

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

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

Cause No. TC-2006-0354

FILED⁴

NOV 13 2006

Missouri Public
Service Commission

**COMPLAINANT'S MOTION TO RECONSIDER DISMISSAL
PURSUANT TO THE ORDER OF THE COMMISSION
DATED OCTOBER 31, 2006**

Comes now Complainant with COMPLAINANT'S MOTION TO RECONSIDER DISMISSAL PURSUANT TO ORDER OF THE COMMISSION DATED OCTOBER 31, 2006, and states:

1. On October 31, 2006 the Commission, without reading any of the Complainant's pleadings/responses filed by the Complainant subsequent to October 31, 2006, dismissed the Complainant's formal Complaint.
2. That it has done the aforesaid despite the fact that ATT, Respondent, has been *guilty of laches* for failing to respond to the Complainant's data requests propounded in June 2006! Under the circumstances, because Respondent has *had unclean hands*, to wit: *laches*, this Commission should not consider or entertain any *Respondent's Motion to Dismiss*.
3. That there are multiple other reasons for this Commission to reconsider including, *inter-alia*, the blatant unfairness of its rules and decisions relating to a *pro-se* litigant when the monetary amount involved is only several hundred dollars and the Complainant is not represented by an attorney.
4. That incorporated herein is an open letter to the Members of the Commission with a request that the Commission's Data Department insure that each member of the Commission receives a copy.

WHEREFORE, Complainant prays that the Commission will set aside and/or hold in abeyance, any effective decision to Dismiss this Case.

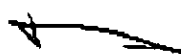
Respectfully,


Complainant

November 10, 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.

9029 Garfield View Ct. #C
St. Louis, Missouri 63123



9029 Gravois View Ct. #C
St. Louis, Mo 63123
November 10, 2006

To: Missouri Public Service Commission:

Jeff Davis, Chairman
Connie Murray, Commissioner
Steve Gaw, Commissioner
Robert M. Clayton, III, Commissioner
Linward "I.IN" Appling, Commissioner
Missouri Governor Matt Blunt

Re: Mark v. ATT a/k/a SBC TC-2006-0354; *David v. Goliath*
Dismissed on October 31, 2006 by the Commission!

Re: General Exchange Tariff §6.12.6(E) with regard to the
waiver of monthly charge for anyone having a data terminal
on their residential line and not using voice

Re: Your "**stacking the deck**" against any residential telephone
customer who seeks fairness and impartiality before you!

Re: Your refusal to grant my Motion to Compel answers to any of
my June 2006 data requests, but **your grant of ATT's**
Motion to Dismiss because of three of their highly invasive,
immaterial, harassing, and irrelevant data requests! (despite
the fact that ATT has been *guilty of laches* because they have
failed to respond to my June 2006 data requests:
interrogatories)

Re: **Incompetence of the Members of the Commission and**
their manifest unfairness and bias against any *pro-se*
individual party and their palpable deference to ATT.

Members of the Commission and the Honorable
Governor of the State of Missouri, Matt Blunt:

Your decisions, those of you who are Members of the Missouri Public Service Commission in the aforesaid case before you have been an absolute disgrace to your office. Your decisions have been unfair, biased, prejudiced, and an abomination. Frankly, neither I, nor other residents of Missouri, can understand how you five can sleep at night. In June 2006 I filed data requests directed to ATT, respondent, instead of answering, they simply responded that they "would answer." I filed a Motion to Compel. You never ruled upon it!

As you may be aware, you ordered that my claim be dismissed for failure to comply with ALL the data requests of the Respondent on October 31, 2006--without even ready my numerous responses filed after October 31, 2006! ANY court would have indicated to ATT that they were guilty of *laches* since I raised this issue: they failed to respond, long ago, to MY June 2006 data requests. This constitutes "unclean hands:" a party cannot go into Court asking for consideration when it is *guilty of laches*--exactly what ATT has been guilty of since June 2006. It said it "would respond" but NEVER DID! Nevertheless, you granted their *Motion to Dismiss* my claim! What kind of Commissioners are you, anyway? How can you be so unfair? What influence does ATT hold

over you? How can you do things contrary to what ANY court would do under the same circumstances and sleep at night? You dismissed my case, TC-2006-0354, without ever giving it a chance!

