

**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)	

FILED³

NOV 7 2006

**COMPLAINANT'S MOTION TO QUASH
NOTICE OF DEPOSITION,
MOTION FOR OTHER ADDITIONAL RELIEF, AND SUGGESTIONS IN SUPPORT**

Missouri Public
Service Commission

Comes now Complainant with *Complainant's Motion to Quash Notice of Deposition, Motion for Other Additional Relief, and Suggestions in Support*, and states:

1. That the Respondent has reached a new nadir in its quest to WIN this case at all costs and to use its overwhelming power and unlimited financial resources to blatantly, wantonly, and willfully harass the Complainant in order to quash any attempt by a lowly P.O.T.S. residential customer--a customer who merely wanted compliance with the Respondent's Tariff, G.E.T. §6.12.6(E), attached, related to under \$2.61/month in improper non-published monthly charges!

2. The history of this case indicates that in November 2003, the Complainant, a mere residential St. Louis telephone customer, ceased using his P.O.T.S. residential exchange telephone line for voice communications and in lieu of simply disconnecting it, decided to use it *exclusively* for data purposes, to wit: a facsimile machine. All voice communications on the line ceased.

3. In accordance with G.E.T. §6.12.6(E), the tariff provides that in the event that a residential service customer uses: 1) a data terminal, and that 2) no voice use is contemplated, the customer is entitled to a waiver of the monthly service charge for a non-published number. In November 2003 the charge was \$1.43, and it has since risen twice in Missouri and is now **\$2.61/month!** A telephone call was placed to the Respondent's office in 2003 and the representative was advised by Complainant of the two specific requirements set forth on the face of G.E.T. §6.12.6(E): a data terminal and no further voice use contemplated. Simple? Apparently not! The Respondent, arbitrarily and capriciously by its employee, Lane, refused to discontinue charging the monthly non-published charge for the line. Respondent refused to give ANY reason other than that it believed that it had "interpreted" the tariff correctly. Respondent asked for no information about the Complainant's fax machine, about his income, about any alternative voice use, etc.--since G.E.T. §6.12.6(E) only required two things: data terminal and no further voice use contemplated.

4. In the meantime, the Respondent successfully used its power, influence, **and money**, to obtained legislation in Missouri effectively preventing the Commission from inquiring into the basis of **any** G.E.T. charge, i.e. non-published monthly charges for residential customers, basic charges, etc. This law rendered the Missouri Public Service Commission impotent to consider such matters. While the **identical non-published charge** by the same **ATT Respondent** is only \$. 28 cents/month in California, the Respondent has been able to, and continues to be able to, virtually *gauge* Missouri residential customers for \$2.61/month for the *identical service* with no possibility of review or outside control because of the passage of the aforesaid law by the Missouri legislature removing the Commission's authority to review Respondent's rates. There is no "cap" on the monthly charge that the Respondent can, **AND WILL**, charge; the Respondent has been granted a virtual "license to steal" from helpless residential telephone customers in this state who wished to have a non-published number! The fact that a telephone customer "could" go to a re-seller of the Respondent's services in Missouri and receive a 10% discount from his/her total telephone bill, is of no consolation! **There is no competition!** Let's call it the way it *really* is! The Respondent is absolutely free to extract as much as it can from Missouri residential telephone customers! And, based on the rulings of this Commission, the Commission does not, or will not, even exercise what authority it still retains over the Respondent!

5. The Respondent has been free to simply, arbitrarily, and capriciously deny, as it has in this case at all times prior to the filing of the formal Complaint and thereafter, a monthly waiver of non-published charge--with no obligation or duty to advise and/or inform its telephone customers of any **specific reason** for the denial; it can be arbitrary, capricious, and irrational do so because it has no fear of any financial cost to it for such a denial and refusal to abide by its own filed tariffs!

6. The Commission has never promulgated any Rule prohibiting the aforesaid abhorrent business practice or requiring the immediate advisement of a telephone customer by a Respondent of all facts and reasons allegedly supporting any denial of relief pursuant to any General Exchange Tariff. No doubt the Respondent has probably engaged in such a subterfuge in hundreds, if not thousands, of OTHER cases, knowing that a residential customer has no power--no ability to hire an attorney and/or to conscientiously pursue a formal appeal when the amount involved consists of no more than several hundred dollars!

