

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

Gail Dinwiddie,)	
)	
Complainant,)	
v.)	File No. IC-2018-0044
)	
Southwestern Bell Telephone Company,)	
d/b/a AT&T Missouri,)	
Respondent)	

AT&T MISSOURI'S ANSWER AND MOTION TO DISMISS

AT&T¹ respectfully submits this filing as its Answer² and moves the Commission to dismiss this complaint for lack of jurisdiction, and on the ground that AT&T is not the proper party respondent.

1. The Commission must dismiss this complaint because it alleges claims outside the Commission's jurisdiction. The claims raised focus on a dispute Complainant has concerning a Yellow Pages ad. Traditionally, state statutes have limited the Commission's telecommunication jurisdiction to:

. . . all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state . . .³

Yellow Pages advertising does not constitute a "telecommunications service"⁴ and falls outside the Commission's statutory grant of authority. Moreover, Section 386.330(4) RSMo. specifically

¹ Southwestern Bell Telephone Company d/b/a AT&T Missouri will refer to itself in this pleading as "AT&T."

² AT&T submits this Answer pursuant to the Commission's August 9, 2017, Order Giving Notice of Contested Case, Directing Answer and Directing Staff Investigation. For the purpose of its Answer, to the extent it has not specifically admitted any of the allegations in the Complaint, AT&T hereby denies them.

³ Section 386.250(2) RSMo.

⁴ Section 386.020(54) RSMo. defines "telecommunications service" as "the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols . . ."

removes complaints concerning “yellow page listings and advertisements” from the Commission’s jurisdiction:

Notwithstanding the power of the commission over telecommunications companies, the commission shall not have jurisdiction over complaints concerning yellow page listings and advertisements . . .

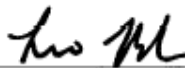
State courts have long viewed directory advertising as a non-utility service, holding that “the publishing of advertisements in the classified section of a telephone directory is a matter of private contract and is not a public service.”⁵ Accordingly, the Commission should dismiss this complaint as beyond its jurisdiction.

2. The Commission must also dismiss this complaint because Complainant has directed it to the incorrect party. Respondent Southwestern Bell Telephone Company, d/b/a AT&T Missouri, does not publish or engage in the directory advertising business.

For the reasons set forth above, AT&T respectfully requests the Commission to dismiss this complaint.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY  _____

LEO J. BUB #34326

Attorney for Southwestern Bell Telephone Company
d/b/a AT&T Missouri
1010 Pine, Room 19E-D-01
St. Louis, Missouri 63101
314-396-3679 (T)/314-247-0014 (F)
leo.bub@att.com

⁵ *Mitchell v. Southwestern Bell Telephone Co.*, 298 S.W.2d 520, 524 (Mo.App.1957); *Khulusi v. Sw. Bell Yellow Pages, Inc.*, 916 S.W.2d 227, 232 (Mo. Ct. App. 1995) (upholding summary judgment dismissing claims premised on directory's alleged status as public utility).

CERTIFICATE OF SERVICE

Copies of this document were served on the following by either US Mail or e-mail on September 7, 2017.



Leo J. Bub

Missouri Public Service Commission
General Counsel
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Gail Dinwiddie
25550 Highway W
Rocky Mt., Missouri 65072
sshdin64@gmail.com

Ms. Colleen M. Dale
Senior Counsel
Attorney for the Staff of the
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
cully.dale@psc.mo.gov