

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In re the Application of John Doe)
to File an Anonymous Complaint.) Case No. TO-2005-0260

ORDER DENYING REHEARING

On February 3, 2005, the Commission issued an order denying a request to file a complaint in which the complainant's name, address and telephone number would be highly confidential. That order stated:

The Commission has determined that it would be appropriate to grant a protective order as provided for in 4 CSR 240-2.085 and allow the residential telephone number of an applicant to be filed under seal. This will prevent the applicant's residential telephone number from being disclosed to the public. The Commission will not, however, allow a complaint to be filed in complete anonymity. The name and service address of a complainant must be provided in the publicly docketed pleadings.

On February 14, 2005, the Commissioners, individually, received personal correspondence from the applicant. The correspondence consisted of a letter and exhibits marked "A" and "B." Exhibit "A" was a document captioned "Motion to Waive the Rules Pursuant to 4 CSR 240-2.015 or Alternatively, Motion for Rehearing in Accordance with §386.500 (1)." Mr. Doe states in his letter that exhibit A was submitted to the Commission on or about October 14, 2004. This exhibit, however, has never been filed¹ and is not a part of the Commission's docket system or "Electronic Filing Information System" (EFIS.)

¹ Pleadings must be filed with the Secretary of the Commission, either through the Data Center or, electronically, through EFIS. 4 CSR- 240-2.080(8) and 4 CSR 240-2.045.

Exhibit “B” was a copy of the Commission’s Order Rejecting Application. This order was issued and mailed on February 3, 2005. According to the certified mail return receipt, this order was received by Mr. Doe on February 9, 2005.

The above referenced letter was stamped “received” by the Commissioners on February 14, 2005. This letter, with exhibits A and B, was an *ex parte* contact. The documents, also, were not filed with the Data Center of the Commission and are not a part of the official case file. For the sake of a permanent and complete case file these exhibits will be attached to this order.

If the personal correspondence was meant to be a formal request for rehearing, it cannot be treated as such. No cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, before the effective date of such order or decision, application to the commission for a rehearing.² The effective date of the Commission’s order was February 13, 2005. The documents in question were not received until February 14, 2005, and as such, were not timely.³

The Commission has reviewed the letter and exhibits A and B. The Commission has, in fact, reviewed all of the documents that have been submitted by Mr. Doe. The letter of February 14 provides no new information nor does it change the Commission’s decision articulated in the order of February 3, 2005. The request for rehearing must be denied for reasons stated herein.

² 386.500(2) RSMo

³ State ex rel. Alton R. Co. v. Public Service Com., 348 Mo. 780 (Mo., 1941)

IT IS THEREFORE ORDERED:

1. That the request to file a complaint in complete anonymity and the request for rehearing is denied.
2. That the Secretary of the Commission shall send a certified copy of this order to the applicant at the mailing service provided by the applicant.
3. That this order shall be effective on April 12, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(SEAL)

Roberts, Chief Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of April, 2005.

February 12, 2005

✓ Mr. Jeff Davis, Chair
Mr. Steve Gaw
Ms. Connie Murray
Mr. Robert M. Clayton, III
Mr. Linward "Lin" Appling

RECEIVED

FEB 14 2005

Mo Public Service Commission
P.O. Box 360
Jefferson City, Mo. 65102

Adjudication Division
Public Service Commission

Re: Exhibit A and Exhibit B attached; procedural issue.

Dear Chairman Davis and Members of the Commission:

I have reason to believe, after reading **Exhibit B** attached and just received, that the Commission members did not have before them, and were not informed or aware on February 3, 2005 of **Exhibit A** when they issued **Exhibit B**. (A & B are attached hereto). **Exhibit A** was filed on or about October 14, 2004 and it is the **ONLY** issue that was to be presented by the Secretary to the Commission for reconsideration¹. As indicated in **Exhibit A** filed last October, the **only** request made of the Commission, as set forth therein, was a **reconsidered by the Commission of ONLY** the matter of an address being made a part of the public record in a proposed formal complaint to be filed. I wanted the Commission to allow the address to be furnished *under seal*, because of the **extreme danger** to the safety and welfare of my family for the reasons set forth in the exhibit!

Originally, way back in **February 2004**, I had requested that the Commission allow the name, address, and unlisted telephone number to be omitted from a formal complaint to be filed. The Commission, I was later informed, then *informally* agreed that the unlisted telephone number could be maintained under seal by the Commission, but that the name of the filer was required along with an address.