7. Sadly, the Commission apparently could care less; although a Missouri resident can go to a Small claims Court to pursue a small claim suit against a powerful and well-healed defendant such as the Respondent (and in that situation, **NO ATTORNEYS ARE ALLOWED** by the court and **NO DEPOSITIONS ARE ALLOWED**), this Commission has never seen fit to adopt similar rules and procedures in order to provide fundamental fairness to a "small claim" Complainant appearing pro-se. **Query:** Although the Commission has been rendered impotent to review the rates of the Respondent, *it still* has been free to formulate rules and regulations with

regard to fundamental fairness to a residential telephone customer when the amount involved is less than \$5,000 or some specific amount. **Why has it not?** Only the Members of the Missouri Public Service Commission can answer this question. It could have, on its own volition, proposed rules to bar a Respondent from using attorneys, from requiring depositions, from harassing a telephone customer with multiple data requests, and from using its overwhelming financial ability to retain an outside law firm to conduct a deposition. It could have instituted rules requiring a Respondent, such as in this case, to provide detailed factual reasons to its customer, immediately and without delay, as to why it refuses to abide by its own tariff: G.E.T.§6.12.6(E)--from the VERY FIRST DAY of the Respondent's refusal, i.e., in this case, November 2003! In this case, the Respondent even refused to agree (stipulate) that the Respondent provided residential telephone service to the Complainant, let alone anything other than that "we believe that we are correctly *interpreting* the tariff." (The Commission's Report agrees with the Complainant, Respondent is not *interpreting* the tariff correctly and the Complainant is entitled to a favorable ruling from the Commission).

8. From November 2003 forward, the Respondent simply refused to grant the waiver to which the Complainant has been entitled, made no factual inquiries of the Complainant, and apparently presumed it would not suffer any consequences for such irrational, arbitrary, inexplicable, and capricious action! It did not inquire of the Respondent at any time even inquire what kind of data terminal was being used, i.e. make, model, etc. since November 2003 until the formal complaint was filed; it was more than willing to accept the facts in this case as indicated in November 2003: a data terminal was being used (fax machine) and no voice use was contemplated (or even utilized).

9. Then, **ONLY AFTER** a formal complaint was filed, it suddenly found itself in the unenviable position of not being able to "justify" its arbitrary, irrational, and capricious refusal to grant the waiver to which the Complainant has always been entitled---so, it has used a cadre of four lawyers (one would think one would be enough!), to harass the innocent telephone customer, the Complainant, with data requests and now, even a demand for a deposition! The Respondent has relied on the fact that apparently the Commission members have such a scarcity of legal knowledge and/or resources available to them that the Commission would not even know the difference between a summary judgment from legal terms such as *with* prejudice and *without* prejudice!

10. The **ONLY** response the Respondent has EVER provided to the Complainant for denial of the monthly waiver of the non-published charge since November 2003 was from an employee of the Respondent indicating that the Respondent believed it had "*interpreted*" the tariff correctly! As indicated, at no time was there any question or inquiry by the Respondent as to any material fact from November 2003 forward until the formal complaint was filed. Why? It was and is obvious that there is and was NO GENUINE ISSUE OF MATERIAL FACT IN DISPUTE in this case! The Respondent obviously recognized this and the Commission Staff

recognized this--the concept is apparently too difficult for the Members of the Commission to recognize this also!

11. After attempts to informally reach a settlement failed, (*inter-alia*, the Respondent at no time would to cease charging a monthly charge in the future despite knowing that only a fax machine was being used and no voice), the Complainant, *naively* thought that he could receive a fair and impartial review by the Commission--a formal complaint was filed. Sadly, the Complainant has found that the Rules, procedures, practices, and rulings of the Commission "stack the deck" **against** any lowly residential telephone customer who does not have an attorney and for whom such legal assistance would be economically impossible in view of the fact that the TOTAL amount at issue is under \$300 plus interest since November 2003!

