BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

R. MARK, Complainant	)	
v.	)	Case No. TC-2006-0354
Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri Respondent	)	

COMPLAINT'S RESPONSE TO ATT'S a/k/a SW BELL'S COMBINED MOTION TO COMPEL, OPPOSITION TO COMPLAINANT'S MOTION TO EXTEND TIME, AND MOTION TO EXTEND TIME TO RESPOND TO COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

Comes now Complainant and states in response to the combined filing of the Respondent, the following:

The Complainant filed a *Motion for Summary Judgment with Affidavit* attached and a *Supplemental Affidavit*; these documents clearly entitle the Complainant to judgment, to wit: a favorable Commission decision relating to Complainant's entitlement, since November 2003 through the present and thereafter, for relief, *inter-alia*, from unpublished line monthly charges (with interest applicable to past improper charges). The Respondent's billed charges have been without reason, basis, or just cause. They have been, and are, arbitrary and have been applied capriciously.

G.E.T. Tariff, Sec. 6.12.6(E) is clear. Statutory interpretation proscribes that one **not look any further** than *the words* of the tariff (statute) if those words are unambiguous and the tariff (statute) is capable of being understood on its face. One who uses a "data terminal" where "no voice use is contemplated" is entitled to a waiver of monthly unpublished charges, **PERIOD!** Nothing more, nothing less! The tariff does not say or imply that it is limited to stand-alone TTY or TDD equipment, (or, for that matter a computer which has a software program to make it *equivalent to* a stand-alone TTY or TDD), or a stand-alone fax machine or a computer with a program designed for the sending/reception of faxes.

Nevertheless, the Respondent has made deliberate attempts to mislead the Staff and "put one over" on the Commission by naming specific devices in its responses to Staff data *requests!* Those responses to the extent they seek to mislead with the naming of two specific devices, should be ignored. The tariff (statute) **must** be interpreted by its words **alone** since they are crystal clear and unambiguous.

G.E.T. Sec. 6.12.6(E) says what it means and means what it says as to the two factual matters, to wit: "data terminal" and "no voice use contemplated." These two requirements, and only these two requirements, are necessary. Further, there would be no legitimate reason for a residential customer to *want* to have a data terminal, whether fax or a computer with software exclusively installed for the transmission/reception of data, i.e., faxes or text, to have such a telephone number published. It would simply "clog up the telephone

directory assistance system" and telephone directories with listed telephone numbers that did not enable voice communications. (Incidentally, even TTY or TDD can be sent/received on a computer with appropriate software! A rose is a rose is a rose; a data terminal is a data terminal is a data terminal! There is no other way to interpret the word "data terminal!"

The Complainant referred to an Illinois U.S. District Court decision in *Complainant's Motion for Summary Judgment*. That case is incorporated herein as if cited in its entirety. The U.S. District Court in that case held, *inter-alia*, a telephone line is capable of two types of transmissions: data and voice. It can be used exclusively for one or the other or both, simultaneously or sequentially.

In the Staff's data request #1 to the Respondent, the Respondent was asked for the "criteria used by ATT to determine if a customer qualifies for a waiver of the monthly rate for non-published number service if the customer's service involves a data terminals where there is no voice use contemplated. Respondent, ATT's response: "The rate for non-published exchange service is waived when a customer self-identifies as a user of . . . (a data terminal).[1]" The Respondent further stated in response: "No documentation is required to be provided by the customer."

Why, then, in November 2003 and thereafter, when the Complainant contacted ATT (f/k/a SBC), and indicated that the Complainant no longer was using the P.O.T.S. residential line for voice and that it would be used exclusively with a data terminal, a fax machine, and that "no voice use was further contemplated" did the Respondent refuse to abide by G.E.T. Sec. 6.12.6(E)? The answer is simple: M-O-N-E-Y! The Respondent is motivated by greed and avarice; by its actions, past and present, it is obvious to the public that Respondent desires to "milk" Missouri telephone residential customers for every penny the Respondent can extract--whether such "milking" is legitimate or not, whether such is logical or not, or whether such unconscionable and exorbitant charges have any basis or not related to the Respondent's actual cost for providing such service!

