

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED<sup>3</sup>

JUN 19 2006

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

Missouri Public  
Service Commission  
Case No. TC-2006-0354

**COMPLAINANT'S SUPPLEMENTAL MOTION IN FURTHER SUPPORT  
OF COMPLAINANT'S PREVIOUSLY-FILED MOTION FOR SUMMARY  
JUDGMENT WITH SUPPLEMENTAL AFFIDAVIT IN SUPPORT**

Comes now Complainant with *Complainant's Supplemental Motion in Further Support of Complainant's previously-filed Motion for Summary Judgment with Supplemental Affidavit in support*

1. That the attached *Supplemental Affidavit* is filed based on the Complainant's just-received information. Based on that information, it is clear that the Respondent intends to harass the Complainant in any and every way possible simply because the Complainant refused to agree to accept Respondent's new, *albeit* insubstantial, Offer of Settlement; this is in addition to the fact that the Complainant had the audacity and temerity to formally challenge the Respondent and its violation of G.E.T. Sec. 6.12.6(E).

2. That Respondent has heretofore set forth **no sworn facts** to the Commission to **refute in any way**, any material fact set forth in *Complainant's Affidavit* attached to *Complainant's Motion for Summary Judgment*, a pleading which focused on, and attested to, all relevant and material facts at issue. The *Complainant's Motion* and supporting affidavit clearly and overwhelmingly indicated Complainant's entitlement to the grant of *Complainant's Motion for Summary Judgment* and at least *some* of the relief requested.

3. That upon information and belief, Complainant believes that the Respondent may now falsely and deceptively allege to the Commission, to cause unnecessary delay and obfuscation, that it cannot respond to *Complainant's Motion for Summary* because it does not have responses to Respondent's Data Requests, totally irrelevant and immaterial data requests that were propounded by Respondent **PRIOR TO** the filing of *Complainant's Affidavit in Support of Complainant's Motion for Summary Judgment*. (See, the examples set forth in *Complainant's Motion for Additional Time* filed contemporaneously with this Motion). As indicated hereinabove, *Complainant's Affidavit in Support* addressed ALL relevant and material facts necessary for the Commission to rule in Complainant's favor on the aforesaid *Complainant's Motion* since there are no material issues of fact to be determined. The

anticipated Respondent's deception and stratagem set forth in this paragraph, if true, is, and would be, reprehensible and should not be allowed or tolerated by the Commission. The Respondent is not entitled to "fish for facts" **it does not have** in order to refute Complainant's unquestioned entitlement to relief and to justify, in some way, its *past refusal*, let alone its *present refusal*, to comply with the waiver of monthly unpublished charges to which the Complainant has been, and is, entitled pursuant to G.E.T. Sec. 6.12.6(E).

4. That the Complainant further believes that Respondent intends, nevertheless, for the purpose of harassment, and harassment alone because the Complainant refused to accept its current insubstantial Offer of Settlement, to indicate to the Commission (based on Respondent's desperation in addition to pure and unadulterated *speculation* and *conjecture*), that not only is Complainant's appearance necessary at any forthcoming Commission hearing, but also that the Complainant's deposition is "necessary." (Note: The Commission is aware that this case involves a small amount of money on its face: the monthly charges billed by Respondent for unpublished service since November 2003 plus interest and future unpublished charges relating to the Complainant's use of his P.O.T.S. line for data with no voice use contemplated).<sup>1</sup>

5. That the Complainant believes that the Respondent regards the Missouri Public Service Commission and its members as "paper tigers," a Commission with members lacking any power, independence, or initiative, and which is unwilling, and/or unable, to do anything other than to abide by the Respondent's wishes and dictates in this State. It appears that the Respondent fully expects the Commission to arbitrarily deny *Complainant's Motion for Summary Judgment*, notwithstanding *Complainant's Affidavit in Support* and *Supplemental Affidavit in Support* attached hereto, and despite the Complainant's *clear legal entitlement* to the grant of Complainant's *Motion*.

6. That the Complainant herein requests, *albeit* implores, the Commission not to allow the Respondent to harass the Complainant based on nothing more than *mere* speculation and conjecture! Such harassment by the Respondent, if allowed by the Commission, will dissuade any aggrieved Missouri citizen from filing a legitimate complaint requesting enforcement by the Commission of its tariffs; it will further encourage and condone the continued and willful violation of the Commission's tariffs by the Respondent.