12. The tariff, §6.12.6(E) is clear and unambiguous on its face. If a statute is clear on its face, even a first year law student could explain to the Members of the Commission that one does not thereafter delve into the background and history of the tariff. *Division of Employment Security v. Comer*, 199 SW3d 915; 2006 WL 2597338. G.E.T. §6.12.6(c) requires no investigation of history, background, intent, or information in order for it to be applied. 1) DATA TERMINAL and 2) NO VOICE USE CONTEMPLATED could not be more clear from a reading by any reasonable person of the tariff.

13. The U.S. District Court in the North District of Illinois, Eastern Division, in *Oneac Corporation v. RayChem Corporation*, 20 F.Supp 2d 1233, (1998), at P-4, stated, in relevant part, with regard to THE signals carried over a telephone line:

"The . . . signal carries **either the voices** that one hears in the receiver **or data** sent to a fax machine or computer. (emphasis added). This signal is high frequency and low voltage."

Missouri, V.A.M.S. 400.5-102 (2), (as well as the statutes of most other states), has adopted the *Uniform Commercial Code*, Sec. 5-102; the U.C.C. provides in relevant part:

"2. . . . the fact that **data** transmitted in a nonpaper (unwritten) medium can be recorded on paper by a recipient's **computer** printer, **facsimile machine**, or the like does not under current practice render the data so transmitted a 'document.'" (emphasis added).

14. What could be more clear?. A data terminal, no matter whether it is fax, computer, TTY, TDD, etc. IS a data terminal. A rose is a rose is a rose. The Staff's Report at P-6 indicated: " . . . the Staff recommends that the Commission determine that a fax machine is a data terminal." "No voice use contemplated" could not be more clear on the face of the tariff. The tariff does not state that "data terminal" is limited to any particular device, whether fax, computer, TTY, etc. yet the Respondent would like nothing better than to have the Commission totally disregard what the tariff SAYS ON ITS FACE in favor of some other constrained

interpretation of what the Respondent may or may not have "intended" years ago! Such is not acceptable or correct legal statutory construction! If a statute (tariff) is fully capable of being understood on its face, nothing further may be considered.

15. In this case, the Respondent has already overwhelmed and inundated the Complainant with data requests requesting everything from any income or business in which the Complainant might be involved, to what was the "nature" of faxes sent and or received, to any use of alternate VOICE communication used by the Complainant with the names of carriers and telephone numbers demanded--none of ANY of this has any relevancy or materiality to the particular telephone line in question for which the non-published waiver is applicable or to the specific General Exchange Tariff relating to non-published charges! The tariff *clearly* states: "data terminal and "no voice use contemplated." **NOTHING MORE--NOTHING LESS!**

16. Thereafter, the Complainant filed a *Motion for Summary Judgment* supported by **two sworn affidavits** in which he indicated that he used, (since November 2003), a data terminal consisting of a fax machine **only** and that not only was no voice use contemplated in November 2003, but no voice use has been used on the residential line since that time. Even if the Members of the Commission do not know what a "Summary Judgment" is, the Members certainly have access to attorneys who could have explained to them that a *Motion for Summary Judgment* is applicable when there is "no genuine issue of material issue to be determined!" Another words, does the Respondent have any EVIDENCE--personal knowledge, testimony, and/or documents to refute the Complainant's affidavits and their recitation that the Complainant has used only a data terminal on his line and that he did not contemplate, nor did he use, any voice since November 2003.

17. The affidavits of the Complainant set forth the answers to these questions clearly and cogently. **THERE IS NOTHING MORE TO BE SAID ON THE MATTER, NO MATTER HOW MANY FURTHER DATA REQUESTS ARE PROPOUNDED BY THE RESPONDENT NOR HOW MANY DEPOSITIONS THE RESPONDENT DEMANDS!** Any circuit court judge would, after receipt of such a *Motion for Summary Judgment* with supporting affidavits, inquire of the Respondent: "Since the Complainant has submitted affidavits--what do you have to indicate that there ARE genuine issues of material facts which are disputed? The judge would further inquire: "Look. for two years you have denied the Respondent the waiver that Respondent is entitled to receive under G.E.T.§6.12.6(E). What facts, if any, do you have to substantiate that denial? Respondent AT&T has set forth nothing to support its refusal; it has provided no genuine issues of material facts in dispute or to be decided. Why--because there are none and Respondent very well knows it!

