

**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	)	

**COMPLAINANT'S RESPONSES TO RESPONDENT'S  
DATA REQUESTS INCLUDING OBJECTIONS THERETO**

Comes now Complainant with Complainant's Responses to *Respondent's Data Requests* including Objections pursuant to 4 CSR 240-2.090(2) thereto, and states:

**Note #1:** The Respondent's data requests were propounded prior to the affidavit/supplemental affidavits filed by the Complainant. Such are incorporated by reference as if stated in their entirety herein.

**Note #2:** The applicable tariff at issue in this case mandates that there is no monthly unlisted telephone service charge:

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

The tariff sets forth **only** two requirements:

- A. A data terminal
- B. No voice use contemplated

**Note #3:** The Respondent has admitted that the *only* issue is whether a fax machine is a data terminal and not one of an issue of fact!

The applicable tariff does not require a telephone customer to state what, if any, alternative telephonic voice service, is, or may be utilized, by a customer; it does **not** require a model or serial numbers of the data terminal, it does **not** require the type and nature of the data conveyed over the data terminal, and it does **not** require personal information related to the income, title, etc. of the telephone customer. In fact, it requires **no other customer requirements** other than **A** and **B**, aforesaid, in order for a customer to be entitled to a waiver of the monthly unpublished service charge in accordance with the above-indicated tariff.

**DR 1.** The name, address, and telephone number of the complainant are not only within the records of the Respondent, but the Respondent has additionally *furnished* this information requested to

*the Staff* in response to the Staff's data request of the Respondent. Complainant objects to this data request as propounded by the Respondent solely for the purpose of impermissible harassment.

**DR2.** This data request requests any *other* telephone service at any *other* location of Complainant. Complainant objects to such as being totally irrelevant and immaterial and an invasion of privacy; this data request, further, is not reasonably calculated to lead to the discovery of admissible evidence and is not related in any way to the applicable tariff and the Complainant's entitlement to the waiver based on the *use of a data terminal* and *non-voice use contemplated* of the P.O.T.S. Further, one could utilize, with permission, the telephone service of another customer at other location(s) and therefore such data request is overly broad and ambiguous. Incorporated by reference, further, are the affidavits of the Complainant previously filed as if stated in their entirety herein.

**DR3** Requests any employment of the Complainant, dates of employment, title/position, job responsibilities, and business address and business telephone number. Complainant objects to this DR in that such is totally irrelevant and immaterial, constitutes an invasion of privacy, and is not reasonably calculated to lead to the discovery of admissible evidence. This is not a personal injury law suit. Further, such data request is not related, reasonably or otherwise, to the tariff at issue and is set forth solely for the purpose of harassment.

**DR 4** Requests whether or not the Complainant has provided services "to another" for compensation in other than an employer/employee relationship (i.e., independent contractor) and if so, each such occasion, name of the services, nature of the services provided, business address and business telephone number. This is totally irrelevant, immaterial, an invasion of privacy, is not reasonably calculated to lead to the discovery of admissible evidence, is unrelated to the tariff at issue, and is propounded solely for the purpose of harassment. Additionally, incorporated by reference are the affidavits filed by the Complainant *subsequent* to the Respondent's propounding of this data request. Without waiving any objection, the Complainant responds: NO! Complainant has provided no services to another for compensation!

**DR 5** Requests the nature/type of "messages sent by and/or received by the fax machine" (whether or not the messages sent were in connection with some business enterprise and whether or not the faxes were personal in nature, if connected to a business enterprise, a request is made in this DR to identify the companies, entities, relationship. etc. Response: The tariff at issue, 6.12.6(E), does not require a disclosure by a customer as to the particular **content** of faxes sent and/or received by a data terminal. This data request is irrelevant, immaterial, an invasion of privacy, and not reasonably calculated to the discovery of admissible evidence. Incorporated herein are the affidavits of the Complainant related to the non-business use (personal use) of the Complainant's fax machine. Subject to said objections, as indicated in the affidavits filed, faxes sent/received by Complainant are personal, non-business, in nature.

**DR 6** Requests whether the "principal purpose of messages" originated by and/or received by the fax machine is business or personal. The tariff at issue does not specify business or personal and such data request is irrelevant and immaterial. Additionally, incorporated by reference are the Complainant's affidavits filed subsequent to this data request. Subject to the aforesaid objections, as indicated in the aforesaid affidavits and in DR5, the response is: personal, non-business use.

**DR 7** Requests "all documents referring or relating to the allegation that a fax machine is a data terminal for the reception and/or transmission of data where no voice use is contemplated." This alleged "data request" requires the disclosure of legal research and is protected as Complainant's work product. Any documents found through research, therefore, are protected from disclosure. Respondent has an equal opportunity to research this request. Incorporated by reference, as if stated in its entirety herein, is the **Commission's Staff Report** filed on or about June 30, 2006, correctly and appropriately concluding that *a fax machine is a data terminal* and setting forth the reasons for such conclusion. Also, incorporated by reference is the Illinois U.S. District Court legal case previously cited by the Complainant to the Commission.

**DR 8.** Requests type, model, purchase date, and serial number of the fax machine of the Complainant. This data request is irrelevant and immaterial. The tariff at issue does not require that such be provided to the Respondent in order for a telephone customer to receive a waiver of the monthly non-published charge. The model number is irrelevant and immaterial. Further objection is that this data request will not lead to the discovery of admissible evidence. Subject to the aforesaid objections, the purchase date and serial number are unknown. The type of the machine is a stand-alone machine for the reception/transmission of data, to wit: faxes.

**DR 9.** Requests the telephone number, account number, cellular provider and the date on which service was established with regard to *Footnote #1* of the Complaint. *Footnote #1* of the Complainant indicated that:

"Use of cell telephone service (other than and NOT ATT a/k/a SBC a/k/a Southwestern Bell telephone Company) by Complainant *and others*, has replaced the need for any land-line based voice contemplated service."  
(emphasis added)

Data request DR 9 is overly broad and ambiguous. Cellular service utilized, if any, by Complainant, is irrelevant and material. Further, such use, if any, could be through the account of another person; such is, and would be further, an invasion of privacy of such other account holder. Any cellular service, if any utilized by Complainant, is not furnished by the Respondent. Information related, if any, to any other person's account is private and confidential and will not be furnished; such is irrelevant and immaterial in any way applicable to the particular tariff at issue. The information sought in this data request is not reasonably calculated to lead to the discovery of admissible evidence. Further, the aforementioned was indicated in a footnote and speaks in generalities of common knowledge *rather than* specific allegations against the Respondent. *The footnote is/was informative in nature.* The footnote states *generally accepted and common knowledge* of the public and is totally inapplicable to the specific tariff at issue, to wit: whether or not the Complainant utilizes a data terminal and whether or not "no voice use is contemplated" by Complainant with regard to Complainant's P.O.T.S. Further, incorporated by reference as if stated herein are Complainant's affidavits related to the Complainant's data terminal and use thereof.

Respectfully,

A handwritten signature in blue ink, appearing to be the letters 'KS'.

Complainant

July 21, 2006

9029 Gravois View Ct. #C  
St. Louis, Missouri 63123

EXHIBIT A

JUL 21 2006

ST. LOUIS