

**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

FILED

NOV 07 2006

Missouri Public
Service Commission

**COMPLAINANT'S REPLY TO RESPONDENT'S
MEMORANDUM IN RESPONSE TO COMPLAINANT'S REQUEST
THAT THE COMMISSION RECONSIDER ITS OCTOBER 12,
2006 ORDER NUNC PRO TUNC GRANTING RESPONDENT'S
MOTION TO COMPEL**

Comes now Complainant with *Complainant's Reply to Respondent's Memorandum in Response to Complainant's Request that the Commission Reconsider its October 12, 2006 order nunc pro tunc granting Respondent's Motion to Compel*, and states:

1. The Commission's Rules are blatantly unfair to a lowly residential telephone customer who has sought only enforcement of a tariff under which the Complainant is entitled to relief in an amount of only several hundred dollars; hiring an attorney familiar with all of the Rules of the Commission is economically out of the question. Unlike Missouri Small Claims Court Proceedings, the Commission has never adopted Rules to prevent exactly what is occurring in this case: an all-powerful Respondent with unlimited financial resources and not one, not two, not three, but **four attorney's** of record seeking to overwhelm and to oppress the poor Complainant.

2. Respondent seeks to dismiss claiming that Complainant's Request is "untimely" and cites various Rules, then it states that it Complainant has "extensively argued his objections"--a statement which is not accurate. Third, Respondent states that at a prehearing conference on 13 September 2006 Complainant raised "no new arguments." Complainant is entitled to file a Motion and Request for an Order Nunc Pro Tunc and to ask that this Commission reconsider. The Complainant, acting in good faith, responded to data requests, even data requests which the Respondent already had information within its care, custody, possession, and control about which it egregiously failed to inform the Commission, or withdraw from its Motion to Compel, or to admit not only having the information sought to be compelled, but having furnished it to the Staff in response to one of their data requests! Such conduct should not be condoned by the Commission. The Respondent has consistently acted unfairly and oppressively throughout this

case and, *inter-alia*, having done that, is not entitled to any consideration.

For the foregoing reasons and for the reasons set forth in the *Complainant's Request that the Commission Reconsider its October 12, 2006 order, NUNC PRO TUNC*, (which is incorporated herein by reference as if stated in its entirety), the Complainant requests that the Commission, if it refuses to grant the *Complainant's Motion for Summary Judgment*¹ (after reviewing the record and in spite of the Staff Report's conclusions and recommendations), that it disregard any procedural matters, i.e., Rules, which may not have been strictly adhered to considering the fact that the Complainant is not represented by an attorney, that it recognize and appreciate that it has created by its lack of consideration for a pro-se litigant, a "playing field that is not fair or equitable," and that it consider that even the inclusion of any Rules in a proceeding such as this, should be disregarded in view of the facts of this case. The Commission should not hold a lowly residential telephone exchange customer to the same standard expected of an attorney appearing before the Commission.

Further, the Commission should consider entering orders and adopting Rules and Orders that are fair and equitable to a *pro-se* litigant appearing before it and desiring only fairness and justice in a matter which amounts to no more than several hundred dollars. This Commission should use as its model, the procedures and practices adopted by Missouri Small Claim Courts in matters under \$5,000: no attorneys are permitted, no depositions are allowed, and the *Rules of the Missouri Supreme Court* and *Rules of evidence* are "not applicable, allowed, or applied."

Respectfully,



Complainant

November 7, 2006

Copies faxed to the Public Service Commission,
General Counsel's Office, 573-751-9295;
Lewis R. Mills, Jr., Office of Public Counsel,
573-751-5562, and mailed to the Attorneys for
AT&T Missouri, Respondent.

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¹ —a Motion which the Complainant is absolutely entitled to have sustained if the Commission rules as any Circuit Court judge would rule under the same circumstances and with the same facts presented.