 to another for compensation."

15 The DR, or the data request that we had
16 submitted -- hang on just a moment, Mr. Mark. Oh,
17 okay. I'm sorry. Excuse me.

18 The DR that we submitted says, "Please
19 state whether, since November 1, 2003, you have
20 provided services to another for compensation in
21 other than an employer/employee relationship."
22 Basically, your Honor, the reason why we asked that
23 is because DR 3 was devoted to an employer/employee
24 relationship.

25 DR 4 would be a third-party contract or

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1 the like, so that when Mr. Mark responds as he did --

2 JUDGE VOSS: I can understand.

3 MR. GRYZMALA: Let me flip back.

4 JUDGE VOSS: I can see it. Well, the
5 one thing on that, basically, it's fully answered no,
6 whether you guys agree on that or not. But it seems
7 that no is a pretty full answer there. Okay.

8 MR. GRYZMALA: The other one your Honor
9 asked me about where there was an answer would be DR
10 6.

11 JUDGE VOSS: Uh-huh.

12 MR. GRYZMALA: And again, I'm sorry.
13 Let me get my objections -- or my requests in hand.
14 DR 6 said, "Please identify whether the principal
15 purpose of the messages originated by and/or received
16 by the fax machine referenced in paragraph 4 of your
17 complaint is business or personal."

18 Again, there are a series of objections,
19 but the response is, as Mr. Mark states, "Personal,
20 nonbusiness use."

21 JUDGE VOSS: Okay. So then you may
22 personally have reasons, or your company may have
23 reasons to question that, but yet, that is a full
24 answer.

25 MR. GRYZMALA: Subject to our objections

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1 on each of them, yes.

2 JUDGE VOSS: Okay. What do you mean by
3 subject to objections?

4 MR. GRYZMALA: Those -- that is, he
5 recited objections prior to --

6 JUDGE VOSS: But he did fully answer
7 them at the end of those objections. Whether you
8 believe it's fully answered, it's a straight, solid
9 answer.

10 MR. GRYZMALA: I don't disagree.

11 JUDGE VOSS: Okay. He's objecting to
12 them, but it looks as if those are fully answered.
13 Maybe the rest you guys could debate amongst
14 yourselves.

15 MR. GRYZMALA: Well, and for what it's
16 worth, the data request 4 asked whether he had been
17 employed since November of '03, and he simply says he
18 has provided no services to another. I don't know
19 whether that includes the entirety of the period.
20 And the reason why November 203 (sic) was selected,
21 your Honor, is because that was the date, if I
22 recall, he alleges, Mr. Mark alleges, that he
23 indicated to our offices that the phone line once
24 used for voice was no longer being used for voice.
25 So that is the pertinent time period.

1 JUDGE VOSS: Okay. Mr. Mark, the
2 Commissioners may ultimately have questions about
3 information similar to data request 4 and 6, but I
4 feel that those are fully answered.

5 MR. MARK: I would concur.

6 JUDGE VOSS: So do you want to restate
7 briefly the reasons you're objecting to the
8 request --

9 MR. MARK: Yeah, I want to make a
10 statement, Judge, if I can.

11 JUDGE VOSS: Okay.

12 MR. MARK: And it's -- it might be a
13 little longer than brief. Number one, under "General
14 Exchange Tariffs," 6.1.26(E), when a customer who has
15 service which involves a data terminal and there's no
16 voice use contemplated, the customer is entitled to a
17 waiver of the nonpublished charge from the telephone
18 utility.

19 Now, the tariff sets forth only two
20 requirements. One, that the customer states orally
21 that the customer is using a data terminal; and
22 No. B, that no voice use is contemplated. Now, I
23 have, by affidavit, sworn to the fact that since
24 November of 2003, I have had use of a telephone line,
25 a residential telephone line, exclusively for a fax

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1 machine, and that no voice has not only been
2 contemplated, but no voice has been used.

3 Now, these are the only requirements of
4 the tariff in order for a customer to be relieved of
5 the charge for a waiver of this nonpublished charge,
6 which now is what I consider excessive, \$2.49 a
7 month, whereas in California, for example, it's 28
8 cents per month for the same AT&T.

9 JUDGE VOSS: Mr. Mark?

10 MR. MARK: All right. I'll try to stick
11 to the --

12 JUDGE VOSS: Well, basically the things
13 you're discussing are things I'd expect to see in a
14 brief. But this is just your objection to the data
15 request itself. Why --

16 MR. MARK: Okay.

17 JUDGE VOSS: Why is it a hardship for
18 you to --

19 MR. MARK: All right. I've answered
20 fully, as you've indicated, Judge, DR 4 and DR 6.
21 Now, I haven't heard any other data requests that are
22 relevant or material to these two issues with regard
23 to 6.12.6(E) or that could lead to any potential
24 discovery of relevant evidence.

25 Now, I've also submitted, and I would

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1 like the Court to note a letter dated from
2 January 31st, 2006, from Mimi McDonald of AT&T,
3 stating that the question is a question of
4 interpretation. And if I may cite briefly, it says,
5 "Southwestern Bell, d/b/a AT&T, continues to believe
6 that the tariff is being interpreted and applied
7 correctly. Section 6.12.6(E) does not provide for a
8 waiver of the charge for residents' nonpublished
9 service when a customer intends to use a line for
10 either internet or facsimile purpose." That is the
11 crux of --

12 JUDGE VOSS: Mr. Mark, we are not here
13 to talk about the issues today. We are just
14 trying -- I mean, that's something that will be
15 decided later. Right now we're just trying to take
16 care of your discovery issues.

17 MR. MARK: All right. Well, you know,
18 in view of the fact, Judge, you have indicated that
19 DR 4 and DR 6 are sufficient, and I certainly concur,
20 I don't know what other -- the gentleman from AT&T
21 hasn't brought up anything else.

22 JUDGE VOSS: Okay. No, those are the
23 two you said that you did answer.

24 MR. MARK: Well, you seem to be, and he,
25 a little bit vague as to whether I did or didn't

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1 until we read the last line in each one of those.

2 So, you know, those are the two that he seems to be
3 addressing.

4 JUDGE VOSS: Well, I think he was
5 questioning the truth and veracity of the final
6 conclusion and the answer to the DR which is not a
7 matter for us to decide now, but that you fully
8 answered the data request, and you did.

9 MR. MARK: Exactly. And that's the
10 point. If he doesn't like the answers, that's
11 unfortunate, but those are the answers. So it seems
12 to me that we're debating whether he likes the
13 answers or doesn't like the answers.

14 JUDGE VOSS: Okay. Well, there's other
15 data requests, though, that are still at issue, and I
16 just --

17 MR. MARK: Well, all right. If he will
18 recite which data requests, each one, I will respond
19 to each --

20 JUDGE VOSS: Actually --

21 MR. MARK: -- one that he believes
22 should be compelled. How would that be?

23 JUDGE VOSS: Well, actually, I'll go
24 through them for you.

25 MR. MARK: All right. Well, I mean,

1 could he -- I'd like to hear it from him, your Honor.

2 JUDGE VOSS: This is a -- my prehearing,
3 and I'm the one that's gonna have to take to the
4 Commission these issues, so it's my responsibility to
5 make sure I get all the information I need to make a
6 decision for the Commission.

7 MR. MARK: All right. All right.

8 JUDGE VOSS: So --

9 MR. MARK: It's your court, your Honor,
10 and I certainly will defer to your decision.

11 JUDGE VOSS: So data request No. 1, it
12 asks for the name and address and telephone number of
13 the complainant. And I'm assuming you asked,
14 Mr. Gryzmala, because you were having things returned
15 undeliverable?

16 MR. GRYZMALA: Well, and frankly, this
17 was before, I believe, your Honor, things started
18 becoming undeliverable. Things started becoming
19 undeliverable in our office I believe somewhere in
20 late June and thereafter. These data requests were
21 generated in May, but it's an introductory data
22 request meant to identify the precise name of the
23 complainant, the full and complete name.

24 I agree it becomes even more germane now
25 because there is some substantial question of whether

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1 that is an accurate address for correspondence or for
2 purposes of even having telephone service of any
3 nature there.

4 I would also just note very briefly all
5 of Mr. Mark's objections, as we wrote in our renewed
6 motion, have been waived. He failed to object to
7 them. The Commission directed that he respond. But
8 that is my response with regard to your question on
9 DR No. 1.

10 MR. MARK: All right. May I say
11 something? First of all, these data requests were
12 propounded when this case started. Now, subsequent
13 to the data request, I have filed two affidavits.
14 Those affidavits addressed any relevant issues in
15 these data requests.

16 Instead of withdrawing the data
17 requests, the -- AT&T seems to want to continue these
18 data requests. They have nothing to do with whether
19 I received mail or didn't receive mail, and that's
20 been resolved by the Commission in my favor. I have
21 not --

22 JUDGE VOSS: Actually, it has not been
23 resolved by the Commission in your favor, Mr. Mark.

24 MR. MARK: Well, the Commission --

25 JUDGE VOSS: You were excused from the

1 last prehearing conference because you truly did not
2 get notice of it.

3 MR. MARK: All right. Okay. Well, this
4 is -- as I've stated, this is not due to my fault. I
5 did receive this notice. I am presently here. So,
6 you know, this is kind of a moot issue.

7 Now, again, these data requests were
8 propounded before the affidavits were submitted, and
9 I would ask that the Commission take judicial notice
10 of my affidavits and my Motion for Summary Judgment.

11 With regard to data request No. 1, this
12 is now a moot -- not only a moot issue, but this is
13 pure and unadulterated harassment. The Staff
14 requested of the Respondent, AT&T, that they furnish
15 this exact same information, and AT&T furnished the
16 same information to the Staff.

17 Now, then they're coming back and
18 they're saying that I should also furnish the
19 information that they have in their own records and
20 that they have, without question, furnished to the
21 Staff of the Commission every single answer to this
22 question.

23 Now, I consider that harassment, and
24 there's no excuse for it. They have --

25 JUDGE VOSS: Mr. Mark?

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1 MR. MARK: -- the service address, they
2 have the telephone number, they have the billing
3 address, they have all this information that they are
4 now coming before this Commission and saying they
5 want compelled.

6 JUDGE VOSS: Just --

7 MR. MARK: I don't understand.

8 JUDGE VOSS: Just one second. I'm gonna
9 ask Mr. Gryzmala to explain how they can furnish it
10 and then request -- he may have been asking for
11 something different which may have not been clear.
12 So let me --

13 MR. MARK: All right.

14 MR. GRYZMALA: No, I'd simply ask the
15 question -- and I don't disagree with Mr. Mark --
16 that this was generated on May 11th before affidavits
17 were submitted. And very candidly, if there is
18 something in those affidavits which answer these
19 questions, I would not have taken any occasion to
20 pursue it in this fashion.

