

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5
6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 August 15, 2006
9 Jefferson City, Missouri
Volume 2

10

11

12 R. Mark,)
)
13 Complainant,)
)
14 v.) Case No. TC-2006-0354
)
15 Southwestern Bell Telephone, L.P.)
d/b/a AT&T Missouri,)
16)
Respondent.)

17

18

18 CHERLYN D. VOSS, Presiding,
19 REGULATORY LAW JUDGE.

20

21

22

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

25

1 APPEARANCES:

2 ROBERT J. GRYZMALA, Senior Counsel (Via Telephone)
3 SBC Missouri
4 One AT&T Center, Room 3516
St. Louis, MO 63101
(314)235-4300

5 FOR: Southwestern Bell Telephone, LP
d/b/a AT&T Missouri.

6 WILLIAM K. HAAS, Deputy General Counsel
7 P.O. Box 360
200 Madison Street
Jefferson City, MO 65102
8 (573)751-3234

9 FOR: Staff of the Missouri Public
10 Service Commission.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 JUDGE VOSS: We're on the record. We're
3 here for the case R. Mark vs. Southwestern Bell Telephone,
4 L.P., d/b/a AT&T Missouri, Case No. TC-2006-0354. Take
5 entries of appearance, beginning with the Staff.

6 MR. HAAS: Good afternoon. My name is
7 William K. Haas. I represent the Staff of the Missouri
8 Public Service Commission in this matter. My address is
9 Post Office Box 360, Jefferson City, Missouri 65102.

10 JUDGE VOSS: And joining us by
11 teleconference is Robert Gryzmala.

12 MR. GRYZMALA: Good afternoon, your Honor.
13 This is Bob Gryzmala. I represent Southwestern Bell
14 Telephone, LP, d/b/a AT&T Missouri, Room 3516, St. Louis,
15 Missouri 63101.

16 JUDGE VOSS: For the record, we'll note
17 that Mr. Mark has not phoned in to the conference call.
18 Makes it very difficult to address the motions pending and
19 the discovery disputes given that Mr. Mark isn't here.

20 For the record, I will note that Mr. Mark
21 filed an advisement stating that, due to illness in his
22 family, he will attempt to file a response to Southwestern
23 Bell's pleading of August 4th, and he will file that by
24 August 22nd. Does anyone have any comments on that?

25 MR. HAAS: No, your Honor.

1 JUDGE VOSS: AT&T, do you have any comments
2 on --

3 MR. GRYZMALA: Yes, your Honor, we do.
4 We -- I empathize with Mr. Mark's statement, which I take
5 to be true, that a relative of his has been hospitalized.
6 He so states at paragraph 3 of the one-page pleading he
7 filed today. But we are going to insist that the
8 Commission consider dismissal.

9 We at the last prehearing which we attended
10 encountered a similar failure of Mr. Mark to appear at a
11 Commission-ordered prehearing conference, and we indicated
12 that if there be another opportunity given for another
13 prehearing, that we would move and ask that the case be
14 dismissed. That's at page 5 of the transcript from the
15 last prehearing.

16 We have at every turn been told that our
17 discovery is not going to be responded to. The Commission
18 has told Mr. Mark in simple terms that we need to proceed
19 by first resolving and eliciting the facts and then ruling
20 on the merits, and that's the way cases get done, not vice
21 versa.

22 And Mr. Mark has at every turn refused to
23 accept that, refused to acknowledge it, and when we file a
24 renewed motion to compel, Mr. Mark does not ask for
25 additional time within which to respond, and we know that

1 when he last asked for time to respond, he served up
2 multiple objections and precious few answers.

3 This pleading, your Honor, that was filed
4 today indicates, to be candid, more of the same. It is
5 simply asking that the Commission entertain but another
6 pleading directed to his argument that the case should be
7 decided before the facts are known.

8 And at some point the Commission's got to
9 say this is at an end. There's -- it may be different had
10 he indicated an intention to provide the discovery, which
11 our motion clearly asked for, and he did receive on
12 August 4th via his fax machine. There's no indication of
13 that in his pleading today. He has indicated no reason
14 why he was unable to appear today.

15 Our motion, your Honor, was filed with an
16 understanding that replies are due within ten days. I
17 filed that motion so that we could at today's conference
18 have a response in hand, and even if it were to address --
19 if it were to address that portion of the motion, the
20 discovery, that would be one thing.

21 This latest filing does nothing to
22 alleviate the problems the Commission's encountered time
23 and again, and AT&T. We have over 30 to 35 pleadings
24 notices and orders in our pleading binder here, and we
25 have gotten nowhere, and there's no indication we're going

1 to go anywhere.