I then promptly submitted the attached **Exhibit A** to the Commission's Secretary on or about October 14, 2004 and requested that the Secretary provide a copy to each member of the Commission. In the attached **Exhibit A**, as you can read, I requested a reconsideration, **ONLY**, of the necessity of an address being a part of the public record when a formal complaint is filed and stated in detail, the reasons why. And, as you can also read, this was requested for **very substantial and overwhelming good cause: to protect the very safety of my family!** Good cause was shown in **Exhibit A** why the address, (in addition to the unlisted telephone number previously decided), should be maintained under seal. If one were to balance the equities, the scale is overwhelming in favor of allowing my request because of the particular circumstances involved in this case.

Members of the Commission--as you can read in **Exhibit A**, I did **NOT** request a reconsideration of the *informal* decision that the subscriber name would be necessary on a formal complaint; that **had already been decided** by the Commission and **I accepted that decision!** I did **NOT** request a reconsideration of the fact that the Commission *informally* had previously decided that the unlisted telephone number could remain under seal; **I accepted that decision, too!** I presumed that the reconsideration of **solely** the *address issue*, would also, *as was the September 2004 decision*, be on an *informal* basis; for some reason, the matter was incredibly delayed for four months from its October 2004 receipt; then it apparently was placed on the

¹ I am, frankly perplexed and disturbed that nothing was done **at all in any and all events** until February 3, 2005. Why did my request presented in October 2004, Exhibit A, remained unaddressed for months?

formal docket! Even then, **Exhibit A** was apparently not even presented! I don't understand!

Now, in February 2005, almost four months after I filed **Exhibit A** with the Secretary and after requesting, at that time, that copies be provided to all members of the Commission, I have received **Exhibit B**: an "Order Rejecting Application" *claiming* in the order, **incorrectly and erroneously**, that I have (now) asked the Commission permission to file a complaint with "his name, his service address, and his residential telephone number" confidential! **THIS IS SIMPLY NOT TRUE**; **Exhibit A**, filed in October 2004, is very clear and precise. It does **NOT** relate to name or telephone number--issues already decided *informally* by the Commission **and accepted by me**; it relates **only** to the matter of "address." With even a cursory reading of **Exhibit A**, its request is direct, precise, and unambiguous!

QUERY: Why wasn't **Exhibit A** also handled on an informal basis? Were copies of **Exhibit A** furnished to the Members on or before February 3, 2005 before the Commission issued **Exhibit B**? (The Order, **Exhibit B**, just received in "Case No. TO-2005-0160," is obviously **NOT** predicated on *any* possible reading of **Exhibit A**!) Did the Members ever see **Exhibit A**? If not, why did the Secretary not present to the Members, copies of **Exhibit A** as I had requested that he do? Sadly, it would appear that the Secretary has failed, for whatever reason, to provide **Exhibit A** to the Members, promptly or otherwise, as I requested he do in October 2004! Further, why did this matter simply sit in limbo from the time it was filed in October 2004 until now, February 2005? The Commission's own Rules require any reconsideration to be decided within 30-days after filing! Certainly this would apply to *informal* decisions, too.

Were the members aware that the **ONLY** issue that I requested for reconsideration was the issue of the necessity of furnishing **an address** on the formal complaint as a matter of public record **in this PARTICULAR case**? Were you, the Members, aware that I set forth and expressed **substantial, serious, and overwhelming reasons relating to the safety of my family in wanting that the address, now, not be required to be a matter of public record**? Where they aware, prior to, or on, February 3, 2005, that the **ONLY** current request pending was that the address on any formal application be maintained under seal along with the unlisted telephone number? After reading the *Order Rejecting Application in Case No. TO-2005-0260*, I am dumbfounded, frustrated, befuddled, puzzled, and frankly, amazed!

I find it incomprehensible that you, the Commission members, would issue the "Order Rejecting Application" if you had before you for consideration, **Exhibit A**! Further, I find nothing in your February 3, 2005 Order relating *directly* to anything in **Exhibit A**! Were the Members aware of the *very serious* implications of making the *particular address* involved a matter of public record--did the Members read what I wrote about the matter in the Exhibit? **All other issues had been decided and were accepted by me**. I find it extremely egregious and unfortunate if your Secretary failed to furnish each member of the Commission a copy of **Exhibit A** as I requested in October 2004 when it was filed with him.

Since the Secretary has failed to keep me promptly and properly informed of what has transpired, (I have only been able to be informed out of the generosity of Commission staff members), I would appreciate hearing directly from the new Chair or a member of his staff, or the staff of the former Chair, relating to the answers to the above posed questions.