Arguendo, if the $ .28 for unpublished residential service in California charged by ATT, the same Respondent in this case, is even appropriate (since Respondent with its *Cingular* cell phone service charges its wireless customers, $0.00, nothing/month for unpublished service), why is it charging Missouri customer's $2.49 every month for the SAME unpublished service?

The history of this case indicates that the Complainant has tried on multiple occasions, in November 2003 and thereafter, to simply persuade the Respondent to stop charging its monthly unpublished monthly charge. Several requests were made of the Respondent, all to no avail! In February 2004, Complainant received a letter attached, **Exhibit A**, from Respondent's General Counsel for Missouri/Kansas. Attached to the Complainant's initial letter to said Respondent's General Counsel were numbered statements,

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[1] ". . . of TTY equipment (Teletypewriter or Text telephone) or TDD equipment (Telecommunications Device for the Deaf)." ***Note: The Respondent attempted to "put one over" on the Staff by inserting in its response, "TTY equipment" and "TDD equipment." Nowhere are these terms found in G.E.T. §6.12.6(E). No user is required to state such specific equipment in a request for waiver of unpublished charges, only that the user has a "data terminal." "Data Terminal" is consistent with the requirement of the tariff. It should further be noted that teletypewriters are outmoded, today a computer with a suitable software program substitutes for a "teletypewriter" and TDD equipment may be a computer with a software program for converting data signals to text for the deaf.***

Exhibit B, which the Complainant requested that the Respondent acknowledge, i.e., that on November 1, 2003 the Complainant advised Respondent of the fax machine (data terminal) and that no further voice use contemplated, that the Respondent has residential service with the Respondent, that the Complainant requested that non-published monthly charges cease effective November 2003, etc.

Respondent arbitrarily and capriciously refused to discontinue the unpublished monthly charge! It, by its General Counsel Mo/KS, refused ***even to give any reasons, legal or factual,*** other than said counsel's "belief" that the charges were "appropriately charged!" Is not a customer entitled to a reason when a utility refuses to comply with a tariff in Missouri? The G.C. would not even admit #9 of the stipulation of facts: the existence of G.E.T. §6.12.6(E) and a verbatim recitation of that tariff! The February 2004 letter from the G.C. indicated that "SBC would present its position fully!" Where is that "full position" presented? When are we to hear it? Respondent has not stated it to the Commission or to the Complainant? Why? The reason is that Respondent's position is not rational and there is no basis in fact for its blatant disregard of the tariff!. Respondent has no position other than it cannot bear to lose even a $1 of income, it simply could care less if it is denying a customer's legitimate right to relief and is blatantly violating a Missouri tariff, to wit: G.E.T. §6.12.6(E)! It has nothing to lose and everything to gain!

Instead, Respondent has propounded voluminous, multi-faceted, data requests to the Complainant including, but not limited to, requesting information it **already has** in its records: i.e., the Complainant's name, address, and telephone number! It has already admitted **and provided** this **same information** to Staff in response to a Staff data request! Nevertheless, it propounded this frivolous data request to the Complaint! It further propounded to the Complainant, *inter-alia*, a request for the name of the fax machine manufacturer and the serial number of the fax machine and the "nature" of messages sent on Complainant's fax machine, and the Complainant's employment! Why? The answer is again simple: harassment--pure harassment, and a misguided attempt to oppressively invade the privacy of the Complainant and to burden the Complainant with voluminous, irrelevant, and immaterial data requests. Respondent's intent has been to overwhelm the Complainant and to force an unfair and unequitable "settlement!"

It is VERY SIGNIFICANT that the Respondent, in response to a Staff data request, indicated that ***nothing more*** than a customer's orally indicating to the Respondent that the customer is using a data terminal and that no further voice use is contemplated is necessary **in order for a customer to obtain a waiver of the Respondent's non-published monthly residential charges!** Why then does the Respondent now burden this Complainant with irrelevant, immaterial, and invasive data requests *not even remotely related* to the tariff when, by Respondent's own admission to Staff, only the oral statement of the customer that the residential telephone line (P.O.T.S.) is being used with a data terminal and that no further voice use is contemplated is otherwise sufficient for relief from a monthly unpublished line charge?

The Complainant has set forth to the Commission, by sworn affidavit, the fact that since November 2003, the Complainant's data terminal, a stand-alone fax machine, has been used on the Complainant's P.O.T.S. line. The Complainant has set forth by sworn affidavit that not only was no voice use contemplated in November 2003, but none has been applicable on the telephone line since that date. Further, the Complainant went further by affidavit the Complainant has sworn to the fact that there was no computer on the telephone line and that the telephone line was not used in any way for any business enterprise. [It

should be noted that a computer could be used in lieu of a fax machine with suitable software--such really, in any event, would make no legal difference].

Nevertheless, the Respondent continues to harass the Complainant (**subsequent** to the filing of *Complainant's Motion for Summary Judgment*), by now requesting an order to compel responses from the Complainant; this, despite Complainant's ill health; this, despite the fact that the Respondent's DRs are obviously, blatantly, and totally irrelevant and material, and this, despite the fact that no response to any of the immaterial and irrelevant DRs could conceivably, to any reasonable man, have any merit related to G.E.T. §6.12.6(E)!

Complainant's response that the Respondent "needs" any of these data requests responded to **in order to** respond to the *Complainant's Motion for Summary Judgment* can be set forth in one word: *Poppycock*! The Respondent admits in responses to the Staff's DRs (incorporated herein by reference as if fully set forth), that it has no way to verify whether the customer has a data terminal, i.e., a fax machine, computer, etc. or even whether the telephone line is used exclusively for data or not. It cannot verify a customer's representations, by Respondent's own admission to the Staff. The serial number of the Complainant's fax machine, the model #, and the "nature of the faxes" received/transmitted by the Complainant do not relate to **ANY** issue in this case! The Respondent, further, has failed in its Motions to **show cause** how, or in what way, the irrelevant and immaterial data requests propounded to the Complainant *could possibly refute the material facts* recited in the Complainant's affidavits.

This case is a prime example of pure and unadulterated harassment and an attempt to invade a Complainant's privacy by a utility with unlimited financial resources and which is driven by greed and avarice--the Respondent well knows that no Missouri agency or entity in this state will do anything about its reprehensible and unacceptable conduct! It also knows that the Commission has never even adopted any provision entitling a **Complainant** to sanctions against a Respondent for a Respondent's blatant and irresponsible disregard of a tariff, but it **has adopted** a provision related to a frivolous filing **by a Complainant!**

The Commission's own Staff would be the first to admit that the Respondent maintains basic telephone service in Missouri as low as possible. Thereafter, it gauges the Missouri telephone public by forever increasing, without limitation, its "other" incidental and ancillary charges.

Respondent even gauges its own AT&T stockholders by assigning four attorneys (at a probable cost of thousands of dollars in legal time/salaries), to this case, a case involving only several hundred dollars! The pleadings in this case are now measured, not in ounces, but in pounds of pleadings, research, and correspondence! The Respondent's legislative lobby is so effective in Jefferson City that it has succeeded in even reducing the financial resources allowed to the Missouri Public Counsel's office--an office that was set up to represent the Missouri utility consumer; the Public Counsel's Office has been rendered ineffective and impotent. The Respondent has succeeded in having legislation passed that permits it to charge anything it wants and, despite its representations to the contrary, Respondent ***effectively has a monopoly control of telephone service*** in this state! The Commission has not done, and cannot do, anything about the fact that in California (*admitted* by the Respondent in response to a data request from the Staff), California residents pay only $ .28/month for unpublished residential telephone service yet in Missouri, Respondent gauges the

Missouri public for $2.49/month. For what? **The identical unpublished service is provided by the Respondent in California and in Missouri!** At the same time, Respondent's Missouri *Cingular* telephone service provides customers with unpublished service for **NOTHING!**

It is amazing that ATT&T stockholders have not yet filed a plethora of derivative action law suits against ATT management's outrageous, unconscionable, and frivolous waste of corporate assets, i.e., its legal department expenditures for four attorneys of record in this case, alone! No doubt thousands of dollars have been wasted in salaries for the Respondent's four attorneys of record in this case alone–a case involving only several hundred dollars in past unpublished charges, interest thereon, and monthly unpublished monthly charges in the future. AND, this case is one in which the Respondent has no factual or legal defense; it has been unable to proffer any factual or legal reason for its blatant failure to abide by G.E.T. §6.12.6(E)!

The Respondent, instead of responding fairly, appropriately, and reasonably to the Complainant by a loyal telephone customer of Respondent since 1971, in November 2003 through the present has provided no legal or factual reasons why the Complainant is not entitled to a waiver of monthly unpublished service pursuant to G.E.T. § 6.12.6(E)! Instead, it seeks to harass and to invade Complainant's privacy with a plethora of irrelevant and immaterial data requests. This is not surprising since Respondent has, apparently, infinite legal financial resources and no Missouri statutory restraints or oversight!

Although the Commission has adopted a provision relating to frivolous complainants filed by a complainant, where is a similar provision reimbursing a Complainant or penalizing a Respondent utility if a Missouri utility files a frivolous response and improperly denies relief to which a complainant is entitled to under a General Exchange Tariff? Where is the fairness of that? Missouri civil case laws provide that the "prevailing party," for example and in particular cases, are entitled to attorney fees; why has not the Commission adopted similar provisions for its tariffs and the enforcement thereof? Would not such, in some small way, prevent or impede a Respondent, as in the instant case, from continuing to take advantage of an "insignificant" residential customer such as the Complainant?

The Respondent knows that the Missouri business community would never tolerate a monthly charge for unpublished service for a business telephone line and such a community has the financial resources and clout to mount a formidable opposition; therefore, Respondent seeks to gauge the poor, independent, and powerless Missouri residential customer with as much as Respondent can get away with charging! There is no rhyme or reason why the Respondent, ATT, charges its Cingular telephone customers *nothing* for an unpublished line, yet it charges its land-based customers, $2.49/month! There is no rhyme or reason why the Respondent, ATT, charges its California residential telephone service customers only $ .28/month yet it charges, for the same unpublished residential telephone line in Missouri, $2.49/month! Just across the river in Illinois, Respondent charges Illinois telephone customers less than half of what Missouri telephone customers pay: $1.20; geography has nothing to do with the Respondent charging as much as it believes it can get away with and whatever the "market will bear!" The rates charged are facts that the Respondent has ***admitted*** to in its responses to Staff's data requests.

California's telephone customers are fortunate, they will not permit the greed and avarice of the Respondent to run amok as is the case in Missouri. If there were some difference between Respondent's

unpublished service in California compared to Missouri or compared to its cellular service, such "might" be explainable. **BUT, THERE IS NOT!**

The Respondent, in its most recent pleading, conjectures and speculates that the Commission delayed a ruling on *Complainant's Motion for Summary judgment* in order to provide Respondent time to receive responses from its (irrelevant and immaterial) data requests to the Complainant. One would hope that such were not the reason for the Commission's delay. One would hope that the true reason for the delay was so that the Commission could have the benefit of its Staff's Report which is currently due on or before June 30, 2006.

The name of the manufacturer of the Complainant's data terminal, to wit: fax machine, its serial number, and the "nature" of the faxes sent/ received by the Complainant are, *inter-alia,* totally irrelevant and immaterial to ANYTHING! The Respondent knows this, yet it still propounded these data requests and now seeks enforcement by its Motion to Compel! The Complainant has serious medical problems as indicated in the request for an extension of 30 days and is entitled, as a matter of Commission discretion, to the additional time requested. In the interim, Complainant believes that the Commission, after receiving its Staff report on or before June 30, and after considering and reviewing the irrelevant and immaterial nature of the DR's propounded by the Respondent to the Complainant, ***could consider and grant*** the *Complainant's Motion for Summary Judgment*. After all, as a mater of law, Complainant **is entitled** to the grant of the Motion!

