

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

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 EXCUSING COMPLAINANT'S**  
**FAILURE TO PARTICIPATE IN PREHEARING CONFERENCE,**  
**RESCINDING ORDER TO SERVE BY FACSIMILE,**  
**AND SCHEDULING A THIRD PREHEARING CONFERENCE**

Issue Date: August 30, 2006

Effective Date: August 30, 2006

Syllabus: This order excuses R. Mark's failure to appear at the second prehearing conference, orders R. Mark to be served exclusively by U.S. Mail at his confirmed service address, advises R. Mark that his case could be dismissed for failure to prosecute, among other reasons permitted by law, if any additional service item is returned undeliverable, and schedules a third prehearing conference for September 13, 2006.

R. Mark filed a complaint with the Missouri Public Service Commission against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, on March 15, 2006, which resulted in the opening of this case. 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.

On June 22, 2006, the Commission scheduled a prehearing conference for July 7, 2006, at 1:30 p.m. The prehearing conference convened on July 7, at the scheduled time. AT&T Missouri and the Commission's Staff appeared for the conference by their counsel. The complainant did not appear in person and did not make arrangements to appear by telephone. Mr. Mark's service copy of the order setting the prehearing conference was returned as undeliverable the day before the prehearing was scheduled.

On July 19, 2006, Mr. Mark filed Complaint's Mailing Address Confirmation in which he blamed the returned mail on a temporary mail employee working his route and reaffirmed that the service address was valid. As a proposed solution to the issue he stated that, "[t]he post office suggests that if that should happen again, to simply remail the correspondence AGAIN!" He further authorized service by facsimile, but only if a piece of mail was first returned.

On July 27, 2006, the Commission issued its Order Establishing Service Method and Scheduling a Second Prehearing Conference. In that order the Commission informed Mr. Mark that the tight timelines in Commission cases made waiting for a return of service prior to serving by facsimile unacceptable. The order further advised Mr. Mark that he would be served with Commission pleadings and orders through both registered mail and facsimile and that his facsimile number would continue to be treated as highly confidential. The Commission notes that the service copies of the July 27, 2006 order and all three

orders issued since that were mailed to Mr. Mark's service address were returned as undeliverable.

In its July 27, 2006 order the Commission also scheduled a second prehearing conference for August 15, 2006, at 1:30 p.m., provided a toll-free number to allow parties to participate by telephone, and advised Mr. Mark that failure to participate in the second prehearing conference could result in his case being dismissed. The second prehearing conference convened on August 15, at the scheduled time. AT&T Missouri and the Commission's Staff again appeared for the conference by their counsel. The complainant did not appear in person or by telephone.

When the complainant failed to appear for the second conference, AT&T Missouri made an oral motion to dismiss the complaint for the complainant's failure to appear. On August 16, 2006, the Commission issued an order requiring Mr. Mark to show cause why his complaint should not be dismissed for failure to appear at the second prehearing conference. On August 23, 2006, Mr. Mark filed his response to the show cause order. In his response Mr. Mark stated that he did not receive the Commission order scheduling the conference.

Records from the Commission's data center confirm that Mr. Mark's mailed service copy of the July 27, 2006 order was returned as undeliverable, and that the Commission's data center inadvertently failed to also serve him by facsimile. Because Mr. Mark did not receive notice of the prehearing conference, his absence is excused.

Information from the Commission's data center indicates that serving Mr. Mark by facsimile is outside the scope of the department's normal activities and constitutes a disruption of normal work activities. The Commission is charged with the responsibility of

deciding an adversarial complaint and is ill-equipped to ensure routine service of process by methods outside the norm. The Commission will rescind its previous order directing that Mr. Mark to be served by facsimile and order the data center to serve him by U.S. Mail, as it would any other party to a Commission proceeding. Mr. Mark has advised the Commission of a service address that he may change if it ceases to be valid. Accordingly, Mr. Mark is put on notice that if any additional item mailed to his service address is returned as undeliverable, it could result in his complaint being dismissed.

The next step is to again attempt to move this matter toward resolution. To that end, the Commission will conduct a third prehearing conference to address discovery issues and discuss the scheduling of an evidentiary hearing. Mr. Mark is advised that failure to participate in this third prehearing conference could result in his case being dismissed.

**IT IS ORDERED THAT:**

1. R. Mark's failure to participate in the August 15, 2006 prehearing conference is excused.
2. All future Commission orders and notices issued in this case will be served upon R. Mark by U.S. Mail at his confirmed service address.
3. A third prehearing conference will take place on September 13, 2006, beginning at 10:00 a.m. The prehearing will be held in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. This prehearing will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before

the hearing. All parties are required to participate in the prehearing conference. **Parties may participate by telephone by dialing 1-866-324-7550.**

4. This order shall become effective on August 30, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Cherlyn D. Voss, Regulatory Law Judge,  
by delegation of authority pursuant to  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 30<sup>th</sup> day of August, 2006.