

IN THE CIRCUIT COURT FOR THE COUNTY OF COLE
STATE OF MISSOURI

FILED
JUL 12 2006
BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

Commissioner Steve Gaw and)
Commissioner Robert M. Clayton, III,)
of the Missouri Public Service)
Commission,)
Plaintiffs,)
v.)
AT&T Communications of the)
Southwest, Inc., SBC Long Distance,)
L.L.C., SBC Advanced Solutions, Inc.,)
TCG St. Louis Holdings, Inc. dba TCG)
St. Louis and Southwestern Bell)
Telephone L.P.,)
Defendants.)

Case No. WAC CC 0578
DUI

**APPLICATION TO COMPEL PRODUCTION OF DOCUMENTS AND TO
COMPEL WITNESSES TO APPEAR AND ANSWER QUESTIONS UPON ORAL
EXAMINATION**

COMES NOW the Plaintiff, Commissioner Steve Gaw and Commissioner Robert M. Clayton, III of the Missouri Public Service Commission, by and through undersigned counsel, and applies to this Court , pursuant to the provisions of Rules 58.01 and 61.01 of the Missouri Rules of Civil Procedure, and Section 536.077 RSMo 2000¹ for an Order compelling the Defendants to produce the documents requested by the Subpoenas Duces Tecum, and for an Order compelling the Defendants' witnesses to appear and answer questions upon oral examination as requested by the Subpoenas Ad Testificandum attached hereto as Exhibits A, B, C, D, E , F, G, H, I, J, K and L.

¹ Unless otherwise indicated, all statutory citations are to RSMo 2000, as currently supplemented.

Plaintiff issued the subject subpoenas pursuant to the authority granted by Sections 386.320.3 and 386.420.2 to determine whether the Defendant telecommunications companies, or any of them, had used, disclosed, or permitted access to customer proprietary network information in violation of Missouri law (4 CSR 240-33.160.) Each of the Subpoenas attached as Exhibits A through L were duly served upon the defendants on June 19, 2006 and June 22, 2006 as noted on the Returns of Service. None of the defendants moved to quash the subpoenas. On June 20, 2006, Plaintiff received one non-responsive reply from Defendant Southwestern Bell Telephone, L.P. who replied only to the Subpoena Ad Testificandum (Ex. K) that it was unable to provide the records as no records were found. (Ex. M)

All subpoenas requested the appearance of witnesses and the production of documents at 10:00 a.m. on Wednesday, July 12, 2006. On the afternoon of July 11, 2006, Paul G. Lane, Attorney for AT&T Affiliated Entities (Defendants) faxed a "response" to Plaintiff, suggesting that Plaintiff "...cancel the attendance of the court reporter and reschedule [their] day." (Defendant's "response" is attached hereto as Exhibit N.) As of this filing, Defendants have made no lawful effort to quash Plaintiff's validly issued subpoenas, or otherwise relieve themselves of the legal obligation to obey the command of the subject subpoenas. At 10:00 a.m. on July 12, 2006, no witnesses appeared on behalf of Defendants to answer questions upon oral examination and no documents were produced. At 10:45 a.m., Plaintiff's and Defendants' attorneys communicated by telephone but were unable to resolve this matter, although Defendant's attorney did agree to accept service of this Application and related filings on behalf of

Defendants. Defendants have failed and/or refused to appear and produce documents within the time period provided by law.

WHEREFORE, Plaintiff prays that the Court enter its Order compelling Defendants to appear before the Plaintiff on the ____ day of July, 2006 at 10:00 a.m. of that day, at 200 Madison Street, Room 310, Jefferson City, Missouri, there to be examined under oath concerning the matters specified in the Subpoenas attached as Exhibits hereto, and that should Defendants continue to fail to appear, answer and produce documents, sanctions be ordered against Defendants pursuant to Rule 61.01(g) of the Missouri Rules for Civil Procedure and Section 536.077, including penalties and costs and granting such other and further relief as the Court deems proper

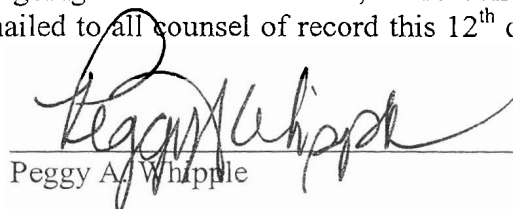
Respectfully submitted,



Peggy A. Whipple
Missouri Bar No. 54758
Attorney for the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 526-6715 (Telephone)
(573) 751-9285 (Fax)
peggy.whipple@psc.mo.gov (e-mail)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 12th day of July 2006.



Peggy A. Whipple