21 I have not found anything which
22 addresses this answer. I don't know if the address
23 that we have on file is your residential address,
24 Mr. Mark. I don't know if it's your business
25 address.

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1 MR. MARK: I would object.

2 MR. GRYZMALA: May I finish --

3 MR. MARK: I don't think --

4 MR. GRYZMALA: May I finish, Mr. Mark?

5 MR. MARK: Yes, yes, indeed.

6 MR. GRYZMALA: Thank you. And whether
7 or not you have other telephones or not -- and I mean
8 "other" because, quite candidly, you and I are
9 agreed, we know what telephone number line works
10 there, but the question is what telephone number or
11 numbers are there, and that goes to the issue as to
12 whether or not the line in question is used
13 exclusively for voice as you allege.

14 MR. MARK: I would respond the affidavit
15 states that it is used exclusively under those I have
16 sworn in my subsequent affidavit that this telephone
17 line has not been used for any purpose other than
18 faxes since November of 2003.

19 Now, you don't -- don't like the answer,
20 but that's the answer, and it's sworn to in an
21 affidavit. So -- and you have the address
22 information, and you have all the information that
23 you have requested in DR 1. You have furnished it to
24 the Staff of the Commission, and I -- you know, I
25 just find it absolute sheer harassment. And I don't

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1 know why it's -- it hasn't been withdrawn since it
2 was furnished by the Respondent to the Staff in
3 response to the Staff's question. It's all in
4 possession of AT&T. We're not talking about service
5 of pleadings here.

6 JUDGE VOSS: Mr. Mark?

7 MR. MARK: Yes.

8 JUDGE VOSS: Is there some reason why
9 this information would be difficult or onerous for
10 you to provide?

11 MR. MARK: Yes. It's harassment.

12 JUDGE VOSS: It's harassment for you to
13 write a one-line response to something?

14 MR. MARK: No. Look, the point is they
15 have it. It should -- I object to it because they
16 already have it within their records. It is pure and
17 unadulterated harassment. They have the same
18 information, they have furnished the same information
19 from the Staff.

20 JUDGE VOSS: Okay.

21 MR. MARK: You know, we're not playing
22 games here, and apparently that's what they're doing,
23 is they're playing games and asking for the same
24 information that they have furnished. Now, they --

25 JUDGE VOSS: Mr. Mark, I understand that

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1 that's your position.

2 MR. MARK: All right.

3 JUDGE VOSS: I think I have enough on
4 that one to take it to the Commission.

5 MR. MARK: All right.

6 JUDGE VOSS: Data request No. 2, they
7 basically asked if you had any other phone service at
8 other locations.

9 MR. MARK: All right. That's
10 irrelevant. If I have a summer home in Minnesota,
11 what relevance does that have, or materiality, to
12 whether I use the single line we're talking about for
13 fax and whether a data terminal is connected?

14 I could have 20 other residences. How
15 does that possibly, conceivably lead to anything that
16 would be admissible as far as discovery goes? We're
17 not talking about -- I haven't applied for 20 lines
18 for -- relieving of nonpublished charges. We are
19 talking about one line.

20 Subsequently I filed an affidavit
21 stating that that one line is used exclusively for
22 fax and no other purpose and hasn't been since
23 November. Whether I go to a pay phone or use any
24 other telephone service is totally -- is -- it's
25 absurd. There's no relevance or materiality. It's,

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1 again, harassment --

2 JUDGE VOSS: Mr. Mark?

3 MR. MARK: -- for no purpose whatsoever.

4 JUDGE VOSS: I personally believe there
5 is relevance to this, because you obviously use some
6 type of phone communication, presumably a cell phone
7 or something. Most people do. But because a fax
8 phone also has the ability to often be used as a
9 telephone, I see why it is information that is
10 relevant today.

11 MR. MARK: They are asking, your Honor,
12 other telephone service. They're not asking -- first
13 of all, a fax machine is used -- is just for fax, not
14 oral communication. Now, they don't like the answer.
15 I mean, you know, I see no reason, your Honor, to
16 placate this Respondent and to give them anything and
17 everything they want --

18 JUDGE VOSS: Mr. Mark?

19 MR. MARK: -- no matter how -- oh, now,
20 whether I use --

21 JUDGE VOSS: Mr. Mark?

22 MR. MARK: Yes.

23 JUDGE VOSS: I am not placating. I am
24 simply trying to find out exactly what information
25 they're seeking. And I'm gonna ask Mr. Gryzmala a

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1 question to clarify.

2 MR. MARK: Well, I appreciate that. And
3 I don't mean to infer that -- that, you know, that
4 you're placating. But --

5 JUDGE VOSS: Just a second. I'm gonna
6 ask Mr. Gryzmala to clarify. One moment.
7 Mr. Gryzmala, are --

8 MR. GRYZMALA: Your Honor --

9 JUDGE VOSS: Wait. Are you asking him
10 if he has a cell phone or other means of
11 telecommunications? Because I'm certain he's not
12 going to want to relinquish the actual phone numbers.
13 Would you be satisfied knowing the existence of such
14 numbers?

15 MR. GRYZMALA: No, your Honor, in all
16 candor. And let me tell you why. Whether or not
17 Mr. Mark has a cell phone is the subject of DR 9. We
18 think that's relevant and we can talk about that down
19 the road.