Once again, the wording of G.E.T. §6.12.6(E) is clear and unambiguous; by the Respondent's own admission to one of the Staff's data requests, the only representation to the Respondent that is required of a telephone customer for relief pursuant to this tariff is that the customer orally advise the Respondent that the telephone line is being used with a "data terminal" and that "no further voice use is contemplated." **There are no other tariff requirements!** There are no conceivable facts which have heretofore not been provided in the Complainant's Affidavits which *could or would* **conceivably** allow the Respondent to rebut the material facts set forth in the Complainant's affidavits! If there are any, the Respondent certainly has not seen fit to provide them to the Complainant since November 2003 or to the Commission in this case!

The Supreme Court of Missouri in *Rice v. Hodap*, 919 SW2d 240 (1996) at page #6 opined: "Summary judgment is appropriate where there are no genuine issues of material fact." Our Supreme Court further opined: "'Genuine' for summary judgment purposes, implies that the issue, or dispute, **must be a real and substantial** one—one consisting, **not merely of conjecture, theory and possibilities,**" citing *ITT Commercial Finance v. Mid-America Marine*, 854 S.W.2d 371, 376 (Mo. banc 1993). (emphasis added)

The Complainant vigorously opposes ATT's (a/k/a Southwestern Bell Telephone's), combined Motion to Compel responses to data requests and its opposition to an extension of time to the Respondent for medical reasons. Complainant opposes, for the reasons set forth above, the grant of further time to the Complainant to provide a response to *Complainant's Motion for Summary Judgment*; it is time for the Respondent to either state facts in opposition under oath or to simply acknowledge and admit that there are *no material issues of fact to be determined* in this case--fishing expeditions are not appropriate! The Complainant further opposes the grant by the Commission to the Respondent of any additional time to respond to *Complainant's Motion for Summary Judgment, inter-alia*, because Complainant has failed to show

"good cause" for said extension along with how, and in what way, *any responses* to the Respondent's data requests by the Complainant would make *any difference* related to the two essential facts required under G.E.T. §6.12.6(E) and the material undisputed facts recited in Complainant's affidavits: "data terminal" and "no voice use is contemplated." **No amount of time provided to Respondent**, would or could **EVER** provide the Respondent with facts to justify, in any way, that there are issues of material fact to be decided. No amount of time provided to Respondent, no manufacture's name, no serial number, no information about the "nature" of faxes sent/received, would or could justify a delay in the Commission's granting the *Complainant's Motion for Summary Judgment*. The Respondent's Motion for Extension of time to respond to *Complainant's Motion for Summary Judgment* is not well taken; it is sought only for the purpose of delay, and is manifestly frivolous! AND FURTHER, the Respondent has, as indicated, stated no "good cause," no specific reasons to indicate that any further time would reasonably enable the Respondent to respond with any disputed material facts.

Complainant prays that the Commission, in its wisdom, will see through the Respondent's subterfuges, its attempts to imply that the G.E.T. Sec. 6.12.6(E) says something or implies something (i.e., specific devices) other than what it *clearly* indicates ***on its face***, to wit "data terminal" (the tariff properly does not define a "data terminal" as a TTY, a TDD, a computer, a fax machine,[2] etc., nor is such necessary or desirable). Respondent unfairly has attempted, and is attempting, merely to delay and to obfuscate at every turn of this case as it has done since November 2003 when Complainant first sought only what the Complainant was entitled to receive under G.E.T. §6.12.6(E): future unpublished charges waived because of lawful entitlement pursuant the tariff.

Respondent continues to set forth only conjecture, theory, and possibilities instead of facts! In almost a month, it has filed no affidavit disputing the Complainant's facts to indicate that there are, in fact, material issues of fact to be determined. Why? Because it cannot! Why else would the Respondent tell the Staff of the Commission to inform the Complainant that if the Complainant did not agree to Respondent's new, *albeit* insubstantial, settlement offer, it, Respondent, was going to force the Complainant to appear at any hearing and Complainant would also be required to appear at a deposition? **The message was clear: either accept our terms or we will harass you!** Harassment and oppression is the Respondent's tactic of choice! Respondent's desperation is fully apparent: the facts are against the Respondent and the law is against the Respondent! Therefore, it has decided upon harassment, intimidation, and oppression in order to attempt to overwhelm the Complainant with Respondent's power, authority, and unlimited financial resources to litigate until "the cows come home!"