If the Secretary, as I suspect and now believe, failed to provide a copy of **Exhibit A** to each Commission member for consideration on or before February 3, 2005, then I now respectfully request that the Chair, at the **earliest possible time**, request that the Members considered, without further delay, **Exhibit A** (attached) and its **only** issue, the matter of the address, in view of the **extremely serious repercussions that could result if the address were made a matter of public record and not maintained confidentially on a formal complaint**.

PLEASE, may I have a response from the Chair or a staff member directly and immediately? Is that too much to ask?²

² Further, if I were a member of the Commission, I would respectfully suggest that the Secretary be directed to insure that **any and all filings** in his office be presented to the Commission members, **promptly and without exception**, so that the members, without delay, are fully informed of what the actual issues are before them.

R. Mark

APT 2 WINS A
Box 11562
ST. LOUIS, MO
63105

CONFIDENTIAL



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re: *John Doe*,

Complainant)

MOTION TO WAIVE THE RULES PURSUANT TO
4 CSR 240-2.015 OR ALTERNATIVELY, MOTION FOR
REHEARING IN ACCORDANCE WITH §386.500 (1)

Comes now Complainant with his Motion to Waive the Rules Pursuant to 4 CSR 240-2.015 or alternatively, Motion for Rehearing in accordance with §386.500 (1) and states:

1. That Complainant wishes to file a formal complaint against Respondent, SBC, relating to Complainant's residential telephone service (plain, ordinary, telephone service "P.O.T.S.") in which the Complainant is billed a non-published monthly telephone charge by Respondent despite Respondent's violation of Section 6.12.6(E) of the General Exchange Tariff and the fact that the aforesaid tariff clearly indicates that such a charge is not applicable when a data terminal is connected to residential service and no voice use is contemplated. That the Complainant has P.O.T.S., no voice use is contemplated, and since last year, there has not been voice use but only a data terminal connected to the line; at the time of the connection of the data terminal and discontinuance of voice use, the Respondent was advised but refused to discontinue the unlisted monthly charge despite G.E.T. Section 6.12.6(E).

2. That heretofore the Complainant has paid a monthly fee to the Respondent in order to have non-published, the Complainant's name, address, and telephone number; the aforesaid information is not available to the public. That the aforesaid name/address/telephone information is, therefore, confidential and has been treated as such by Respondent; it cannot be found in any format in any other public document.

3. That heretofore, the Commission, at its public agenda meeting of September 21, 2004, considered the matter of Complainant's *Motion for Protective Order* and decided that the unlisted telephone number of the Complainant could remain confidential, but under the Rules, the Complainant and the Complainant's address would be required as part of the public record.

4. That the Complainant heretofore did not set forth in the Complainant's *Motion for Protective Order*, the specific reason(s) why the Complainant's address should not be made a part of the public record (in addition to the unlisted telephone number), in view of the fact that the Commission's Rule: 4 CSR 240-2.085(1) and historical precedent, both have implied and inferred that information which is "not part of the public record" has historically been sufficient in order to obtain the necessary protective order from this Commission.

5. That there is a very substantial reason why the Complainant's address should not be part of the public record (aside from the fact that it cannot currently be found in any public record), if the Complainant files a formal complaint; accordingly, Complainant wishes the Commission to now grant a rehearing/reconsideration in accordance with §386.500(1)¹ or, alternatively, to waive its rules² for good cause in accordance with 4 CSR 240-2.015 relating to the necessity of Complainant's address to be included as part of a formal complaint. Complainant hereby waves his right to be present at the determination/discussion by the Commission related to this request/motion.

6. Previously, the life of the Complainant/Complainant's family has been threatened, law enforcement authorities determined that the threat was real, viable, and could not be rationally ignored. They indicated that disclosure of Complainant's address could place the Complainant and Complainant's family at *extreme* risk for their physical safety. Accordingly, up to now, the protection of an unlisted telephone number/unlisted address and non-disclosure on any public record thereof, has been sufficient to afford the necessary degree of protection; however, if the Complainant is now required by this Commission, in accordance with its Rules, to furnish (as part of the public record in order to file a meritorious complaint), such confidential address information, such would place the Complainant and family at substantial risk for their physical safety. Such would place the Complainant in the *very unfair* position of having to decide between their safety and the requirements of the Commission in order to file a formal complaint!