For years since November 2003 I have had a fax machine on my residential telephone line, exclusively, and not only was no voice use contemplated as I stated to the ATT rep in November 2003, but no voice has been used since that time on the line! In November I fully complied with Missouri General Exchange Tariff, §6.12.6(E) (attached) and orally advised the Respondent, ATT; I requested relief from the monthly service charge for an unpublished number. Simple? NO! Arbitrarily and capriciously it denied my request and the only "reason" stated was that it "did not agree with the interpretation of the tariff." Then, only after my formal complaint was filed in 2006, it said it had a right to require me to submit to a deposition and to disclose personal and non-relevant and non-material additional things, i.e. the "nature" of my faxes, etc. etc. etc.

An employee of ATT named Lane wrote in February 2004 (excerpt attached) that he believed the tariff was being "interpreted correctly." At no time since November 2003 did ATT EVER request any material facts from me or indicate any doubt that my statements that I used exclusively on my telephone line a data terminal: a fax machine, and that no voice use was contemplated or used. All attempts at reaching an informal settlement failed--ATT a/k/a SBC refused even to include in any offer the cessation in the future of monthly unpublished charges even knowing that I fully qualified for the monthly charge waiver.

While this company, ATT, has charged only \$.28 for unpublished service in California, the Missouri legislature passed a law rendering the Missouri Public Service Commission virtually impotent to review any of ATT's rates or costs; within the last three years ATT a/k/a SBC has raised its monthly residential Missouri rate for non-published numbers to a currently astounding \$2.61--for the identical non-published service that is provided by the same company in California for \$.28/month; yes, 28 cents/month! When asked in one of my data requests to disclose any difference between an unpublished line in California and one in Missouri, ATT OBJECTED! This company has been allowed to GAUGE Missouri residents and have been granted and enjoy a virtual license to STEAL from the Missouri residential telephone customer; there is no other way to describe it! Because there IS competition in wireless communications in Missouri, ATT's wholly owned CINGULAR charges Missouri customers ZERO/month for unpublished cell phone service. Why should an unpublished ATT landline be treated any differently than an unpublished ATT/Cingular cell phone line?

In any event, I was forced to continue to pay ATT their outrageous monthly charge in order to maintain my non-published number from November 2003 forward. I filed a formal Complaint despite the fact that only several hundred dollars was involved. I was naive, Members of the Commission--I THOUGHT I could receive a fair adjudication of the facts and resolution by an "allegedly" independent and fair-minded Public Service Commission! **BOY, HOW WRONG I WAS!** Either you, the Members, of the Missouri Public Service Commission, are so unduly improperly and unduly influenced by ATT that you cannot be fair, or you just couldn't give a damn! I believe you, as Commission members, make a mockery of the entire process -- of those who came became you and who expect, and are entitled to receive, a fair, impartial, conscientious, and unbiased hearing. You provided it to ATT but not to me!

You, the Members of the Commission, provide no way that an individual *pro-se* "Complainant" can effectively receive justice with a Goliath: ATT. Unlike in Missouri Small Claims Courts, you, the Members of the Commission, have failed to establish any rule prohibiting attorneys from being involved in "small claim" disputes in the formal complaint process, you have not barred depositions, thus letting ATT harass a poor residential complainant with only a few hundred dollars involved, you have failed to suspend Commission rules and rules of evidence when the amount involved is only several hundred dollars (in Small Claims cases: \$5,000) and the

Complainant appears pro-se without an attorney. You **expect and demand** that the lowly residential Missouri telephone customer seeking only to have ATT a/k/a SBC abide by its tariff that waives a monthly charge when a data terminal is used exclusively and no voice use is used, to wit: fax machine, to not only know, but also to abide by ALL of your involved rules and regulations--rules and regulations which only an attorney who practiced before, you, the Commission Members, would know.

Your existing Rules are **so grossly unfair** that when ATT claimed that certain "highly confidential" material could not be disclosed and should be treated specially, you entered a **protective order** that **included** the fact that the material could **only be reviewed** by an "attorney" or by an "expert" for the litigant! What pro-se residential customer with only several hundred dollars involved can afford an attorney or an expert? How unfair can you get, Members of the Commission? You call yourselves fair and impartial--you must be kidding! Your actions have been disgraceful and an abomination!

