

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

R. Mark,)	
)	
Complainant)	
)	
v.)	Cause No. TC-2006-0354
)	
ATT a/k/a SBC a/k/a Southwestern)	
Bell Telephone Company,)	
Respondent)	

FILED³

NOV 7 2006

Missouri Public
Service Commission

**COMPLAINANT'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS**

Comes now Complainant with *Complainant's Response to Respondent's Motion to Dismiss*, and states:

1. That the Respondent has reached an even lower nadir that previously exhibited in its *Motion to Dismiss for Complainant's Failure to Comply with the Commission's Order*.
2. As Officers of the Court, the attorneys for the Respondent have an ethical obligation to be truthful and to fully disclose all facts applicable. In violation of this ethical duty and responsibility, incredibly the Respondent has now filed a *Motion to Dismiss the Complainant's Complaint*, a lowly residential telephone customer who merely has wanted from the very beginning, compliance with G.E.T. §6.12.6(E) by the Respondent--a Respondent which arbitrarily, capriciously, and irrationally, simply denied the relief to which the Respondent was obviously entitled to receive in November 2003. Even the Commission's own Staff has recommended that the Commission find in favor of the Complainant and that no additional facts would make any difference to the disposition of this case. Yet, the Commission has seen fit to ignore its own professional and independent Staff's recommendations!
3. The Respondent comes to this Commission with unclean hands, to wit: dirty hands, and because of this, **any request of this party should be peremptorily denied**. In June 2006, Complainant filed data requests directed to the Respondent. The Respondent indicated in response to some of them that it "would respond." Others it objected to and these objections are currently the subject of a *Complainant's Motion to Compel*. As of November 6, 2006 the Complainant has received **NOTHING**, absolutely no responses to ANY data requests. This constitutes laches and any court would immediately deny such a Respondent any request for any action or relief under the circumstances.
4. The Respondent is fully aware that because of mail receipt problems, the Complainant did not receive mailings from the Commission. The administrative law judge in this case, after learning of the circumstances and reviewing the file, concluded that the Complainant had not willfully ignored orders, etc. Yet the Respondent states in its paragraph #1: "after approximately five months . . . the Complainant steadfastly refused to respond to *most* (emphasis added) of

ATT's data requests.

5. In good faith and timely, the Complainant DID answer data requests and timely requested that the Commission reconsider others. This is more than the Respondent has ever done! The Complainant answered data requests with regard to name, service and billing address, make, model, and serial number of the fax machine, and the fact that the Complainant did not receive any business income, the latter not even being required, material, or relevant with regard to G.E.T. §6.12.6(e) and which the Complainant and others consider a blatant invasion of privacy, irrelevant, and immaterial to §6.12.6(c). The other data requests were/are subject to Complainant's request that the Commission reconsider *nunc-pro-tunc*!

6. It would be manifestly unfair to hold any Complainant, a mere residential telephone customer, to the standards that the Commission would expect from a cadre of lawyers: not one, not two, not three, but four which the Respondent has in this case. It would be manifestly unfair for the Commission to conclude that the Complainant should not just go out and hire a lawyer in view of the small dollar amount at issue in the Respondent's willful and wanton failure to comply with G.E.T. §6.12.6(E). The Complainant has acted throughout this case in good faith despite the Rules of the Commission which are incredibly "stacked against" a pro-se Complainant and, unlike the Small Claims Courts of Missouri, do not level the playing field, do not bar lawyers, do not bar depositions, and do not expect a litigant to comply with any Rules of the Missouri Supreme Court. The Rules of this Commission do not provide for special consideration when the amount involved is less than \$5,000—as do the Rules relating to Small Claim Court Proceedings. And, the Rules of the Commission even prevent a pro-se Complainant from seeing responses submitted as "highly confidential" merely because the Complainant is not a lawyer or an expert. IS THIS A FAIR WAY FOR THIS COMMISSION TO CONDUCT WHAT PURPORTS TO BE A FAIR, IMPARTIAL, AND EQUITABLE ADMINISTRATIVE BODY?

7. The Respondent has been so unfair that it has failed even to disclose to the Commission that it possessed the Complainant's service and billing information when it served the Complainant with a data requests for the **exact same information**! The Respondent has not and cannot deny it provided to the Staff in response to a Staff data request ALL of the same information it already had within its own care, custody, possession and control! Further, subsequent to the service of the Respondent's data requests, the Complainant submitted two sworn affidavits in support of his Motion for Summary Judgment. Did the Respondent thereafter withdraw its data requests from its Motion to Compel which were directly and specifically answered by these affidavits. NO! NO! NO! Nevertheless, the Respondent included all of the original data requests in those it has sought to "compel" from the Complainant! There is no limit to which this Respondent will go in order to WIN at all costs; sadly, the Commission is unable to recognize this!