A refusal to reconsider or to waive its Rules in this instance would be blatantly unfair and would be looked upon as the Commission's effort, whether willful or inadvertent, to improperly

¹ After an order or decision has been made by the commission, the public counsel or any corporation or person . . . interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such a hearing, if in its judgment sufficient reason therefor be made to appear; if a rehearing shall be granted the same shall be determined by the commission within thirty days after the same shall be finally submitted. "

² (1) A rule in this chapter may be waived by the commission for good cause.

protect a utility from having the matter adjudicated and decided on behalf of all those Missouri customers who have, for whatever reason, changed their residential P.O.T.S. service from use for voice to use only for data,³ and, as a consequence thereof, should not be charged a monthly charge for unlisted telephone P.O.T.S. service in accordance with G.E.T. Section 6.12.6(E). A refusal to waive its Rules or to reconsider, now that the Commission has been apprised of all of the relevant facts, would effectively prevent the formal complainant from being filed.

7. Although even disclosure of the Complainant's name should not be required,⁴ the Complainant will file his formal complaint if, the Commission now agrees that not only the unlisted telephone number, but also the Complainant's address, may be kept confidential and not part of the public record. Since the putative Respondent currently has the Complainant's address and telephone number, there will be no prejudice to the aforesaid utility.

WHEREFORE, Complainant prays that the Commission will immediately either waive its Rules *for good cause* under the circumstances in accordance with 4 CSR 204-2.015, and/or grant a rehearing in accordance with §386.500, and thereafter order that in addition to the Complainant's unlisted telephone number, Complainant's address (prior to, and after, the filing of a formal complaint), shall be maintained as confidential and will not be made part of the public record. Further, Complainant prays that the putative Respondent, SBC, shall be ordered to continue to keep, and to not disclose, such information for any reason.

Respectfully submitted,

/s/

"John Doe"
Complainant

³ Because of the use of alternative voice cell phone service or for any other reason.

⁴ Such is not required by many public service commissions throughout the U.S. when the matter involves an unlisted telephone number/address/etc. Such other commissions allow the filing of a formal complaint under the name "John Doe" or other pseudonym for the protection of the privacy of the utility customer and in the interest of not thwarting the customer from having the matter adjudicated at the risk of losing his/her privacy.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION



At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
February 2005.

In re the Application of John Doe
to File an Anonymous Complaint.

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Case No. TO-2005-0260

ORDER REJECTING APPLICATION

The applicant in this case has asked that the Commission allow him to file a complaint in which his name, his service address and his residential telephone number would be kept confidential. The Commission allows certain information to be filed under seal, pursuant to a protective order.¹ However, the Commission has not allowed a case to be filed in complete anonymity.

The applicant's initial attempts to do so were rejected by the Data Center and, subsequently, by the Secretary of the Commission. The applicant was notified of the rejection, and provided a copy of the Commission's rules of pleading and practice on June 10, 2004. A copy of that notification is attached.²

At the applicant's request, the Commission took this matter up as a discussion item on its September 21, Agenda meeting. As a result of that discussion the Commission directed the Secretary to notify the applicant that, although his home telephone number

¹ See 4 CSR 240-2.085.

² This letter was returned by the U.S.P.S. as "Not deliverable as addressed." The applicant later provided a correct address at which he could receive mail.

would be kept confidential, his name and service address would not.³ After numerous telephone conversations between Commission staff and the applicant, the Secretary of the Commission mailed written notification to the applicant explaining the decision of the Commission. A copy of that notification is also attached.

The applicant has requested the Commission reconsider his request and issue an order in response to his repeated requests. Thus, a case has been docketed to enable the Commission to respond by a formal order of the Commission.

The Commission has determined that it would be appropriate to grant a protective order as provided for in 4 CSR 240-2.085 and allow the residential telephone number of an applicant to be filed under seal. This will prevent the applicant's residential telephone number from being disclosed to the public. The Commission will not, however, allow a complaint to be filed in complete anonymity. The name and service address of a complainant must be provided in the publicly docketed pleadings.

IT IS THEREFORE ORDERED:

1. That the request to file a complaint in complete anonymity is denied.
2. That the applicant shall be permitted to file a complaint in which his residential telephone number is provided under seal but the applicant's name and service address will not be filed under seal.
3. That the Secretary of the Commission shall send a certified copy of this order to the applicant at the mailing service provided by the applicant.

³ Agenda Minutes of September 21, 2004, item #9.

4. That this order shall become effective on February 13, 2005.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(SEAL)

Davis, Chm., Murray, Gaw, Clayton, Appling, CC., concur

Roberts, Chief Regulatory Law Judge