Then, when, prior to the end of August (and one time only since then), the post office erred and returned some of my mail, **through no fault of my own** (someone moved from the same building with the same surname and left no forwarding address), and the data center sent me faxes of Commission orders and rulings as a "backup," your "fair" administrative law judge entered a **UNILATERAL order barring** the Commission's data center personnel from sending any further faxes to me--she, your judge, wanted to insure that I received nothing, even when there was no question that **the post office was at fault!** Can you imagine that, **unilaterally**, she entered such an order to **prevent me** from receiving "back up" faxes of any orders sent by your Commission **AND**, she did so on her **own motion!** **Incredible!**

Fortunately, since the end of August (except on one occasion), everything was straightened out (I was assured by the post office), and only **one single piece of mail** has been returned incorrectly by them when a temporary carrier was on the route; everything else from the Respondent and the Commission has been properly delivered to me. You agreed in an order that my unpublished fax number could remain confidential, yet your Order dated October 31st dismissing my case falsely indicates that I refused to furnish a telephone number or an alternate delivery address (even though I advised that the address furnished WAS and IS correct! Since my telephone line is strictly a fax line, any other telephone service that I might use for oral communication, whether that of a neighbor, pay phones, or cell telephones belonging to others, is irrelevant, private, and justifiably confidential. **AND**, your data center HAS my fax number. I have always responded to a fax! You have been able to communicate with me through letter OR fax!

ATT is the same company that has allegedly ignored, violated, and flouted the law by furnished thousands of pieces of information about its customers to the government and to others without **any** legal process whatsoever! Frankly, who can trust them with anything?

Then, I was subjected to not only numerous voluminous data requests from ATT, but also a Notice of Deposition from a law firm they hired to harass me! ATT retained a prominent law firm to conduct a "deposition"--apparently their own **four** lawyers were not sufficient to do their "fishing" for them despite the fact that they absolutely knew I could add nothing and provide nothing further to my answers to their data requests and to my comprehensive, material, and relevant affidavits I filed in support of my Motion for Summary Judgment. Their **ONLY** purpose was to harass--and this was **obvious** to anyone except to you, the Members of the Missouri Public Service Commission!

I filed two affidavits in support of my *Motion for Summary Judgment*; those affidavits recited the fact that in November 2003, I called ATT/SBC and stated that I was using a fax machine exclusively henceforth on my residential telephone line and that no further voice use was contemplated. My affidavits, under oath and under penalty of perjury, stated that these facts were true and correct. Summary Judgment is granted when there is *no genuine issue of material fact* to be decided. **THERE WAS NONE AND THERE IS NONE** and you, the Members of the Commission

knew this or should have known this.

Any Circuit Court judge, under the circumstances, would have said to ATT: Where is your affidavit or testimony contradicting or opposing with personal knowledge the Complainant's affidavits and his indication that there is *no genuine issue of material fact* to be decided? A judge would have said to ATT: for three (3) years you, ATT, have denied him relief from your charge for a monthly non-published number. Either "put up or shut up!" When a litigant like ATT could not either "put up or shut up," virtually **any** competent (or even an incompetent), Circuit Court judge would have entered summary judgment for me! What did you do? You just "tabled" my Motion for Summary Judgment and never ruled upon it! Incredible! How could one expect any fairness from a Commission that never acted on MY motion to Compel Answers from ATT to my June 2006 data requests and came before you with unclean hands to persuade you to dismiss my complaint because I allegedly did not answer three data requests that were totally irrelevant, totally immaterial, and invasion of privacy, constituted information that ATT already demonstrably had and provided to the Staff, etc.?

You allowed ATT to incredibly claim that they "couldn't answer without conducting extensive discovery!" For three years, they arbitrarily and capriciously denied my request for waiver of the monthly fee, without any reason and without asking for any additional support or facts, and now, they fraudulently stated they could not respond as to whether or not there were any genuine issues of material facts at issue! They then demanded to know where I worked, what my title was, if any, whether my faxes from my home were related to personal or business use, and what was the "nature" of my faxes—what any of this had to do with the simple requirements of G.E.T. §6.12.6(E) is a mystery to me and to absolutely everyone else familiar with your abysmal and pathetic orders and "consideration." Where in G.E.T. §6.12.6(E) does it state that any residential telephone customer must furnish this type of information? It does not? ATT's *only purpose* was to harass and to find some "excuse" that would enable you, the gullible and apparently legally uneducated Members of the Missouri Public Service Commission to deny a hearing and to dismiss my formal Complaint!