7. That upon information and belief, Complainant believes that the Respondent will now, further, in desperation--since the facts are against it and the law is against it, allege that the Complainant "might have" or "could have" used the data terminal (fax machine) connected to the

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<sup>1</sup> It is the understanding of the Complainant that the Respondent has now threatened, upon information and belief, that if the Complainant does not accept Respondent's insubstantial current Offer of Settlement, it intends to not only require the Respondent to appear at any forthcoming Commission hearing, but it is also going to require the Complainant to be deposed at a deposition (this, *even though* there is no material issue of fact to be determined and such would serve no useful purpose other than manifest harassment of the Complainant and further, is a manifest waste of thousands and thousands of dollars of legal resources and Respondent, ATT's, corporate assets--all to the **substantial** detriment of ATT's own stockholders!)

complainant's P.O.T.S. residential telephone line, *for business*! This, after the Complainant has soundly refuted in Complainant's previously-filed affidavit in support any insinuation that the Complainant's data terminal, (fax machine), is ~~not~~ a computer--*as if*, such would make any difference under G.E.T. Sec 6.12.6(E)!

8. That attached hereto is the *Complainant's Supplement Affidavit in further Support of Complainant's Motion for Summary Judgment*. This Affidavit confirms that the fax machine in question has not been used in, or for, any business enterprise despite the fact that, *arguendo*, any use of a fax machine: a data terminal, used *even for* or in connection with a business enterprise, would not preclude the Complainant from relief from ~~of~~ a monthly unpublished service charge by the Respondent under G.E.T. Sec. 6.12.6(E). [**AND**, noteworthy, to the contrary, *Arguendo*, if a data terminal were used **for** and in conjunction with, a business enterprise, the telephone customer would **WANT** to have the telephone customer's fax telephone number published in order to promote and to enhance the telephone customer's business!]

**WHEREFORE**, Respondent prays that the Commission will determine, (if the Respondent proffers no affidavit containing material facts in opposition to refute the *Complainant's Affidavit*, and *Supplemental Affidavit*), that there are no material issues of fact to be determined and that the Complainant is entitled to relief. Respondent prays that the Commission will not be beguiled, misled, intimidated, or led astray by Respondent's "red herrings" (i.e., fax machine or computer, personal use or business use of the data terminal), its utilization of not one, not two, not three, but four attorneys to oppose the Complainant on a simple, straight-forward, and crystal clear issue (to wit, a data terminal **and** no voice use anticipated is entitled to no unpublished monthly charge); and its overwhelming legal and financial power and determination to "win" at all costs, even to the substantial and overwhelming financial detriment of its own AT&T stockholders.<sup>2</sup> Respondent further prays that the Commission will not allowed the Respondent to harass the Complainant based merely on Respondent's *speculation* and *conjecture*, **And**, the Complainant additionally prays for such other and further orders as the Commission in its wisdom may find to be just and proper in the premises.

Respectfully,

  
Complainant

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 Gravois View Ct. #C  
St. Louis, Missouri 63123

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<sup>2</sup> The value of ATTs legal resources for four attorneys in this case, alone, is estimated to be thousands of dollars.

State of Missouri     )  
                                  ) ss:  
County of St. Louis    )

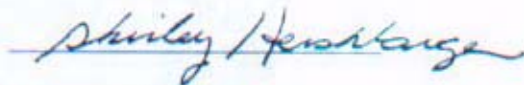
**SUPPLEMENTAL  
AFFIDAVIT OF COMPLAINANT  
R. MARK, IN SUPPORT OF COMPLAINANT'S  
MOTION FOR SUMMARY JUDGMENT**

Comes now the undersigned affiant and after being duly sworn, under oath, deposes and states;

1. That I am the Complainant in Case No. TC-2006-03254.
2. That the data terminal used from November 1, 2003 to the present on the P.O.T.S. residential line which is the subject of the Complaint has not been used by the Complainant for the conduction of **any** business enterprise and ~~have~~ been personal in nature.
3. That the undersigned Complainant has earned no income from the use of said fax machine in **any** business enterprise.

  
\_\_\_\_\_  
Complainant/Affiant

Subscribed and sworn to before  
me on this 15th day of June, 2006.



My commission expires:

