

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

**FILED<sup>2</sup>**  
OCT 29 2006

R. Mark, )  
Complainant )  
v. )  
ATT a/k/a SBC a/k/a Southwestern )  
Bell Telephone Company, )  
Respondent )

Missouri Public  
Service Commission

Cause No. TC-2006-0354

**COMPLAINANT'S MOTION TO MODIFY THE COMMISSION'S  
PROTECTIVE ORDER ENTERED ON MAY 19, 2006  
AND SUGGESTION FOR NEW RULE ADOPTION**

Comes now Complainant with *Complainant's Motion to Modify the Commission's Protective Order entered on May 19, 2006 and Suggestion for New Rule Adoption*, and states:

1. That on May 19, 2006, the Commission entered its *Order Adopting Protective Order* upon the Motion of the Respondent, Southwestern Bell Telephone d/b/a ATT.
2. That said protective order prohibits disclosure of highly confidential and proprietary information "except to attorneys or outside experts who have been retained for the purpose of" the case.<sup>1</sup>
3. That either negligently or deliberately, the Commission, by the entry of such an order, denies to the Complainant, a pro-se party, due process of law since this Complainant is without an attorney and does not have an outside expert "retained for the purpose" of this case nor would either one be economically justified or feasible in view of the small amount of money involved, to wit: a refund of all monthly non-published charges with interest since November 2003.
4. That the Complainant heretofore fully anticipated that the Missouri Public Service Commission, acting in the capacity of a Circuit Court Judge, would sustain the *Complainant's Motion for Summary Judgment* which was previously filed and which was supported by two sworn affidavits and which **irrefutably** set forth **THE** material facts--facts which the Respondent, to date, has not disputed by the filing of **any** counter affidavit(s) to refute the two **specific** requirements for Complainant's entitlement, to wit: 1) That the Respondent has had a data terminal connected to his residential telephone line (fax machine), and, 2) That since the time of the request for waiver of the non-published charge in November 2003, not only has there been "no voice use contemplated on the residential line," but there has been no voice use at all!

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<sup>1</sup> That the Commission should on its own volition, modify this provision to include pro-se litigants entitlement to the information and material filed.

THESE TWO REQUIREMENTS ARE THE ONLY CONSIDERATIONS SET FORTH IN GENERAL EXCHANGE TARIFF, §6.12.6(e) FOR CONSIDERATION IN GRANTING OR NOT-GRANTING A RESIDENTIAL CUSTOMER'S ORAL REQUEST FOR WAIVER OF THE NON-PUBLISHED TELEPHONE CHARGE. NOTHING ELSE!

If this matter were heard by a Circuit Court Judge under Missouri Rules of Civil Procedure, when the Respondent could not justify its refusal to comply with the tariff for almost three (3) years, failed and refused to give the utility customer any reason for denial, AND failed to refute by affidavit or personal-knowledge-testimony in opposition the affidavits of the Complainant, *Summary Judgment* would have been entered since any competent judge would find that there are/were **no material issues of fact** to be resolved! Since November 2003, the Respondent has simply **arbitrarily and capriciously** refused to abide by the tariff, has refused to provide any reason why--other than indicating it "does not agree" that a fax machine is a data terminal--and it has wantonly and willfully done so knowing that either a lowly residential telephone customer would be forced to accept its arbitrary and capricious refusal or would suffer what the Complainant has suffered in this case: **POUNDS** of pleadings, data requests, affidavits, etc! There is currently no sanction under C.S.R. for any utility to do what it has done in this case --**AND THERE SHOULD BE!**<sup>2</sup>

Instead, the all-powerful Respondent with unlimited financial resources has been allowed by the Commission, and has prevailed upon it, to proceed with a "fishing expedition" to somehow justify its arbitrary and capricious denial of the relief to which the Complainant has been irrefutably entitled to receive **for almost three (3) years** (since November 2003), to wit: a waiver of the monthly non-published monthly charge for the Complainant's non-published residential telephone line.<sup>3</sup> Further, the Commission's own Staff, in a comprehensive report ordered by the Commission and filed under oath, has set forth in its sworn Report that no additional facts would make any difference in the Staff's recommendation that the Commission should rule and find in favor of the Complainant; the Commission has instead **chosen to ignore** even its own Staff report in failing to grant the *Complainant's Motion for Summary Judgment!*

One *might* initially believe that the Commission is acting in the "interest of fairness," but the facts and the totality of this case, speak otherwise: it is undisputed that for almost three years the Respondent has failed and refused to comply with G.E.T. §6.12.6(e), the tariff, or to give any

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<sup>2</sup> The "value" of reasonable attorney fees or \$25,000, whichever is more, would be a suitable and proper penalty/sanction if the Commission wanted to be fair to a pro-se litigant who was arbitrarily and capriciously denied relief despite being irrefutably entitled to such relief immediately, directly, and promptly from the utility.