18. Instead, the Respondent in this case has misled this Commission and its members and has relied on the Commission's naivete. The Members of this Commission have been led down the primrose path to believe that simply because the Respondent "does not like" the response of the Complainant, it has the right to go on a "fishing expedition" and to demand more--what more is never explained by the Respondent other than "strict proof." A term which *even the*

Commission's own staff has a problem with after one reads its Report! Respondent will not learn anything more now (on a deposition or otherwise), than it did before from the Complainant -- to try to justify why it has refused for years, since November 2003, to grant the waiver of the monthly charge to which the Complainant has been absolutely entitled to receive since he has used the residential telephone line exclusively with a data terminal and there has been no voice use on the line. He fully met, as the Staff has correctly concluded, the requirements for the waiver!

19. To classify this case as "incredible" would be an understatement! The pleadings in this case are not measured in pages, but pounds! Nobody could have conceived that a simple oral request of a residential telephone customer wanting only compliance with G.E.T. §6.12.6(E) (and the Respondent's, irrational, arbitrary, and capricious refusal), would have generated such an incredible response from the Respondent, a Respondent that has proven to be an unfair, arrogant, hostile, and belligerent adversary--demanding but not furnishing (i.e., answers to Complainant's data requests); this Respondent has clearly demonstrated that it will do anything and everything to WIN at all costs, even though its cause is unjust! Any lawyer could have explained to the Commission Members that Missouri Rule of Civil Procedure Rule 74.04 provides that if there is a *Motion for Summary Judgment* stating with particularity each material fact and that there is no genuine issue of material facts, (supported by affidavits), the other party has thirty days on which to serve a response; if the adverse party is relying on affidavits, the respondent must attach affidavits. The Response must admit or deny each of "movant's factual statements, shall state the reason for each denial, shall set out each additional *material fact* (emphasis added) that remains in dispute, and shall support each factual statement asserted in the response with specific references." Did the Respondent do that in this case, **NO!** Despite for years having denied the waiver the Complainant was entitled to receive pursuant to G.E.T. 6.12.6(E) on his monthly bill, Respondent has been unable to respond or to set forth by affidavit or otherwise that any genuine issue of material fact exists!

20. Respondent's original decision to deny the waiver to which the Complainant was entitled was obviously arbitrary, irrational, and capricious with no basis whatsoever! Now, when it must "put up or shut up," it finds itself unable to do so! It could not, and cannot, refute the material facts: that the Complainant is using a data terminal exclusively and that there was no voice use contemplated or even used on the residential telephone line since November 2003! Any Circuit Court judge would have immediately granted the Complainant's *Motion for Summary Judgment*! Any Circuit Court Judge would have indicated:

"For years you, Respondent, have refused to abide by G.E.T. §6.12.6(c) and now, you state that you are unable to state any material facts on which you relied for your denial--you are unable to state whether or not there are genuine issues of material fact to be decided by this Court! Such is unacceptable and not worthy of belief. *Complainant's Motion for Summary*

Judgment is granted!"

This Commission, however, has done nothing relating to the *Complainant's Motion for Summary Judgment!* Only the Members of this Commission know why its members could not have consulted its/their own legal counsel in order that they could be enlightened on the subject of summary judgments!

Even more egregious and upsetting is that the Commission's independent and professional Staff, in its SWORN Report, indicated that no other information or facts would make *any difference* in its recommendation to the Commission that the Complainant is ENTITLED to the Commission's finding in his favor. Incredibly, this Commission even disregards its own professional STAFF which *independently and fairly examined* the facts and the issues. This Commission apparently could care less that the Commission's own independent Staff, under oath, concluded at P-6 of its Staff Report the absurdity of ATT's position:

"ATT has demanded that the complainant provide "strict proof" that "no voice use is contemplated" on his telephone line."
The staff is uncertain of how much proof is required to meet AT&T's criteria." (emphasis added).