20 Separate and apart from that is the DR 2
21 which talks about whether he presently has telephone
22 service at any other address. Your Honor, your point
23 I think is the principal point. It is rare, if not
24 counterintuitive, for an individual to not have
25 access to voice communications.

1 If you believe Mr. Mark's version of
2 events, he has no access to voice communications
3 other than a pay phone. I'm entitled because it's
4 reasonably calculated to lead to discovery of
5 admissible evidence to know whether he has voice
6 communications that may have satisfied his need at
7 other addresses.

8 We are also aware that he has the
9 capability to forward telephone calls received at the
10 address he has provided the Commission to other
11 telephone lines. And the reason for which he does
12 that and why he does that is very, very germane as to
13 whether the calls he's forwarding received from that
14 principal fax line, if you will, as he calls it, are
15 actually voice or fax.

16 Those are germane questions. And again,
17 I would hark back to what your Honor said a moment
18 ago. It takes but two minutes to answer this
19 question, or a line, I think you mentioned. It is
20 minimally intrusive.

21 And frankly, if Mr. Mark wants to
22 protect this as confidential information, I have no
23 objection to protecting it under a proprietary
24 designation, if that be the course, but this is not
25 the kind of information that should normally or is

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1 ever normally regarded as confidential.

2 MR. MARK: If I may respond?

3 JUDGE VOSS: Go ahead, Mr. Mark.

4 MR. MARK: I have again stated under
5 oath and under affidavit the telephone -- first of
6 all, the telephone number is not forwarded anywhere.
7 Number two, it's used exclusively for fax and for no
8 other purpose. I have met the requirements of
9 6.12.6(E) and also sworn to it under oath.

10 Now, I never said that I don't use a
11 neighbor's telephone or I don't use my sister's cell
12 phone or I don't use a pay phone or I have used
13 exclusively pay phones, but what difference does that
14 make as to whether I am being truthful and that line
15 is used exclusively for fax with the data terminal
16 connected?

17 That's the only possible factual issue.
18 I have answered that under oath. Whether I've used
19 smoke signals or used voice override on internet or
20 any other possible communication method is totally
21 irrelevant to whether I use that telephone line that
22 I am entitled to a nonpublished waiver since November
23 of 2003.

24 I mean, we can go on a fishing
25 expedition and go into anything and everything just

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1 simply because the Respondent wants to harass someone
2 for simply wanting what they're entitled to under
3 6.12.6(E).

4 JUDGE VOSS: Mr. Mark?

5 MR. MARK: Yes.

6 JUDGE VOSS: My job as the judge is to
7 make sure that the Commission has all the information
8 they need to make a decision.

9 MR. MARK: All right.

10 JUDGE VOSS: And if they decide that
11 they're curious about this issue and want that
12 information, I'll be issuing an order requiring you
13 to respond. And I want you to -- make you very
14 clearly aware that if any information is given, it
15 will be highly confidential, and it will never be
16 released to anyone other than the parties to this
17 case.

18 I don't know what the Commission's going
19 to do at this time, but if they feel there is an
20 issue here that they want to have this information to
21 help them make a decision, then that's what will
22 happen.

23 MR. MARK: All right.

24 JUDGE VOSS: Whether you think it's
25 irrelevant doesn't matter. It's whether the

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1 Commissioners think it's relevant. In fact, whether
2 I think it's relevant doesn't matter, because I am a
3 facilitator as the judge in these cases for the
4 Commission.

5 MR. MARK: Well, if the Commission rules
6 that I have to furnish anything about any other form
7 of communication, I would really question the
8 objectivity and the independence of the Commission if
9 they made such a decision.

10 JUDGE VOSS: Well, you would be entirely
11 within your rights to question that, and you could
12 even appeal it at Circuit Court if you so chose.

13 MR. MARK: Well, look, we're talking
14 about \$2.49. Let's talk practicalities. I mean, you
15 know --

16 JUDGE VOSS: Mr. Mark, we're not here to
17 talk practicalities. Really, we need to get through
18 these data requests. So if the Commission does
19 something like that, then you can figure out what you
20 want to do at that time. I'm not sure what they'll
21 want to do. I just want to make sure that I ask the
22 questions that I think they would ask so that
23 everything is in the record.

24 MR. MARK: All right. Well, I do --
25 would like to incorporate by reference my pleading,

0045

1 and I would like the Commission to be provided with
2 my response to Respondent's data request,
3 including --

4 JUDGE VOSS: They have those, Mr. Mark.
5 They have access to everything in the record.

6 MR. MARK: Okay. But I'd like to just
7 specifically state on the record and the
8 Complainant's Response to Southwestern Bell
9 Telephone'S Renewed Motion to Compel Responses to
10 Data Requests and Complainant's Motion to Terminate
11 All Further Discovery.

12 And I would like to specifically just
13 note that for the record that I would request the
14 Commission review those pleadings before making any
15 kind of decision compelling anything.

16 JUDGE VOSS: The Commission would never
17 make a decision without having reviewed that
18 information. Don't worry.

19 MR. MARK: Okay.

20 JUDGE VOSS: They'll also review
21 Southwestern Bell's information. Would --

22 MR. MARK: Oh, one other thing. And
23 whether it's submitted confidentially or whatever,
24 Southwestern Bell would have access to it, and that I
25 object to entirely. So we're not only talking about

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1 confidential, we're talking about it's none of AT&T's
2 business.