To the extent that it is able to do so, the Commission should not allow or condone the oppressive and unconscionable conduct exhibited by the Respondent. The Respondent has set forth to this Commission nothing more than conjecture, theory, and possibilities, **if anything!** No reasonable person could conclude that, even with responses to the serial number of the Complainant's fax machine, the name of the manufacturer, and even the knowledge of the "nature" of faxes sent and received by the Complainant, would

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[2] The Respondent deliberately attempted to mislead and to attempt to "put one over on" the Staff by inserting specific devices in its responses despite the fact that the Tariff clearly and simply says: "data terminal."

the Respondent ever have ***any*** facts, material facts, to refute the material facts set forth in the Complainant's affidavits. It should be fully apparent to the Commission that nothing will legally bar the entitlement of the Complainant to the grant of *Complainant's Motion for Summary Judgment.* The Respondent knows this; the Commission should realize this.

As an aside, the Commission should recognize and should take the opportunity to opine that G.E.T. §6.12.6(E) is just as applicable and appropriate today as it was on the day it was filed and approved. A "data terminal" **can now be** a computer with a software program to enable the deaf to read the text from the data received on the computer's monitor, it **can be** a stand-alone TTY, (teletypewriter or text telephone), it **can be** a stand-alone TDD device (Telecommunications Device for the Deaf) **or** it **can now be** a computer with a suitable TDD software program, it **can be** a fax machine, it **can now be** a computer with a software program and printer to send and receive data in the way of faxes, it **can be** a stand-alone fax machine, etc. A data terminal is, was, and can be ***ANY DEVICE*** for the **reception/transmission of data!** The use of such a device ***plus*** a telephone customer's oral representation to a telephone utility that "no further voice use is contemplated" has always been, and continues to be, the criteria for waiver of non-published monthly residential service charges. This is what the Respondent's admission to the Staff basically confirmed. The *sine-qua-non* is that "no voice use is contemplated!"

The Commission should deny the *Respondent's Combined Motions* and should, as soon as it receives its Staff's report on or before June 30, 2006, grant the *Complainant's Motion for Summary Judgment* and grant as much as is within the Commission's jurisdiction allows of the Complainant's prayer. Further, as indicated hereinabove, it should take the opportunity to opine that a data terminal can be a computer (with applicable software) or a stand-alone device. As long as the customer represents that there is "no voice use contemplated," a residential telephone customer is entitled to immediate relief from any monthly charge for unpublished residential telephone line service.

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,.

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ADDENDUM:

EXHIBIT "C" from Respondent's own legal counsel dated January 31, 2006, admits that this case is one of ***LEGAL STATUTORY INTERPRETATION***. This case involves a matter of law, **NOT** one of disputed material facts; "Exhibit C" supports Complainant's contention that the voluminous, irrelevant, and immaterial data requests propounded to Complainant from Respondent are ***solely*** for the purpose of harassment and invasion of privacy--and are frivolous. Any contention of Respondent that responses are necessary are disingenuous and frivolous and not well taken.

This case is **NOT** one of disputed material facts! Respondent's own senior counsel in Missouri states in Exhibit C that the Respondent believes that **"Section 6.12.6(E) does not provide for the waiver of the charge for residence non-published service when a customer intends to use the line for either internet or facsimile purpose."**

There are no material facts to be determined by the Commission in this case, only a question, if any, of law, to wit: Does "data terminal" in the normal and customary sense of the words include any device (terminal) for the reception of data, (as opposed to voice), to wit: computers (with appropriate software for TTD, TTY, text to speech, etc.) and facsimile machines (as well as computers with software used exclusively for the receipt and transmission of facsimiles)?

The question has been answered by the Illinois U.S. District Court case cited by the Complainant in *Complainant's Motion for Summary Judgment* and incorporated herein. A data terminal is any device that is used for data, non-voice communication.

Paul G. Lane
General Counsel – Missouri/Kansas

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A

February 20, 2004

Mr. Richard Mark

In re: Section 6.12.6(E) of Southwestern Bell Telephone, L.P.'s General Exchange Tariff

Dear Mr. Mark:

This is in response to your request that Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") exempt you from the application of the provisions of our General Exchange Tariff assessing a charge for customers desiring non-published service on the basis that your local exchange line is being utilized only for facsimile communications. I have reviewed the tariff and continue to believe that the charge is properly assessed. I have also reviewed your proposed stipulation of facts, which presumably has been prepared in the event you choose to pursue litigation of some sort. If you decide to pursue a litigation alternative, SBC would present its position fully and would not agree to the proposed stipulation.