8. As indicated, the Commissions Rules do not even allow a *pro-se* Complainant to see any data request responses that are marked "highly confidential." In this case, the Respondent has willfully failed to even furnish ANY responses to ANY data requests in any and all events. How can any Complainant *pro-se* receive a fair adjudication of anything before a Commission with such rules so abysmally skewed against a *pro-se* Complainant with no legal representation?

9. Yet, the Respondent now seeks to cite CSR's to justify that the filing of Complainant's Motion for Reconsideration does not excuse him from complying with a Commission order. Is this fair? NO! A Small Claims court does not allow Missouri Rules of procedure or evidence to be utilized in order to permit any small claims court plaintiff and defendant to receive a fair and impartial hearing. Yet, the Commission has adopted no Rules to the same effect and has allowed this all-powerful Respondent with unlimited financial resources and a plethora of legal talent to be unfair and oppressive at every fork in the road! The all-powerful Respondent with unlimited financial resources and legal talent is a Goliath compared to a lowly residential telephone customer seeking only a few hundred dollars that the Respondent has unjustly, oppressively, irrationally, arbitrarily, and capriciously denied.


10. There has been absolutely no "contumacious refusal" as the Respondent alleges and would like to deliberately mislead the Commission into believing; what there has been has been a manifestly good faith effort on the part of the Complainant to be fair, ethical, prompt, and honest in the Complainant's filings, statements and over a hundred hours expended thus far in this matter. If only the Respondent acted in the same fair, ethical, prompt, and honest way, this case would never have reached this point. If only the Respondent had acted fairly and properly in the first place in November 2003 pursuant to G.E.T. §6.12.6(e) instead of stating what amounts to be a "take it or leave it" attitude, then this matter would not have reached the point where it is today. The Commission's own Staff has determined that nothing would ever satisfy this Respondent and in its Report it has agreed with the Complainant's position and entitlement to a Commission finding in his favor. One would think that this independent opinion would be sufficient for the Commission; however, the Commission has chosen to ignore the professional, thorough, well thought out, and comprehensive discussion of the issues and the facts.

11. If this Commission were to grant the *Respondent's Motion to Dismiss*, it would only serve to demonstrate that it has caved in to the all-powerful Respondent with unlimited financial and legal resources; it would only serve to demonstrate that despite the Respondent's laches, its unclean hands, it will, nevertheless, be successful in obtaining whatever relief it wants from the Commission. Such a decision by the Commission would only demonstrate that it is acceptable for this Commission to penalize a Complainant, even though the amount involved in the Respondent's egregious violation of G.E.T. §6.12.6(E) is only several hundred dollars and one's retaining an attorney would be financially out of the question. If this Commission were to grant the *Respondent's Motion*, it would only serve to embolden this Respondent to continue treating its loyal residential telephone exchange customers with outright and utter contempt--knowing

that each residential telephone customer has no alternative but to accept whatever the Respondent does with regard to the Respondent's willful and wanton failure and refusal to comply with its own filed tariffs; any formal complaint to the Commission would be an exercise in futility!¹

For the foregoing reasons, the least of which is the Respondent's *laches* entitling it to NO consideration of ANY request, Complainant prays that the Commission will immediately and forthwith deny *Respondent's Motion to Dismiss* and will enter such other and further orders as may be found to be fair, just and proper, in the premises.

Respectfully,


Complainant

November 7, 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 Granada View Ct. #C
St. Louis, Missouri 63123

¹ Frankly, the Complainant believes that the Commission should institute rules requiring a full disclosure of all specific facts when a Respondent denies relief under any G.E.T. so that it cannot later claim that it needs to do discovery to find such reasons! Frankly, the Complainant believes that the Commission DOES HAVE the authority to adopt rules which will compensate a prevailing complainant for his time and effort involved in pursuing a legitimate claim--particularly when the Commission's own staff agrees with the Complainant. The Commission needs to adopt rules that provide some teeth so that, never again, is any residential telephone exchange customer subject to the oppression and the harassment that has been exhibited by the Respondent in this case.