3 JUDGE VOSS: Well, I will make you aware
4 that it wouldn't be the company as a whole, it would
5 simply be their legal counsel in this case that would
6 have access.

7 MR. MARK: Well, even their legal
8 counsel.

9 JUDGE VOSS: Well, you can object to it,
10 object to it in whole. But I will advise you that if
11 an order of the Commission comes out requiring you to
12 do something that you do not do, then failing to do
13 so could be grounds for dismissal of your complaint.

14 MR. MARK: Well, I just get the
15 impression this thing is gonna be dismissed one way
16 or the other without my Motion for Summary Judgment
17 ever being decided, and, you know, I would question
18 whether such a decision would be unbiased without
19 substantial pressure from the Respondent.

20 And I think that it's well known that
21 they have very significant and substantial lobbies
22 that are very effective with the Commission and with
23 the Governor and with everybody else.

24 JUDGE VOSS: Mr. Mark, I'm glad - you
25 can step off the podiums. Your opinions have been

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1 noted for the record.

2 MR. MARK: All right. Okay.

3 JUDGE VOSS: With data request No. 3, is
4 there some reason that it would be onerous for you to
5 provide business addresses and phone numbers?

6 MR. MARK: That's not the issue, your
7 Honor.

8 JUDGE VOSS: Mr. Mark?

9 MR. MARK: The issue is it's not --

10 JUDGE VOSS: Mr. Mark?

11 MR. MARK: Yes, it would be. It would
12 be. It's --

13 JUDGE VOSS: Why?

14 MR. MARK: -- none of their business.

15 JUDGE VOSS: No, it's not that it's none
16 of their business. I need to know if you have a
17 reason that it is detrimental to you personally to
18 release such information.

19 MR. MARK: Yes. It's an invasion of my
20 privacy. Dates of employment, title positions.
21 We're talking about a fax machine on a single
22 residential line. I have -- I cannot see any
23 legitimate purpose for dates of employment, title
24 position, job responsibilities, business addresses.
25 When someone calls the Respondent and says, "I'm

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1 using my residential telephone line for fax and as a
2 data terminal", they don't have to furnish dates of
3 employment, title positions, job responsibilities and
4 business address.

5 JUDGE VOSS: Mr. Mark?

6 THE WITNESS: I think it's an absolute,
7 total, complete invasion of privacy. It's
8 oppressive. It's designed to be oppressive.

9 THE COURT: Mr. Mark, I'm gonna advise
10 you that the response you gave is not necessarily a
11 valid reason not to answer the data request.

12 MR. MARK: It's irrelevant and
13 immaterial.

14 JUDGE VOSS: Mr. Mark?

15 MR. MARK: Yes.

16 JUDGE VOSS: I'm trying to warn you
17 that, for example, data request No. 3, you have
18 simply said that you think it's irrelevant and
19 immaterial, but that's up for the Commission to
20 decide. I want to know is there some reason -- for
21 the same reason that you don't like to give out your
22 phone number -- is there a reason that giving dates
23 of employment or --

24 MR. MARK: Excuse me. Let me correct
25 this about my phone number. Well, you know, it's

1 nonpublished. The fax number is nonpublished. There
2 is a good reason for not giving it out. It's
3 nonpublished, and I'm paying through the teeth for
4 having the number nonpublished for a fax machine.

5 So I would object to the premise, your
6 Honor, that, you know, I just don't want to give it
7 out. I mean, if I'm paying for a nonpublished
8 service, I'm entitled to nonpublished service and not
9 part of a public record.

10 JUDGE VOSS: Not published and not part
11 of a public record are not the same thing, Mr. Mark.

12 MR. MARK: Well, all right.

13 JUDGE VOSS: I really want to know any
14 additional reason you have other than that you think
15 it's immaterial why dates of employment, titles of
16 position, you would not give them.

17 MR. MARK: It's an invasion of privacy.

18 JUDGE VOSS: Other than --

19 MR. MARK: It's not likely -- it's
20 totally not calculated to lead to the discovery of
21 admissible evidence, and it is set forth purely and
22 solely for harassment and to be oppressive.

23 JUDGE VOSS: Mr. Mark, those are the
24 reasons you've stated in DR 3.

25 MR. MARK: All right. Well, they might

0050

1 ask me whether my view is that the sun is going to
2 come up tomorrow morning. It's just as irrelevant
3 and immaterial to ask me what business title I may
4 have as far as whether my fax machine is used
5 strictly -- my -- as a data terminal.

6 And I, again, refer to the letter from
7 their counsel indicating it's a question of tariff
8 interpretation. Why would then my employment or
9 title position or job responsibility or business
10 address have anything to do with the interpretation
11 of this statute?

12 JUDGE VOSS: Mr. Mark, it's my
13 understanding that the statute is only for a
14 residential line.

15 MR. MARK: That's correct.

16 JUDGE VOSS: And I -- will you please
17 let me finish?

18 MR. MARK: I'm sorry.

19 JUDGE VOSS: And Southwestern Bell/AT&T
20 is making a legal position, or trying to find out a
21 legal position whether you have a home-based
22 business. If you have no other employment, that
23 might --

24 MR. MARK: I've already answered that,
25 your Honor, in affidavits and in questions. It's

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1 strictly personal, in a residential building. I have
2 no other business. I do not conduct business on the
3 telephone. The faxes have been purely and solely
4 personal, not business. I have answered that under
5 oath, I have answered that on their DRs. I have made
6 it very clear. They just simply don't like the
7 answer --

8 JUDGE VOSS: Mr. Mark?

9 MR. MARK: -- period.

10 JUDGE VOSS: People don't always believe
11 each other --

12 MR. MARK: Well, that --

13 JUDGE VOSS: -- and I think they're
14 looking for evidence of one way or the other.

15 MR. MARK: They're on a fishing
16 expedition, and they want to harass and oppress a
17 customer who they want to collect \$2.49 a month, and
18 they will go to whatever extreme is necessary in
19 order to make an example of any customer who objects
20 to that.

21 JUDGE VOSS: Mr. Mark, are you aware
22 that if AT&T really believes that they're charging
23 appropriately, they cannot legally charge you any
24 other rate. If it's a tariffed rate, they would be
25 breaking the law if they charged you anything but the

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1 tariffed rate.

2 MR. MARK: It's not a tariffed rate,
3 your Honor. They can set whatever rates they want.
4 Just like in California, it's 28 cents for the same
5 unpublished service that they charge 2.49.

6 JUDGE VOSS: No. In Missouri there's a
7 tariff on file.

8 MR. MARK: Your Honor --

9 JUDGE VOSS: Mr. Mark, in Missouri
10 they're a tariff on file that has rates that AT&T can
11 charge for certain services. If they charge anything
12 but that rate, like let's say they try to charge you
13 five dollars. You could take a complaint and they
14 would be in court and they would be in trouble.

15 MR. MARK: Your Honor, I beg to differ
16 with you. There was a recent -- the legislature
17 passed an amendment -- and I'm sure the gentleman
18 from AT&T will verify this -- giving them complete
19 and total freedom to set ancillary (sic) rates for
20 a nonpublished service whatever they choose. Is that
21 not true, sir?

22 JUDGE VOSS: It's ma'am. But no,
23 Mr. Mark, they have a tariff on file.

24 MR. MARK: Well --

25 JUDGE VOSS: If they can change that

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1 rate, maybe they can change that rate. They have to
2 file a tariff to change that rate. They are not
3 legally allowed to charge anything but their tariffed
4 rate.

5 MR. MARK: They are -- well, whether
6 they --

7 JUDGE VOSS: Mr. Mark, this is a legal
8 discussion I'm not gonna get into with you. I was
9 trying to clarify something for you. But I am --

10 MR. MARK: The Commission does not
11 approve or disapprove of the rates that they charge
12 for nonpublished service. Now, whether they file --
13 file that with the Commission and say "We're going to
14 charge \$2.49" or not, I don't know. But the point
15 is, the Commission does not approve or disapprove of
16 the rates that they decide to charge Missouri
17 customers.

18 JUDGE VOSS: That's not true, actually.
19 The Commission has to approve all tariffs and find
20 that the rates charged therein are just and
21 reasonable.

22 MR. MARK: Not true.

23 JUDGE VOSS: Mr. Mark?

24 MR. MARK: I'm sorry. I disagree with
25 you.

1 JUDGE VOSS: You are mistaken. Read the
2 tariff --

3 MR. MARK: All right. Let's ask counsel
4 for AT&T. Is that true? Can you set whatever rates
5 you want? Does the Commission have to approve, and
6 wasn't there an amendment that was in the legislature
7 and the Governor signed an amendment giving you the
8 right to set your own rates? True or not?

9 MR. GRYZMALA: Mr. Mark, let me come to
10 the point. I am here to talk about discovery. That
11 is what the Commission told me to be here for.

12 MR. MARK: All right. Okay. You don't
13 want to answer. That's fine.

14 MR. GRYZMALA: And that's why I'm here.
15 Ever so briefly, ever so briefly: With respect to DR
16 No. 3, very briefly, again, you waived all your
17 objections, sir. The Commission determined
18 previously that we would resolve discovery to its
19 conclusion before we looked at the merits of the
20 case.

21 The Commission and AT&T in particular is
22 not required to accept your view of the facts or your
23 affidavit. We are entitled to either seek to
24 corroborate or to impeach that declaration, if you
25 will. Whether or not there is a business for which

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3 JUDGE VOSS: Mr. Mark --

5 JUDGE VOSS: -- can you please answer
6 the question?

13 Other than that, I don't have anything
14 further on this point.

18 MR. MARK: Your Honor, I've sworn under
19 affidavit.

25 And I'm simply trying to make sure that

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1 there is a complete record for the Commission to make
2 a decision. That's my job, is to make a complete
3 record. And if you don't have anything else to add,
4 I'm gonna go ahead and end the on-the-record portion
5 of the prehearing, and then you guys maybe can get
6 together and discuss since I don't know when you will
7 ever be in the same room to discuss again, since no
8 one has your phone number -- but a date when maybe a
9 hearing would work for you with the understanding
10 that it would be in St. Louis.

11 I would recommend putting it out at
12 least a couple of months so that we can finish all
13 the discovery issues, maybe six weeks at a minimum.
14 That way we can, Mr. Mark, have a Commission decision
15 on the discovery issues, give you a chance to
16 finalize any discovery issues prior to any type of a
17 hearing, and such a hearing, I would arrange it so
18 that you could be in St. Louis and be web casted in.

19 MR. MARK: Your Honor, it's oppressive
20 it's not necessary I have a Motion for Summary
21 Judgment, I have set forth the responses to these DRs
22 in detail very clearly. I would ask a ruling on my
23 motion to terminate all discovery. There is no
24 relevance or materiality. These DRs were, again,
25 filed prior to my affidavits.

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1 JUDGE VOSS: Mr. --

2 MR. MARK: They've all been answered and
3 I respectfully think --

4 JUDGE VOSS: Your motion for termination
5 of discovery is denied. Discovery cannot be
6 terminated at this stage of a proceeding.

7 MR. MARK: Well, then, I request that
8 the Commission be fully apprised of all the pleadings
9 and all the responses and the issues in this case and
10 take a look at 6.12.6(E) and simply because a party
11 does not like the answers --

12 JUDGE VOSS: Mr.

13 MR. MARK: And that's what it appears to
14 be.

15 JUDGE VOSS: You're repeating yourself
16 and I do appreciate where you're coming from. I have
17 read your pleadings, and I do understand your
18 position, and I believe the Commission understands
19 your position. But there's a very strong likelihood
20 that the Commission have questions for both you and
21 for AT&T. I mean, AT&T's gonna have to answer some
22 stuff for them as well, I'm certain, and we need to
23 try to get a date that will work for everybody.

24 And since it's very difficult for the
25 other parties to contact you, while you're on the

0059

1 phone today, it would make a lot more sense to -- I'm
2 gonna go ahead and go off the record now, and we'll
3 finish this conversation and you can work with the
4 other parties to pick a date.

5 MR. MARK: I don't know what we're
6 picking a date for.

7 JUDGE VOSS: There's going to be an
8 evidentiary hearing in this case.

9 MR. MARK: Why?

10 JUDGE VOSS: Because the Commission has
11 questions that they want to be answered.

12 MR. MARK: Well, then, with all due
13 respect, Judge, I'd like to know what specific
14 questions they have.

15 JUDGE VOSS: Often they don't know until
16 they hear answers to other questions, Mr. Mark.

17 MR. MARK: Well, then, perhaps
18 representatives of the Commission could be available
19 on the telephone and they can ask their questions.

20 JUDGE VOSS: I'm sorry. That's not how
21 the Commissioners work. They're incredibly busy.
22 They set a hearing and the other parties generally
23 come to them. They're making an exception to you,
24 and they're going to set up, if necessary, a
25 situation so that you can testify from St. Louis.

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1 MR. MARK: I would be happy to
2 participate in another telephone conference. I think
3 it would -- it's unnecessary. Even the Staff and I
4 would again -- as you say, they're just a party, but
5 the Staff of the Commission said no change of facts
6 is going to make any possible difference, and that is
7 the bottom line, no change.

8 JUDGE VOSS: That's their position, Mr.
9 Mark.

10 MR. MARK: That's fine. And I agree
11 with it.

12 JUDGE VOSS: But they need --

13 MR. MARK: And I think it's very fair,
14 and I think the Commission should consider their
15 Staff report as well as any other testimony that is
16 applicable in this case.

17 JUDGE VOSS: Okay. Mr. Mark --

18 MR. MARK: And they ought to read the
19 Staff report.

20 JUDGE VOSS: Mr. Mark, I've read
21 everything that everyone has filed, including the
22 Staff report, and right now we're going to go off the
23 record and let the parties have a chance to discuss a
24 possible date.

25 MR. GRYZMALA: I have one housekeeping

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1 matter, your Honor.

2 JUDGE VOSS: Okay. I'm sorry. I should
3 have clarified.

4 MR. GRYZMALA: In the event -- in the
5 event that the Commission were to compel discovery as
6 we have requested, we talked a little bit before
7 about making sure that Mr. Mark's confidential
8 interest in it, as it were, were protected. I would
9 only suggest that if the Commission's inclined to go
10 that route, that the information be designated as
11 proprietary, not highly confidential.

12 As you may know, your Honor, on the
13 standard protective order, only myself as a lawyer
14 would know the responsive information. I do believe
15 my client, certainly at a minimum, the witness or
16 witnesses I may have should be entitled to review
17 Mr. Mark's information so as to adequately prepare
18 for the hearing.

19 So for the record, if we go that route,
20 if it unfolds in that manner, we would ask for
21 proprietary designation. And, of course, it would
22 remain confidential and used, again, only for
23 purposes of this case.

24 MR. MARK: And I would -- I would object
25 to any divulging of any irrelevant immaterial and

1 invasion of privacy even to counsel's witnesses. I
2 think it would be oppressive, and I think it would be
3 totally unfair, uncalled for, and I think the Staff
4 would agree with me, that it's not going to make any
5 difference whatsoever as far as the tariff
6 interpretation, which is the bottom line in this
7 case, in view of the fact that I have very clearly
8 set forth where we're talking about, a fax machine on
9 a residential line for nonbusiness purposes, never
10 used for business.

11 And I'm sorry that AT&T doesn't like
12 that answer, but being oppressive and invading
13 someone's privacy is not an excuse.

14 JUDGE VOSS: I understand that that's
15 your position.

16 MR. MARK: I would hope that the
17 Commission would review everything and come to the
18 same conclusion and put a stop to this.

19 JUDGE VOSS: You never know, they might.
20 We don't know what they're gonna do. My job is to
21 make sure that they have a full record to make a
22 decision on, which will most likely require
23 questions, so I'm gonna -- we're gonna go off the
24 record now, and Staff is looking at the calendar.

25 But any more issues, motions to address

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1 on the record before we end the on-the-record
2 portion?

3 MR. MARK: No. Other than I would renew
4 my request, again, a request that the court
5 reconsider termination of all discovery and a ruling
6 on the motion of summary judgment.

7 JUDGE VOSS: Mr. Mark, I've ruled --

8 MR. MARK: All right.

9 THE COURT: -- on your termination of
10 discovery already.

11 MR. MARK: All right. Okay. I --
12 Reconsider. All right. I did hear you, your Honor.
13 But with all due respect, I think it ought to be
14 reconsidered.

15 JUDGE VOSS: Okay.

16 MR. GRYZMALA: And in closing, I would
17 simply state, your Honor, that AT&T reiterates its
18 request for the relief stated in page 1 of its
19 renewed motion on August 4th. Thank you.

20 JUDGE VOSS: Is everybody good?

21 MR. MARK: Thank you, Judge.

22 JUDGE VOSS: All right. Stay on the
23 line, Mr. Mark. Because they're gonna need to
24 discuss setting a date. Thank you. That ends the
25 on-the-record portion.

1 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

2 JUDGE VOSS: We are going back on the
3 record briefly to allow Mr. Mark an opportunity to
4 make a statement why he is opposed to having to
5 participate in any evidence in this case that would
6 necessitate his leaving his residence.

7 MR. MARK: Yes, that's correct, your
8 Honor. Number one, I would ask that the Commission
9 consider whether another -- whether an evidentiary
10 hearing is required. That's number one.

11 Number two, if that decision is that we
12 need a further evidentiary hearing, in my opinion,
13 based only on facts that the Respondent doesn't like
14 my affidavit or my responses to DRs, that I would be
15 more than happy to participate by telephone.

16 I am not willing to go somewhere to have
17 a face-to-face meeting or to have to engage -- spend
18 time, money and effort, gasoline, over \$2.49 per
19 month that the Respondent wants to take from me
20 because of my use of my phone line for a fax machine.

21 Now, again, I'm happy to participate. I
22 have medical issues. I'm not gonna divulge my
23 medical issues to AT&T or anyone else. Again, this
24 is an invasion of privacy. I think we can make a
25 federal case of this. I am asking that if the

1 Commission, in view of all the facts and in view of
2 all the pleadings and in view of the Staff reports,
3 still feels that there is an evidentiary hearing
4 that's necessary, that it be conducted strictly by
5 teleconference, the way this hearing has been
6 conducted, and I cannot participate or agree to
7 participate on anything that requires me to travel
8 anywhere.

9 JUDGE VOSS: Okay. Mr. Mark, I can't
10 say that the Commission will be willing to go along
11 with that, but your position has been noted for the
12 record so that I can take it to them.

13 MR. GRYZMALA: And your Honor, we'd like
14 to be heard on that point very briefly.

15 JUDGE VOSS: Very briefly.

16 MR. GRYZMALA: Very briefly. Your
17 Honor, we kicked off this prehearing conference this
18 morning by Mr. Mark saying he had a summer home out
19 north.

20 Number two, Mr. Mark is no stranger to
21 travel. In his August 21st pleading he filled to the
22 Commission, he referred to having returned from an
23 extended trip. Number three, his claim of medical
24 issues, while I sympathize, remains unvalidated. We
25 have no medical evidence to suggest that. So, again,

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1 we would insist upon an in personam hearing. And we
2 are amenable to doing this in St. Louis if need be.

3 MR. MARK: I would like to respond to
4 that. Number one, I didn't say I had a summer home.
5 Counsel seems to put words -- you know, come to
6 conclusions. I said if one had a summer home. It
7 was hypothetical. If one has -- stays with one's
8 sister in another state, it doesn't make any
9 difference.

10 As far as medical issues, yes, for
11 medical reasons I do travel. I am unwilling to spend
12 the time, money and gas and have serious medical
13 problems. I am not gonna furnish AT&T medical
14 documentation when/if there were an evidentiary
15 hearing which I would consider oppressive and
16 punitive, that there's no reason why it can't be done
17 on the telephone. And that would be my position on
18 this.

19 JUDGE VOSS: Mr. Mark?

20 MR. MARK: We're talking about \$2.49 per
21 month. Further, let's be realistic --

22 JUDGE VOSS: Mr. Mark, it's not the
23 dollar amount, it's that the Commission cannot let
24 AT&T charge anything but their tariffed rate.

25 MR. MARK: Look, that's not -- that's

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1 not true, your Honor.

2 JUDGE VOSS: Mr. --

3 MR. MARK: Mr. Gryzmala has refused to
4 answer that question.

5 JUDGE VOSS: Mr. Mark, he doesn't have
6 to answer that question. As a judge for the
7 Commission, I know that's the answer, Mr. Mark.

8 MR. MARK: May I furnish you some
9 evidence to that effect?

10 JUDGE VOSS: No.

11 MR. MARK: All right. Well, there was a
12 law if I understand, and I'm sure the Public Counsel
13 can verify this.

14 JUDGE VOSS: Mr. Mark, there are
15 different standards for competitive and not
16 competitive services. The main thing is we have
17 everybody's position, and again, we are going to go
18 off the record if nobody has any other motions.

19 MR. MARK: That's it for me, your Honor.

20 JUDGE VOSS: Okay. Thank you. We're
21 off the record.

22 (WHEREUPON, the recorded portion of the
23 prehearing conference was concluded.)

24

25