

FILED³

MAY 25 2006

NOTE

Missouri Public
Service Commission

Complainant's Response and Objections to Respondent's Motion to Strike will be filed on or before May 31, 2006 pursuant to the grant of additional time granted by the Commission for such filing.

In the interim, attached is: Complainant's **MOTION FOR SUMMARY JUDGMENT and Affidavit in Support Attached and Complainant's MOTION TO SUSPEND ALL DISCOVERY UNTIL DISPOSITION OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT.**

R. Mark,

Complainant

v.

ATT a/k/a SBC a/k/a Southwestern Bell Telephone Company,

Respondent

No. TC-2006-0354

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED³

MAY 25 2006

Missouri Public
Service Commission

R. MARK,

Complainant

v.

Case No. TC-2006-0354

ATT a/k/a SBC a/k/a Southwestern
Bell Telephone Company,

Respondent

COMPLAINANT'S MOTION TO SUSPEND ALL
DISCOVERY UNTIL DISPOSITION OF
COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

Comes now Complainant with COMPLAINANT'S MOTION TO SUSPEND ALL
DISCOVERY UNTIL DISPOSITION OF COMPLAINANT'S MOTION FOR SUMMARY
JUDGMENT by the Commission, and states:

1. That Complainant has just received from the Respondent, not by mail as authorized, but by an unauthorized and unrequested mode of delivery, **voluminous and multiple data requests**, DRs.

2. That such multiple and voluminous data requests include, *inter-alia*, a request for the serial number of the Complainant's fax machine, the employment of the Complainant and dates of employment, title, position, job responsibilities, dates, information on services to any other with compensation, the nature and type of messages received on Complainant's fax machine, the "principal purpose" of the messages originated by and/or received by the fax machine of Complainant, information about cellular telephone service (re: opinion of Complainant indicated in the Complaint's footnote relating to Respondent ATT's Cingular cellular service), etc., etc..

3. That the multiple and voluminous narrative requests, preliminary, are substantially frivolous and propounded solely and overwhelmingly for the purpose of harassment and oppression of the Complainant as "pay back" retribution for the Complainant's audacity in merely filing a formal complaint to this Commission, in desperation, because of Respondent's flagrant violation of G.E.T. §6.12.6(E) when Complainant refused to accept a pittance settlement and further refused to agree that the Respondent could thereafter continue to violate §6.12.6(E) and could continue to charge Complainant unlawfully for monthly unpublished service. It is further retributive "pay back" for the Complainant's bringing to the Missouri Public Service Commission's attention and to the attention of the general public, the fact that this **same** Respondent, ATT, while charging Missouri residential customers \$2.49/month for unpublished service, charges California residential customers only \$.28 for the **same** unpublished service and

further, Respondent's wireless division, *Cingular*, charges **NO MONTHLY CHARGE** to Missouri wireless telephone line customers for unpublished service.

4. That said multiple and voluminous narrative DR requests propounded by Respondent, preliminarily, amount to no more than a fishing expedition on the part of the Respondent which, without legal or factual justification, repeatedly denied relief, (from 2003 to the present), to Complainant, despite said party's overwhelming lawful entitlement thereto pursuant to G.E.T. §6.12.6(E), to wit: cessation of unpublished monthly charges since a data terminal was being used **and** no voice use was contemplated by Respondent.

5. That the Respondent admits in its pleadings filed by its FOUR attorneys of record (*See, RESPONDENT'S MOTION TO STRIKE*), that the Commission has no authority to consider the award of damages or to grant equitable relief (citations omitted), etc. The voluminous and multiple requests for DRs filed by Respondent's attorneys cannot conceivably assist the Commission in determining **whether or not** the Respondent violated G.E.T. 6.12.6(E) when it arbitrarily and capriciously refused to discontinue monthly charges in accordance with §6.12.6(E) after the Complainant advised Respondent in 2003 that Complainant was using a data terminal and that no further voice use was contemplated for the P.O.T.S.. The Commission's General Exchange tariff at issue requires *nothing more than a statement by a utility customer* as to the facts at issue, to wit: **a data terminal is being used and no voice use is contemplated; NOTHING MORE!**

6. That all relevant and material questions have been answered in the AFFIDAVIT OF COMPLAINANT (filed *subsequent* to the DRs propounded by Respondent), which has been attached to the COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT. Said MOTION and AFFIDAVIT are incorporated herein by reference as if stated in their entirety.

7. That in the event that the Commission grants COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT, there would be no point in requiring even a response by Complainant to the multiple and voluminous DRs filed by Respondent; a grant of Complainant's MOTION would render any requirement to respond, moot.

8. That there will be no prejudice to the Respondent by the grant of the twenty (20) day extension of time requested, following the disposition by the Commission of the COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT.

WHEREFORE, Complainant prays that the Missouri Public Service Commission order that the time for response to all of Respondent's DRs propounded to Complainant be suspended until *at least* twenty (20) days following the Commission's final disposition of the COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT and for such other and further orders as may be found to be just and proper in the premises.

Respectfully,

Complainant