Would Respondent be satisfied if the Complainant signed his affidavits in blood? Probably not! As the Staff indicated: "how much proof is required to meet AT&T criteria?" **NOTHING COULD EVER MEET AT&T'S "ALLEGED" CRITERIA** but Commission's Members seem incapable of seeing the forest through the trees! ATT's **only purpose** of a deposition is obviously and patently to harass the Complainant to such an extent that the Commission will ultimately dismiss the formal complaint or the Complainant will throw up his hands and conclude that for the several hundred dollars at issue, **enough is enough! Is that what the Commission wants?** Is that what the Commission considers its duty relating to principles of upholding justice and fairness to ALL parties? Granted, the law has stripped the Commission of most of its powers to regulate the Respondent, but it has not stripped the Commission of its ability to use common sense and to exercise fundamental fairness to all parties!

The Staff states in its Report at P-9 indicates that it has analyzed ATT's responses to the Complaint and found them "unpersuasive when held to the light of a definitional and plain reading of the term 'data terminal.'" The independent and professional Commission Staff recommended that the Commission find in Complainant's favor at P-10:

"Because facsimile machines (and personal computers) fall within the 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

Complainant's favor! Because the Complainant has provided a verified statement that he does not use his telephone line for voice purposes, the Staff recommends the Commissions find that Mr. Mark qualifies for the tariff rate exemption." (emphasis added).

The Commission's own professional and independent Staff further states:

"The staff is unaware of any other matter that affects, or that would be affected by, these recommendations!"

THE STAFF IS UNAWARE OF ANY OTHER MATTER THAT AFFECTS, OR THAT WOULD BE AFFECTED, BY THESE RECOMMENDATIONS! What more could a lowly residential exchange telephone customer, the Complainant, do or say further, that would justify, (now, after **pounds of pleadings and voluminous data requests**), a deposition? **THERE IS NOTHING MORE TO SAY!** --and the all-powerful Respondent, the "Goliath" in this case with its cadre of four attorneys, has now retained a large law firm to carry on with the overwhelming harassment of "David," the Complainant, merely to enable the Respondent to WIN this matter and make an example of Complainant in this case: **nobody, but nobody**, has **any** hope of success in challenging **anything** that the all-powerful Respondent with its unlimited financial and legal resources, does or will do!

Once again, IT APPEARS APPARENT that the Commission cannot see the forest through the trees! In so acting up to this point, the Commission incredibly even refuses to accept and acknowledge the **expertise** of its own independent **Staff which is not beholding to the Respondent or to the Complainant.**

21. The Complainant's two affidavits FULLY answered the only data requests of the Respondent which were relevant and/or material in this case, however, despite this, the Respondent then used its overwhelming power and legal talent--its FOUR (4) attorneys of record, to move that the Commission compel compliance with **ALL** of the data requests. It unfairly and punitively did not even withdraw its data requests with regard to the only material facts which were **clearly** answered by the Complainant in his sworn affidavits, to wit: a data terminal being used and no voice use contemplated (or used).

22. In June 2006, the Complainant filed his own data requests and although the Respondent filed a pleading indicating it "would provide a response," **it never did!** Nothing to date has **ever been received** by the Complainant from the Respondent! Further, Respondent deliberately classified two of its alleged data request responses as "highly confidential," *knowingly* that the Commission rules are so skewed **against an individual pro-se litigant**, that the Complainant would never be able to see the "highly confidential" responses--if any were filed! Commission's rules are **blatantly** unfair: they provide that **ONLY** an attorney or expert is entitled to view "highly confidential" responses--is this fair to the Complainant who is not represented by an attorney? Is this fair to a Complainant when the total financial amount

involved in the Respondent's refusal to comply with G.E.T. §6.12.6(e) is only several hundred dollars and an attorney is financially out of the question? Is this fair to a Complainant who cannot afford to involve an expert witness over a matter of several hundred dollars? To compound the utter unfairness, this same Respondent provided answers to Staff's data requests relating to information the Respondent had within its care, custody, possession, and control: the Complainant's name, service address, and billing address--yet the Commission (despite being informed of this fact), thereafter, ordered that the Complainant furnish this same information which the Respondent already not only had, but had furnished to Staff, or risk having Complainant's formal Complaint dismissed! Just how unfair can the Commission get, anyway? Can the Commission blame the Complainant for believing that the Commission has "stacked the deck" against any pro-se Complainant having to deal not only with an all-powerful, arrogant, and ruthless Respondent, but also with a Commission that could care less about an individual residential telephone Complainant with only a few hundred dollars involved in a Respondent's arbitrary and capricious refusal to comply with its own General Exchange tariff?

23. One certainly cannot expect even a modicum of fairness from this Respondent, a Respondent that demands that the Commission compel answers to data requests *despite knowing, and having received*, affidavits of the Complainant subsequent to the propounding of their data requests which **specifically provide answers and having furnished, itself**, information (and furnishes to Staff), information which it seeks to compel from the lowly residential exchange telephone customer? One cannot expect a modicum of fairness from an arrogant Respondent with unlimited financial resources and a plethora of legal talent (four attorneys of record in this case), that arbitrarily and capriciously thumbs its nose at compliance with its own filed tariff, G.E.T. §6.12.6(e), for years and refuses to provide its loyal telephone customer, the Complainant, even with any specific reason(s) why it has refused to grant the relief to which the customer is entitled. What can one expect from a Respondent that arrogantly knows that there will be **no consequences to its arbitrary and capriciously refusal to abide by its filed tariffs?** What can one expect from a Respondent who not only has a cadre of four (4) attorneys representing it in this case, but also has now retained a law firm to conduct a deposition which is scheduled for no purpose other than to blatantly harass a Complainant with a fishing expedition in order to try to "break down" the residential telephone customer seeking **only** what the customer has been, and is, entitled to receive, to wit: several hundred dollars reimbursement for unpublished monthly charges which even the Staff of the Commission, (after a full and complete investigation), agrees the Complainant is, and was, entitled to receive!

24. Specifically with regard to the deposition notice (attached), the Complainant is unable to attend and will not attend because of serious medical problems and because of other objections, some of which have been set forth above. If the Commission requires an affidavit, the Complainant will supply one. Presumably the arrogant and all-powerful Respondent will now file a motion to dismiss because of the failure to attend a deposition! It will use any stratagem, however, improper, to WIN at all costs!

25. Certainly before taking any adverse action against the Complainant, it could reasonably inquire: what do you expect to achieve by a deposition that you have not been able to achieve by voluminous previous data requests?

26. IF this Commission wishes to be fair and to place the Complainant on the same footing as the Respondent, then it should:

- A. Grant this Motion, Complainant's Motion to Quash the Subpoena, in that the Respondent has had every opportunity to request responses on its data requests and the Respondent is guilty of laches, to wit: unclean hands, for having failed and refused to provide the answers to the Complainant's data requests propounded in June 2006 which the Respondent agreed to respond to but has not. The Respondent has unclean hands and is therefore, not entitled to any action by the Commission.
- B. Grant the still pending *Complainant's Motion for Summary Judgment* and after re-reading its own sworn Staff's report: no fact will make any difference in the Staff's recommendation that the Commission rule in favor of the Complainant on the Complainant's request for adjudication of the formal complaint and after re-reading the two affidavits of the Complainant in support of his *Motion for Summary Judgment*.
- C. Institute, not as a penalty, but as a *new Rule*, that a successful Complainant shall be entitled to receive compensation, (again, not as a penalty), but as liquidated damages, \$25,000 or some fair amount perhaps equal to the amount that a Respondent expends, for the *value* of a Complainant's time, efforts, and energy in seeking compliance by a Respondent with a tariff that a Respondent has arbitrarily and capriciously refused to comply with, about which the Respondent has refused, for years, to give any specific reasons for non-compliance other than that the Respondent believes that the tariff is being "interpreted" properly, about in view of the Commission's Staff Recommendation. Although the current Missouri law prevents the Commission from reviewing the basis for any tariff, the Commission has not been stripped of its authority and power to institute new Rules which are fair and equitable to all parties.
- D. Institute a new Rule, like a *Small Claim Court Proceeding*, that if the amount at issue in a formal complaint relating to a G.E.T. is less than \$5,000 (i.e., like Small Claims Courts in Missouri), the Respondent shall not be allowed to utilize any attorney in the litigation and shall not be allowed to utilize depositions.
- E. Cancel any future hearings in this case. Any future hearing would be rendered moot if the Commission immediately and forthwith reviews and grants the *Complainant's Motion for Summary Judgment* as well as the