Not having an attorney, I was forced to spend **hundreds of hours** "trying to learn the ropes" and trying to respond to rules with which I was unfamiliar. In the process, I also made suggestions including the fact that the Commission should reimburse a pro-se litigant for the value of his time and effort, i.e. \$25,000 or an amount equal to what the Respondent spent! This type of rule would prevent ATT from arbitrarily and capriciously denying a telephone customer a waiver (with utter impunity and at no financial risk to it), to which a customer was otherwise entitled. This new rule would be effective in the event that the Commission's own Staff found in favor of the Complainant, as the Staff did in my case in their Report! Conveniently, this *Motion* and suggestion has now been rendered "moot" by your dismissal of my formal complainant on October 31, 2006! I did my best; I responded to every filing of the numerous ones filed by ATT/SBC. That was not enough? I expect fairness from you, the Members of the Commission, and received nothing!

This behemoth, ATT, was determined to **win at all costs**, despite the fact that they knew they were wrong and had no material facts at issue. They assigned not one, not two, not three, **but FOUR** attorneys of record to handle this case! Then they retained an outside law firm to take my deposition! If this is not harassment for the sake of harassment of a telephone customer seeking only what is fair and reimbursement for several hundred dollars in improper monthly fees, I, and others, do not know what is! It became obviously that their purpose was, again, to **win at all costs** and to **demonstrate** that no lowly residential telephone customer could **ever** prevail before you, the Members of the Commission! And, it appears that you enabled them to be successful by your incompetence and your malfeasance with the help of an unfair and biased administrative law judge!

You wisely ordered your professional and independent Commission Staff to make findings and provide you with a report. They did an exemplary job, were fair and impartial, and filed a sworn

affidavit attached to their Report. (Excerpt attached). They concluded that I was entitled to the Commission finding in my favor on the central core issues: a fax machine is a data terminal and that my telephone line was used exclusively for non-voice from November 2003 forward. They had no reason to question my affidavits and the fact that not only was no voice use contemplated since November 2003, but there had been no voice use on the line. I was entitled to the monthly waiver and a refund from November 2003 forward!

In answer to ATT's data requests, I provided them with all relevant and material information and even information that was **totally** improper, private, and none of their business. They were entitled to the make, model, and serial number of my fax machine; they were not entitled to other data requests which you, the Members of the Commission, demanded that I answer: I had no business income and my faxes were personal and not business. They were not satisfied and sought **any reason** to get rid of this case and to **WIN** so that I could not have a fair adjudication! For example, they had furnished to the **Staff** my name, service address, and my billing address, yet they demanded that you, the Members of the Commission, nevertheless **compel me** to provide this **same information** that **THEY HAD FURNISHED** to the Commission Staff in response to the STAFF's data request of ATT to furnish the information! Do you think they withdrew their *Motion to Compel* these particular data requests--**NO!** They lacked the ethics and fairness to do so and *clearly* demonstrated that nothing is beyond them in their quest to **WIN** at all costs! Ethics and fairness be damned!

I acted in good faith. I requested that the Commission Members reconsider. I responded to all relevant and material data requests *far beyond* what G.E.T. §6.12.6(E) requires of **any** residential telephone customer seeking a waiver of the monthly charge. Incidentally, G.E.T. §6.12.6(E) states only "data terminal" (as you can read)--**NOT** TTY, TDD, device for the disabled, etc. An Illinois Court ruled there are **only** two types of transmissions on a telephone line: voice and data. United States District Court, N.D. Illinois, Eastern Division, in *Oneac Corporation v. RayChem Corporation*, 20 F.Supp 2d 1233, (1998), at 4, stated with regard to signals carried over a telephone line, *inter-alia*, in relevant part:

"The data 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."

A fax machine is a data terminal. **On its face**, the tariff is clear--a DATA terminal is any terminal used for the reception of data, not voice! Legal construction holds that if a statute is *clear* on its face, it is improper to look further as to any background or historical meaning.

ATT then moved to dismiss my formal complaint and you, the "allegedly" fair and impartial members of the Commission, ruled on October 31 that my Complainant should be dismissed--even despite the fact that since June 2006 they have been *guilty of laches* in failing to furnish data responses to which I was absolutely entitled! Your dismissal Order of October 31, 2006 appears to have been drafted by the same inexperienced and unfair "administrative law judge" who unilaterally ordered the Commission's data department **NOT** to send me any backup fax of any Commission orders--it appears that you, the Members of the Commission, simply rubber stamped her "Commission" Dismissal Order! You, the Members of the Commission, would not even give me a chance to have the ultimate issue decided by you as to my entitlement, as **your own Staff recommend!** They and you didn't even want to give me my day in court because if you did, there was no question that I would prevail against ATT. This was apparently acceptable to you and what ATT feared--why else would they assign **FOUR (4) ATTORNEYS** to this case **AND** retain an outside law firm to take a deposition!