<sup>3</sup> Since only a data terminal--a fax machine--has been utilized on said line from November 2003 forward and, not only has "no voice use been contemplated," but also because the residential telephone line has not been used for voice at any time from the aforesaid date to the present.

reason to Complainant other than that "we believe we are *interpreting* (emphasis added, the tariff), it correctly." **PERIOD!** Since November 2003, the utility **accepted** the statements from the Complainant (without contradiction), the **only** facts **required** for waiver of the monthly non-published charges: 1) A fax machine on the line, and 2) No voice use contemplated!

### **THE ONLY ISSUE BEFORE THE COMMISSION IS WHETHER A FAX MACHINE IS A DATA TERMINAL!**

Incredibly, the Commission seems oblivious to be able to realize and/or to appreciate, the above. It has instead allowed the Complainant to be overwhelming burdened contending with this *all-powerful* and pernicious Respondent with *unlimited* resources and an unlimited *plethora* of legal talent! Why doesn't, or hasn't, the Commission entered an order that the Respondent, in such a case, shall pay all the attorney fees of any attorney selected by a pro-se Complainant, that is, if the Commission wishes to be "fair" to **all** parties, to "balance the equities," and to enable any pro-se litigant to be on the same footing as the Respondent, particularly when the monetary amount sought is so low? If it were to do this, maybe, just maybe, a Respondent utility in such a case would find it too costly to arbitrarily and capriciously deny relief when a Complainant has been entitled to receive it, as is fully apparent to everyone (including the Commission's own Staff **but with the exception** of the Commission, itself), in this case!<sup>4</sup>

5. That in the opinion of the Complainant, respectfully, the Commission has pandered to the punitive, all-powerful, and pernicious antics of the Respondent (with *unlimited* financial resources and *four* (4) attorneys of record in this case), has adopted "standard" protective orders, (i.e., protective orders *effectively denying* a pro-se litigant the same rights as those litigants represented by an attorney or having an outside expert), and has allowed, without restriction, Respondent's progressively-oppressive-multiple-pleadings under the Respondent's guise of "defending" the allegations of the Complaint--a case involving less than a total of several hundred dollars and interest and the **irrefutable entitlement** of the Complainant (since November 2003), to relief pursuant to G.E.T. §6.,12.6(e).

6. That in order to fully prepare for the hearing ordered by the Commission and set for December 12, 2006, (unless the Respondent has an epiphany and elects to settle this case prior to the aforesaid date), the Complainant, if the Commission intends to afford the Complainant a fair and impartial hearing and full due process, must immediately be provided **ALL** "highly confidential" and "proprietary" material and information filed by the Respondent in response to Complainant's past and presently-pending-and-outstanding data requests and those provided by the Respondent in response to the Commission's Staff's data requests.

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<sup>4</sup> Alternatively, if the Commission staff in a Report concludes that a Complainant is entitled to relief, then the Respondent shall be ordered to pay for **ALL** of the attorney fees, up to and including \$25,000, for an attorney selected by the pro-se Complainant to represent said Complainant.

7. That without ALL of the aforesaid material indicated hereinabove in paragraph #6, without exception, the Complainant is, and will be, unable to properly prepare for the December 12, 2006 hearing and to receive a fair and impartial adjudication in accordance with his entitlement to relief pursuant to G.E.T. §6.12.6(e).

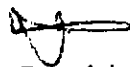
8. That Paragraph "U" of the *Order Adopting Protective Order* dated May 19, 2006, sets forth that:

**"The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties . . ."**

9. That there is *overwhelming just cause and good reason*, in the interest of fundamental fairness and manifest justice to this pro-se Complainant, for the Commission to act in accordance with paragraph "U" and to modify its May 19, 2006 Protective Order, ordering the Respondent to immediately and forthwith mail to the Complainant, without delay, ALL of the aforesaid highly confidential and proprietary information and material previously filed as well as all of the same information and material invariably to-be-filed in the future by the Respondent in response to the Complainant's currently-outstanding data requests.

**WHEREFORE**, Complainant prays that the Commission will order that the Respondent shall immediately mail to the Complainant all highly confidential and propriety material and information filed heretofore, with the understanding that the Complainant will protect, and will not disclose without court order, all of said material furnished to him. Further, Complainant prays, in the interest of fundamental fairness to any Complainant that seeks to prevail against a utility that has frivolously, arbitrarily and/or capriciously failed and refused to abide by a G.E.T., that the Commission adopt a provision that if the Commission finds that a utility has had no just cause for denying relief from a tariff or that the Commission Staff recommends that a Complainant is entitled to relief, that in order not to unduly burdened a Complainant with litigation in forcing a utility customer to proceed with a formal complaint in order to obtain relief, that said Complainant shall be entitled to the "value" of reasonable attorney fees or \$25,000, whichever is greater, not as a penalty but as liquidated damages in addition to the relief sought by the customer/Complainant as determined by the Commission.

Respectfully,



Complainant

October 20, 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  
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