2 The rules of the Commission are absolutely
3 clear that there can be a dismissal for failure to comply
4 with orders, including failure to comply -- appear at any
5 scheduled proceedings such as a prehearing conference.
6 That's Rule 2.1163. With all due respect, your Honor, we
7 are again going to ask that the Commission dismiss the
8 case in its entirety.

9 Alternatively, and not a preferred
10 alternative, your Honor will recall that in our motion we
11 asked that Mr. Mark be required to provide a response, a
12 complete response to the discovery by X date, that he
13 certify in writing to the Commission that he did so, and
14 that unless that certification be filed, the case be
15 self-executingly dismissed with no further action.

16 That's not the preferred course. We again
17 submit the case should be dismissed today for failure to
18 appear at the prehearing conference. Our alternative
19 request is as stated in the motion, your Honor. Thank
20 you.

21 JUDGE VOSS: Staff, do you have any
22 comments?

23 MR. HAAS: No, thank you.

24 JUDGE VOSS: Well, I do sense your
25 frustration, Mr. Gryzmala. I'm disappointed that Mr. Mark

1 did not join us today as well.

2 The one thing that I think is key is the
3 words can be dismissed, and at this point I'm not certain
4 what the Commission will choose to do. Given that
5 Mr. Mark is a pro se litigant, he's not held to the same
6 standard as an attorney would be held to.

7 MR. GRYZMALA: I would like just a brief
8 opportunity to speak to that, your Honor.

9 JUDGE VOSS: Can I finish, please?

10 MR. GRYZMALA: Oh, absolutely. I'm sorry.
11 It cut off.

12 JUDGE VOSS: Okay. Sorry. I will put this
13 case on for discussion on agenda on Tuesday to try to get
14 a feel for what the Commission wants to do, and then I
15 will try to get an Order out by Thursday in this case
16 giving guidance.

17 There's a very good chance that the
18 Commission will want to go forward, and in that event I'll
19 ask the parties to come up with a procedural schedule that
20 will hopefully be acceptable to all parties and probably
21 put Staff in charge of that given that they seem to have
22 the best relationship with both sides and the best luck
23 contacting Mr. Mark or anyone.

24 But I will note for the record that in the
25 Order establishing the service method and scheduling this

1 prehearing conference, Mr. Mark was advised, and I'll
2 quote that Order on page 3, Mr. Mark is advised that
3 failure to participate in the second prehearing conference
4 could result in his case being dismissed. That's could.

5 What will happen at this point, especially
6 given the potential health issues in his family, are for
7 the Commission to decide. Like I said, hopefully I'll
8 have an Order giving some direction at that time. But I
9 definitely think that this case to go forward needs some
10 more participation from Mr. Mark.

11 MR. GRYZMALA: I'm sorry. Needs more?

12 JUDGE VOSS: Participation from Mr. Mark.
13 I think he needs to either be present at minimum at a
14 prehearing and ultimately at a hearing.

15 Did you have any additional comments?

16 MR. GRYZMALA: Very few, your Honor. I
17 understand, and I understand he's not been present at any
18 of the proceedings. Our mail at this point I believe has
19 been consistently returned for approximately the last six
20 weeks. I believe, if I recall, an address, I won't state
21 it on the record, but I think we know the address, but our
22 mail to that address has been consistently returned. I
23 have tried to call Mr. Mark in connection with an attempt
24 to resolve our discovery disputes as the rules require
25 that I do, and he refuses to return my calls.

1 He's telling us today he's not going to
2 respond to discovery. He wants to respond to our
3 arguments. He wants to go back to the merits of the case.
4 I understand the pro se litigant status keenly, and if
5 this were a situation which deference be owed, that's
6 fine. But let's not delude ourselves. Mr. Mark is keenly
7 aware of the rules in play. He cites them liberally. He
8 relies on them liberally. And he knows well how to craft
9 pleadings which are, if not acceptable to AT&T, at least
10 they state his points well.

11 So having said that, I am not convinced
12 that this is a pro se litigant to the extent that he is
13 not versed with the Commission's rules and procedures. He
14 certainly is.

15 That's all I have. Thank you, your Honor,
16 for the time to speak. I really appreciate that.

17 JUDGE VOSS: Yes, sir. Is there anything
18 else anyone would like to bring up before we go off the
19 record?

20 (No response.)

21 JUDGE VOSS: This conclude the
22 on-the-record portion of this prehearing conference.

23 WHEREUPON, the recorded portion of the
24 prehearing conference was concluded.

25