Staff's Report and Recommendation that the Complainant is entitled to judgment.

F. Institute a new *amended* Rule that in addition to an attorney and an expert witness having access to "highly confidential answers" of a Respondent, a pro-se Complainant SHALL BE ENTITLED to a copy of any response of a Respondent that is marked as "highly confidential" or "proprietary" in order to "level the field" and permit a Complainant to be afforded the same right of discovery as is currently available to the Respondent--in this case, with a cadre of not one, not two, not three, but four attorneys of record!

G. Consult its legal resources when it is called upon to make a decision on legal rulings such as "summary judgment" and to take the action that a Circuit Court Judge would utilize under the same or similar circumstances pursuant to the Missouri Rules of Civil Procedure.

27. If the Commission fails to act appropriately and fairly, such lack of action by the Commission will only serve to have the Missouri Public Service Commission held in disrepute by the citizens of Missouri; Such lack of action and fundamental fairness will confirm to all that any aggrieved residential telephone customer will not, and cannot, receive a fair adjudication before the Missouri Public Service Commission when a formal complainant is filed and the aggrieved telephone customer is acting pro-se. Justice, fairness, and an even playing field--cannot be expected when dealing with the Missouri Public Service Commission.

WHEREFORE, Complaint prays that the Commission will:

1. Immediately order that the deposition notice of the Respondent shall be quashed because, *inter-alia*, the Respondent has come to the Commission with *laches*, unclean hands, since it has not provided answers to the Complaint's June data requests despite its promise to do so. Respondent is not entitled, therefore, to any consideration of any claim for relief.

2. Consider the reasons set forth by the Complainant for the quashing of the Respondent's deposition notice including, but not limited to, the fact that for medical reasons, the Complainant cannot attend and that no useful purpose has been demonstrated, or would be served by, such a deposition; the Respondent has not affirmatively demonstrated that the data requests heretofore propounded and answered are insufficient.

3. Consider and grant Complainant's Motion for Summary Judgment after re-reviewing the Staff's report that no other facts would change the recommendation of the Staff that the Commission should grant the Complainant's requests for relief.

4. Consider adopting rules such as are applicable in Missouri Small Claim Courts that the Respondent shall not be allowed to be represented by an attorney unless the amount at issue is

over \$5,000 and/or the Complainant has an attorney and is not appearing pro-se.

5. Consider some fair and just compensation, not as a penalty, to compensate a pro-se Complainant for the value of complainant's time, effort, and energy expended because a Respondent has arbitrarily and capriciously denied a legitimate and meritorious request for compliance with a general exchange tariff. Such would also require that the Staff find that the complainant is entitled to some relief prior to the Commission's ordering fair and just compensation to a Complainant. In this case, \$25,000 should be considered by the Commission, once again, not as a penalty, but in the interest of fairness and justice under all of the circumstances. Suggestion: the Commission could inquire as to the value of the legal services and time that the Respondent has expended and order that such same amount be paid to a successful Complainant. Although the Commission's right to review tariffs has rendered the Commission impotent under the law, to wit: the Commission's right to adopt rules providing fundamental fairness to ALL litigants is still available to the Commission.

6. Cancel any future "evidentiary hearing" in this case (which would be rendered moot if the Commission grants Complainant's Motion for Summary Judgment), after reviewing the Complainant's affidavits and the Staff's independent and professional sworn Report indicating that no further facts would change the Staff's recommendation to the Commission that it find in favor of the Complainant.