While SBC Missouri continues to believe that the charge for non-published service is appropriately assessed, I am willing to propose a settlement of the dispute. SBC Missouri would make a $50 one-time credit to your account while the non-published number charge would continue to apply both retroactively and prospectively. If you are willing to resolve the matter on this basis, please indicate below by signing and returning the executed agreement to me.

I hope this proposed settlement is satisfactory, but if not, you are certainly free to pursue whatever complaint or litigation alternatives you may have.

Very truly yours,

Paul G. Lane
General Counsel-MO/KS

I have reviewed the proposed settlement agreement described above and accept it in full and complete satisfaction of the dispute with SBC Missouri concerning Section 6.12.6(E) of the General Exchange Tariff.

_____
Richard Mark

Date: _____

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STIPULATION BETWEEN COMPLAINANT AND RESPONDENT RELATING TO THE APPLICATION OF P.S.C. 35, General Exchange Tariff Section 6, 15th Revised Sheet 11.

1. The Complainant subscribes to a (P.O.T.S.) residential telephone line within St. Louis Missouri from the Respondent.

2. That the Complainant has heretofore paid a monthly charge to the Respondent for unpublished telephone service for the aforesaid Complainant's residential line in accordance with G.E.T. 6.12.4, 15th Revised, Sheet 11.

3 That a computer is a terminal for the reception and/or transmission of data.

4. That a fax machine is a terminal for the reception and/or transmission of data.

5. That on or about November 1, 2003, the Complainant advised the Respondent that the Respondent had placed a fax machine data terminal on the telephone line for the transmission and reception of fax, non-voice data. The Complainant also advised that the residential telephone line might be also used for a computer terminal utilizing a dial-up internet data connection.

6. That in the aforesaid conversation occurring on or about November 1, 2003, the Complainant also advised the Respondent that no further voice use was contemplated for the aforesaid P.O.T.S. residential line.[2]

7. That in accordance with Sec. 6.12.6(E) of Southwestern Bell Telephone's General Exchange Tariff, Complainant requested that Respondent discontinue any further non-published monthly billing charge, effective as of the date of the Complainant's notification, for the Complainant's non-published residential exchange service.

8. That the Respondent refused to discontinue the monthly charge charged for the Complainant's non-published residential exchange service.

9. That the parties agree and stipulate that Section 6.12 of SBT's General Exchange Tariff states the following with regard to the nonpublished monthly rate not applying, to wit: $2.14 per month (§6.12.4), for residential service when:

> 6.12.6(E): *"E. When a customer who has service which involves data terminals where there is no voice use contemplated."*

10. That the Respondent advised Complainant on or about January 28, 2004 that Respondent does "not agree" that Section 6.12.6(E) provides that the charge for nonpublished Exchange Service shall be waived for residential non-published service under the aforesaid circumstances.

Respondent:

Complainant:

Dated: February___ 2004

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[2] because of alternative cellular voice type service

Mimi B. MacDonald
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January 31, 2006

Mr. Richard Mark

In re: Section 6.12.6(E) of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri's General Exchange Tariff

Dear Mr. Mark:

I am in receipt of your Offer of Settlement, dated January 21, 2006.

Enclosed please find a letter dated January 28, 2004, from Paul G. Lane, General Counsel-MO/KS to you regarding this same subject matter. Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri ("AT&T Missouri") continues to believe that the tariff is being interpreted and applied correctly. Section 6.12.6(E) does not provide for the waiver of the charge for residence non-published service when a customer intends to use the line for either internet or facsimile purposes.

AT&T Missouri continues to value your business. I am sorry that we don't agree on this issue. Please kindly direct any future correspondence regarding this issue to me. Thank you in advance.

Very truly yours,

Mimi B. MacDonald

Enclosure

LEGAL NOT FACTUAL