Not only have I lost several hundred dollars in unpublished exorbitant fees charged by ATT/SBC since November 2003 and been *gauged* by ATT/SBC for unpublished service where no voice has been used since that time and only a data terminal, my fax machine, has been used, but you just "sat" on my *Motion for Summary Judgment* and my *Motion to Compel* ATT's answers to MY June 2006 data requests--either you are each incompetent or each of you could have cared less! One would be forced to conclude that you merely collect your annual salary and simply "rubber" stamp anything that is placed in front of you!

Because of your ruling on October 31, 2006 dismissing my case, you didn't even see any further responsive pleadings that I filed, did you? You or your administrative law "judge" were so anxious to simply get rid of my formal complaint, that you didn't even wait to see what, if anything, I responded, right?

Your decisions, Members of the Commission, are an abomination and an outrage to fairness, justice, and providing a "level playing field" to all participants--not just to ATT! You "stack the deck" against pro-se litigants and you do not give them a fair and impartial opportunity to be heard and to be decided. When the Staff agrees with a Complainant as the Missouri Public Service Did in this instance, you **knowing disregard their report entirely!** One cannot help but believe you are either highly influenced by ATT, incompetent, or simply just don't give a damn about fairness, equality, and justice!

In the Staff report it indicates that **even they could not determine** what would ever satisfy ATT. Would my affidavits signed in blood suffice? I think not and probably your own Staff they would agree! ATT has no doubt spent tens of thousands of dollars "defending" the indefensible, and you, the Members of the Commission have been *enablers*--you have *enabled* them to do it! By your lack of adopting fair and equitable Rules such as the suspension of rules of evidence and suspension of rules of procedure (as Small Claims Missouri court do), you blatantly allow what has happened to happen. You could care less about the poor individual telephone customer seeking only justice and fairness before you and you obviously either are unfamiliar with the law or couldn't give a damn about it!

You have an administrative law "judge," incredibly, who in this case *unilaterally* did not even want the Commission's data department to send me any fax; she did this to insure I DID NOT received any orders (as a back-up). The data department had been more than happy to do so and it was no burden on them in any way; this, too, is an abomination and is a disgrace that you would have such an administrative law "judge" working for the Commission who would *unilaterally* enter such an order. Then, instead of waiting for my responses to the current pleadings, on October 31, 2006 you just simply just got "rid of this matter," didn't you, Members of the Commission? ATT's latches, notwithstanding, fairness and equity notwithstanding, ATT's obvious harassment of an innocent lowly residential telephone customer not with standing, and the amount involved of only several hundred dollars, not withstanding!

The citizens of the U.S. have spoken in our last election; it is hoped that the citizens of Missouri will be heard the next time that a governor is elected. Hopefully, we Missourians will have learned our lesson and will elect one that appoints fair, impartial Commission members with integrity who are not beholden to any special interest and who will give the "little guy" an even playing field with a behemoth such as ATT/SBC. Your decisions in this case, Members of the Commission, have been abysmal and an utter disgrace. I hope you can sleep at night doing what you do and acting as you have!

You, the Missouri Public Service Commission Members, have clearly demonstrated in this case that your decisions and actions are a farce, a deception, and constitute a gross misrepresentation and miscarriage of justice--nobody, and certainly not the lowly telephone customer with only a few hundred dollars at stake, *can ever receive fair consideration* when a formal complaint is filed! Hopefully the citizens of Missouri will act and act soon to eliminate the governor who appointed you

to the Commission. Frankly, I think he should fire all of you! You, the Members of the Missouri Public Service Commissions cannot see the forest through the trees!

By copy of this letter, I am advising the Governor of Missouri as well as others. Hopefully, one or more will consider exposing your decisions for what they *really* are--a farce and a fraudulent representation of fairness, integrity, and impartiality.

Attached is a copy of General Exchange Tariff §6.12.6(E). Also, attached is a copy of the letter from ATT which confirms that the **ONLY** issue was the "interpretation" of the tariff. As such, it did not require depositions, voluminous data requests (interrogatories) and/or "pounds" of pleadings! Since November 2003 until the filing of my formal complaint, **not once** did ATT a/k/a SBC **ever** question my statements that I used a fax machine only on my telephone line and that no voice use was contemplated or used!

Only after I filed my formal complaint did they decide they had to *justify* a three year denial of the relief to which I was entitled; **only then** did they seek to defend the indefensible! **AND YOU, THE MEMBERS OF THE COMMISSION**, willfully or with gross negligence and incompetence, enabled them to do it! If you care to, read the Staff's Report excerpt attached in which they indicated that they recommended that you, the Commission Members, should find in my favor; also, even they did not know what would ever satisfy ATT/SBC if my affidavits would not! They found my affidavits acceptable related to all of the *genuine issues of material facts*. There were no "genuine issue of material facts" in this case still to be decided, as **any** Circuit Court judge would have determined--obviously, you, the Members of the Commission are not judges but political appointees who are either obviously beholdng to special interests or are content to take your salary and to do nothing else; you apparently each decide matters by the "seat of your pants" or simply rubber stamp what an unfair and incompetent administrative law "judge" puts before you! This is sad, but true! The decisions made by each of you in this case are an utter disgrace and an abomination! Each of you should consider submitting your respective resignations and/or the Governor of Missouri should consider replacing each one of you!

The undersigned urges that each person who receives a copy of this correspondence, investigate and review the entire file and expose what this Commission Members have done and will, no doubt, continue to do along with its administrative law judge to virtually insure that no individual telephone residential telephone customer could or would **EVER** receive a fair hearing before the current Missouri Public Service Commission and its Administrative law judge!

Very truly yours,



R. Mark

Enc: Excerpts from sworn Commission Staff Report
Excerpt from ATT employee February 2004 letter
General Exchange Tariff §6.12.6(E) providing that one is
entitled to relief from monthly service charge if one:
uses a data terminal and does not contemplate the use
of voice on the residential telephone line.

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

FEB 20 2004 16:05 FR MISSOURI LEGAL

314 247 0014 TO 98621234



Paul G. Lane
General Counsel - Missouri/Kansas

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One SBC Center
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St. Louis, MO 63101

314.235.4300 Phone
314-247-0014 Fax

paul.lane@sbc.com

February 20, 2004

EXCERPT

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

Dear Mr. Mark:

This is in response to your request that Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") exempt you from the application of the provisions of our General Exchange Tariff assessing a charge for customers desiring non-published service on the basis that your local exchange line is being utilized only for facsimile communications. I have reviewed the tariff and continue to believe that the charge is properly assessed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul G. Lane", with a long, sweeping horizontal stroke extending to the right.

Paul G. Lane
General Counsel-MO/KS

Missouri Case No. TC-2006-0354
Complaint
Request No. 1
RFI No. 1-6
Page 1 of 2

Q. PLEASE STATE ALL UNPUBLISHED FEATURES AND/OR ATTRIBUTES AND/OR SERVICES(S) PROVIDED BY RESPONDENT TO A RESIDENTIAL TELEPHONE CUSTOMER IN MISSOURI IN RETURN FOR THE PAYMENT OF AN UNPUBLISHED MONTHLY LINE CHARGE. STATE THE SAME INFORMATION APPLICABLE FOR CALIFORNIA AND FOR EACH STATE, OTHER THAN MISSOURI, IN WHICH THE RESPONDENT DOES BUSINESS AND/OR OPERATES AND PROVIDES UNPUBLISHED RESIDENTIAL SERVICE.

Subject to and without waiving its objection to this data request, AT&T Missouri states as follows:

~~EVASIVE~~

A. The undertaking of AT&T Missouri in providing non-published exchange service is stated in AT&T Missouri's General Exchange Tariff, to which AT&T Missouri refers Complainant.

Responsible Person: Michael Yoest
Area Manager-Regulatory Relations
1401 I. St. NW., Room 1100
Washington, DC 20005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

EXCERPT

R. Mark,

Complainant,

v.

Southwestern Bell Telephone, L.P., d/b/a AT&T
Missouri,

Respondent.

Case No. TC-2006-0354

STAFF REPORT

COMES NOW the Staff of the Missouri Public Service Commission and for its report states:

1. R. Mark filed a complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri. The complaint involved a billing dispute over AT&T Missouri charging R. Mark to omit his name and telephone number from the white pages of the telephone directory.
2. The Commission had directed the Staff to conduct an investigation and to file a report concerning the results of that investigation by June 30, 2006.
3. In the attached Memorandum, the Staff reports on its investigation. AT&T Missouri's tariff provides that no monthly service charge is applicable for a non-published telephone number when a customer has service which involves data terminals where there is no voice use contemplated. R. Mark filed a notarized affidavit on May 25, 2006, in which he states that his telephone line is used only for a fax machine. In the Staff's opinion, (1) a fax machine is a data terminal, and (2) R. Mark's verified statement shows that no voice use is contemplated.

If, as the Staff recommends, the Commission determines that facsimile machines are within the meaning of "data terminal", a question arises as to whether Mr. Mark uses his telephone line exclusively for that purpose. Mr. Mark has submitted a verified statement indicating that his telephone line is used exclusively for facsimile purposes, and that no voice use is contemplated on his line. Based on his verified statement, the Staff has no reason to doubt Mr. Mark's assertions.

"Data Terminal" - Defined

Although central to this dispute, the term "data terminal" is not defined in AT&T's tariff. In response to Staff Data Request No. 19, AT&T defines "data terminal" as consisting of "the devices through which information enters and leaves a communications system."

In support of his position that facsimile machines are "data terminals", Mr. Mark cites to a decision by the United States District Court, N.D. Illinois, Eastern Division, which stated in relevant part: "The data signal carries either the voices that one hears in the receiver or data sent to a fax machine or computer..."¹⁰ Thus, according to Mr. Mark, facsimile machines are "data terminals."

As previously discussed on page three, the Staff accepts the definition of "data terminal" as defined by Graham Langley in Telephony's Dictionary as "[T]he equipment connected to the end of a transmission line to provide a terminal for the transmission or reception of data."

In the Staff's view, there is no inconsistency among the definitions of "data terminal" supplied by AT&T, Mr. Mark, or the Staff. Irrespective of Mr. Mark's claims or the Staff's or AT&T's definition of "data terminal", the Staff submits that a plain reading and common understanding of the term "data terminal" would apply to facsimile machines (or personal computers). In this regard, the Staff recommends that the Commission determine that a facsimile machine is a data terminal.

"No Voice Use Contemplated" - Discussion

AT&T has demanded that Mr. Mark provide "strict proof" that "no voice use is contemplated" on his telephone line.¹¹ ~~The Staff is uncertain of how much proof is required to meet AT&T's criteria.~~ AT&T disagrees that the tariff exemption applies to the manner Mr. Mark claims he uses his telephone line. AT&T claims that it should not be forced to accept Mr. Mark's statement that his voice communications needs are met by a wireless telephone merely because Mr. Mark makes that assertion.

¹⁰ Oncor Corporation v. Raychem Corporation, 20 F Supp. 2d 1213; 1998 U.S. Dist. LEXIS 15750

¹¹ AT&T's May 1st Answer to R. Mark's Complaint, paragraph 14.

Staff Recommendation:

Issue 1 - Should the Commission rule that Mr. Mark qualifies for a non-published rate exemption?

Yes. The Staff recommends the Commission find in Mr. Mark's favor. Because facsimile machines (and personal computers) fall within the range of 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 Mr. Mark's favor. Because Mr. Mark has provided a verified statement that he does not use his telephone line for voice purposes, the Staff recommends the Commission find that Mr. Mark qualifies for the tariff rate exemption.

Issue 2 - Should the Commission order AT&T to credit with interest Mr. Mark's account retroactively to November 1, 2003?

No. According to Staff counsel, the Commission cannot order monetary relief.

Issue 3 - Should the Commission rule that Mr. Mark qualifies for future non-published rate exemptions?

Yes. The Commission should order AT&T to apply the exemption to Mr. Mark as long as his usage and the tariff both remain the same. Should AT&T elect to clarify its tariff in a manner applicable to its original intents and purposes, and in a manner that is technologically neutral, the Staff does not foresee that it would have any objections to it doing so.

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

R. Mark,

Complainant)

v.)

Case No. TC-2006-0354

Southwestern Bell Telephone, d/b/a)
AT&T Missouri,)

Respondent)

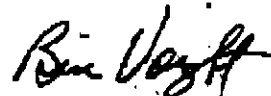
AFFIDAVIT OF WILLIAM VOIGHT

STATE OF MISSOURI)

) ss


COUNTY OF COLE)

William Voight, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was given by him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



William Voight

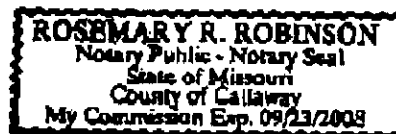
Subscribed and sworn to before me this 30th day of June, 2006.



Notary Public

My commission expires

9-23-2008



EXCERPT

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.

Southwestern Bell Telephone, L.P.,
d/b/a AT&T Missouri,

Respondent.

Case No. TC-2006-0354

**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.

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 12th and September 12th 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

(SEAL)

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

Voss, Regulatory Law Judge

C-2006-0354

REVISED/AMENDED P-3

Complainant appears pro-se without an attorney. You **expect and demand** that the lowly residential Missouri telephone customer seeking only to have ATT a/k/a SBC abide by its tariff that waives a monthly charge when a data terminal is used exclusively and no voice use is used, to wit: fax machine, to not only know, but also to abide by ALL of your involved rules and regulations--rules and regulations which only an attorney who practiced before, you, the Commission Members, would know.

Your existing Rules are so **grossly unfair** that when ATT claimed that certain "highly confidential" material could not be disclosed and should be treated specially, you entered a **protective order** that included the fact that the material could **only be reviewed** by an "attorney" or by an "expert" for the litigant! What pro-se residential customer with only several hundred dollars involved can afford an attorney or an expert? How unfair can you get, Members of the Commission? You call yourselves fair and impartial--you must be kidding! Your actions have been disgraceful and an abomination!

Then, when, prior to the end of August (and **one time only** since then), **the post office** erred and returned some of **my mail, through no fault of my own** (someone moved from the same building with the same surname and left no forwarding address). I **DID** respond to the Commission's July 12, 2006 order and indicated that the address was correct; on August 30, 2006, the Commission **DID** acknowledge my response and entered an "Order Excusing Complainant's Failure. . ."; the data center sent me faxes of Commission orders and rulings as a "backup," your "fair" administrative law judge nevertheless entered a **UNILATERAL** order **barring** the Commission's data center personnel from sending any further faxes to me--she, your judge, wanted to insure that I received nothing, even when there was no question that **the post office was at fault!** Can you imagine that, **unilaterally**, she entered such an order to **prevent me** from receiving "back up" faxes of any orders sent by your Commission **AND**, she did so on her **own motion!** **Incredible!**

Fortunately, since the end of August (except on one occasion), everything was straightened out (I was assured by the post office), and only **one single piece of mail** has been returned incorrectly by them when a temporary carrier was on the route; everything else from the Respondent and the Commission has been properly delivered to me. You agreed in an order that my unpublished fax number could remain confidential, yet your Order dated October 31st dismissing my case falsely indicates that I refused to furnish a telephone number or an alternate delivery address (even though I advised that the address furnished **WAS** and **IS** correct! Since my telephone line is strictly a fax line, any other telephone service that I might use for oral communication, whether that of a neighbor, pay phones, or cell telephones belonging to others, is irrelevant, private, and justifiably confidential. **AND**, your data center **HAS** my fax number. I have always responded to a fax! You have been able to communicate with me through letter **OR** fax!

ATT is the same company that has allegedly ignored, violated, and flouted the law by furnished thousands of pieces of information about its customers to the government and to others without any legal process whatsoever! Frankly, who can trust them with anything?

Then, I was subjected to not only numerous voluminous data requests from ATT, but also a Notice of Deposition from a law firm they hired to harass me! ATT retained a prominent law firm to conduct a "deposition"--apparently their own **four** lawyers were not sufficient to do their "fishing" for them despite the fact that they absolutely knew I could add nothing and provide nothing further to my answers to their data requests and to my comprehensive, material, and relevant affidavits I filed in support of my Motion for Summary Judgment. Their **ONLY** purpose was to harass--and this **was obvious** to anyone except to you, the Members of the Missouri Public Service Commission!

I filed two affidavits in support of my *Motion for Summary Judgment*; those affidavits recited the fact that in November 2003, I called ATT/SBC and stated that I was using a fax machine exclusively henceforth on my residential telephone line and that no further voice use was contemplated. My affidavits, under oath and under penalty of perjury, stated that these facts were true and correct. Summary Judgment is granted when there is *no genuine issue of material fact* to be decided. **THERE WAS NONE AND THERE IS NONE** and you, the Members of the Commission