

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 31st day  
of October, 2006.

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

**ORDER DENYING COMPLAINANT'S MOTION FOR  
RECONSIDERATION AND DISMISSING COMPLAINT  
FOR FAILURE TO COMPLY WITH COMMISSION ORDERS**

Issue Date: October 31, 2006

Effective Date: November 10, 2006

Syllabus: This order denies Complainant's Request that the Commission Reconsider its October 12, 2006 Order *Nunc Pro Tunc* Granting Respondent's Motion to Compel and dismisses R. Mark's complaint for failure to comply with an order of the Missouri Public Service Commission.

R. Mark filed a complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, on March 15, 2006. AT&T Missouri filed its answer on May 1, 2006, and the Commission Staff filed its recommendation on June 30, 2006.

Although Mr. Mark has repeatedly asserted that the address he provided as his service address is valid, service copies of Commission orders and filings sent to that

address have repeatedly been returned as undeliverable due to insufficient address. Mr. Mark has also refused to provide the Commission with a phone number where he can be reached. The difficulty serving and contacting Mr. Mark has made adjudication of Mr. Mark's complaint difficult, if not impossible.

To address service issues, the Commission issued an order on July 12, 2006, requiring R. Mark to provide the Commission with a valid service address. Mr. Mark responded by confirming that his service address was valid. Service copies sent to R. Mark's confirmed service address continued to be returned as undeliverable, and on August 30, 2006, the Commission issued an order, which among other things, advised R. Mark he could change his service address anytime it ceased to be valid. In that order the Commission also advised Mr. Mark that if any additional item mailed to his service address was returned as undeliverable, it could result in his complaint being dismissed. However, service copies continue to be returned as undeliverable.<sup>1</sup> As of October 18, 2006, R. Mark has still not complied with the Commission's July 12<sup>th</sup> order.

On October 12, 2006, the Commission granted AT&T Missouri's Renewed Motion to Compel Responses to Data Requests as to data request numbers 1, 2, 3, 7, 8, and 9 with certain exclusions, and denied that renewed motion as to data requests 4, 5 and 6 (Order Compelling Response). That order required R. Mark to answer the data requests at issue on or before October 23, 2006. R. Mark failed to comply with the Commission's Order Compelling Response.

On October 24, 2006, R. Mark filed Complainant's Request that the Commission Reconsider its October 12, 2006 Order *Nunc Pro Tunc* Granting Respondent's Motion to

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<sup>1</sup> One in three orders issued since the Commission's August 30, 2006 order was returned as undeliverable.

Compel. R. Mark's request is inappropriate on multiple grounds. First, R. Mark's request for reconsideration was not timely filed under Commission Rule 4 CSR 240-2.160(2), which reads in pertinent part, "Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued." Second, Motions for reconsideration must set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable.<sup>2</sup> R. Mark's request fails to state any such grounds, but merely restates his theory of the case.

R. Mark's request is also inappropriate in that it asks for the Commission to reconsider its Order Compelling Response *nunc pro tunc*. While the Commission retains authority to make *nunc pro tunc* changes to its orders,<sup>3</sup> the type of reconsideration requested by Mr. Mark is not the correction of a clerical error and therefore not of the nature addressed *nunc pro tunc*.

R. Mark's request that the Commission reconsider its Order Compelling Response in no way excuses his failure to comply with that order. Commission Rule 4 CSR 240-2.160(3) specifically states that, "[t]he filing of a motion for reconsideration shall not excuse any party from complying with any order of the commission, nor operate in any manner to stay or postpone the enforcement of any order, ..."

On October 25, 2006, AT&T Missouri filed a Motion to Dismiss for Complainant's Failure to Comply with the Commission's Order. In that motion AT&T Missouri informed the Commission that R. Mark had not complied with the Commission's October 12, 2006 Order

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<sup>2</sup> Commission Rule 4 CSR 240-2.160(2).

<sup>3</sup> *Pirtle v. Cook*, 956 S.W.2d 235 (Mo. banc 1997).

Compelling Response and requested that the Commission dismiss R. Mark's complaint based upon his refusal to comply with that order.

Commission Rule 4 CSR 240-2.116(3) states that a party may be dismissed from a case for failure to comply with any order issued by the Commission. Complainant has failed to comply with both the Commission's July 12<sup>th</sup> and September 12<sup>th</sup> orders even after being warned repeatedly that failure to do so would result in his complaint being dismissed. The Commission will therefore dismiss R. Mark's complaint.

**IT IS ORDERED THAT:**

1. Complainant's Request that the Commission Reconsider its October 12, 2006 Order *Nunc Pro Tunc* Granting Respondent's Motion to Compel, filed on October 24, 2006, is denied.
2. The complaint filed on March 15, 2006, by R. Mark against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, is dismissed.
3. All pending motions and requests not herein ruled upon are denied.
4. This order shall become effective on November 10, 2006.
5. This case may be closed on November 11, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

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

Voss, Regulatory Law Judge