7. Amend its rules so that a *pro-se* litigant, IN ADDITION TO, an attorney and an expert witness, shall be furnished by any Respondent, answer(s) to data requests that are classified as "highly proprietary" or "trade secrets" so that the Complainant is on an even playing field with the Respondent and has all information necessary to prepare for any fair adjudication of the issues.

8. Enter such further orders as may be found to be just and proper in the premises.

Respectfully,



Complainant

November 6, 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.

4029 Gravena View Ct. #C
St. Louis, Missouri 63123

A

No Supplement to this
tariff will be issued
except for the purpose
of canceling this tariff.

P.S.C. Mo.-No. 35

General Exchange Tariff
Section 6
15th Revised Sheet 11
Replacing 14th Revised Sheet 11

DIRECTORY SERVICES


6.12 NONPUBLISHED EXCHANGES SERVICE (cont'd)

6.12.4 Residence nonpublished exchange service will be furnished at the following rate:

		Monthly Rate	Service and Equipment Charge (1)
Nonpublished Exchange Service, each Nonpublished telephone number	(NPU)	\$2.14 (CR)(2)	\$6.00

6.12.5 The minimum term for which nonpublished Exchange Service will be billed is one month.

6.12.6 The rate will not apply in the following cases:

- A. Foreign Exchange Service, where the customer is also furnished Local Exchange Service.
- B. Additional Local Exchange Service furnished the same customer in the same exchange so long as the customer has Local Exchange Service listed in the directory in the same exchange.
- C. Local Exchange Service for customers living in a hotel, hospital, retirement complex, apartment house, boarding house or club, if the customer is listed under the telephone number of the establishment.
- D. Where a customer's service is changed to nonpublished for a Telephone Company reason due to unusual circumstances, such as harassing calls, threats or other acts adversely affecting the health, welfare, security or service of the customer. (This service should not be provided for a period of more than one month.)
-  E. When a customer who has service which involves data terminals where there is no voice use contemplated.
- F. When the customer elects to publish his/her preferred number service telephone number in lieu of the residence local exchange number in the same exchange.

- (1) The Service and Equipment Charge is applicable only when the request for non-published Exchange Service is subsequent to the initial installation of the exchange access line.
- (2) A portion of this rate is interim and subject to refund to all the customers charged pursuant to the revenue recovery mechanism described in P.S.C. Mo.-No. 24, Local Exchange Tariff, Paragraph 1.7.7.A. and 1.8.6, and in P.S.C. Mo.-No. 26, Long Distance Message Telecommunications Service Tariff, paragraphs 1.10.4 and 1.11.F.

Issued: June 10, 2003

Effective: July 10, 2003

By CINDY BRINKLEY, President-SBC Missouri
Southwestern Bell Telephone, L.P., d/b/a SBC Missouri
St. Louis, Missouri

Filed
MO PSC



VIA FACSIMILE

January 28, 2004

EXCERPT

In re: Section 6.12.6(E) of Southwestern Bell Telephone, L.P.'s General Exchange Tariff

Dear Mr. Mark:

I understand from your numerous phone calls that you do not agree with SBC Missouri's application of the tariff. While I respect your opinion, I do not agree with it. I want you to know that SBC Missouri values your business and I am sorry we don't agree on this issue.

Very truly yours,

A handwritten signature, appearing to read "Paul G. Lane", is written in dark ink.

Paul G. Lane
General Counsel-MO/KS

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

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

NOTICE OF DEPOSITION

YOU ARE HEREBY NOTIFIED that the deposition of Richard Mark will be taken at the offices of Thompson Coburn LLP, One US Bank Plaza (corner of Seventh and Washington Streets), 35th Floor, St. Louis, Missouri 63101, at 9 a.m., on Thursday, November 9, 2006, and that the taking of said deposition, if not completed on that day, will be continued from day-to-day, at the same place and time until completed.

SOUTHWESTERN BELL TELEPHONE, L.P.

BY Robert J. Gryzmala

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