

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

<b>BARRY ROAD ASSOCIATES, INC.,</b>	)	
<b>d/b/a MINSKY'S PIZZA,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>THE MAIN STREET ASSOCIATES, INC.</b>	)	
<b>d/b/a MINSKY'S PIZZA,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>HARRY MARK WOOLDRIDGE,</b>	)	
	)	
<b>Complainants,</b>	)	
	)	<b>Case No.:</b>
<b>v.</b>	)	
	)	
<b>SOUTHWESTERN BELL TELEPHONE COMPANY</b>	)	
<b>d/b/a AT&amp;T MISSOURI</b>	)	
	)	
<b>Serve:</b>	)	
<b>CT Corporation System</b>	)	
<b>120 South Central Ave.</b>	)	
<b>Clayton, MO 63105</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINT**

**I. Identity and Location of Complainants**

Barry Road Associates, Inc. d/b/a Minsky's Pizza

West location:

7007 NW Barry Road  
Kansas City, Missouri 64153  
Phone: 816-741-2737

East Location:

221 NE Barry Road  
Kansas City, Missouri 64155  
Phone: 816-436-8818

The Main Street Associates, Inc. d/b/a Minsky's Pizza  
5105 Main Street  
Kansas City, Missouri 64112  
Phone: 816-561-5100

Harry Mark Wooldridge  
404 E. Morgan Street  
Boonville, MO 65233  
Phone: 660-882-3448

## **II. Identity and Location of Respondent**

Southwestern Bell Telephone Company d/b/a AT&T Missouri  
One AT&T Plaza  
208 South Akard Street  
Dallas, Texas 75202

Represented by:

Craig S. Laird  
Robert A. Kumin, P.C.  
PO Box 30088  
Kansas City, MO 64112  
Phone: (816) 471-6877  
Fax: (913)-236-7115

Stephen B. Higgins- Lead Counsel  
Amanda J. Hettinger  
Kimberly M. Bousquet  
THOMPSON COBURN LLP  
One US Bank Plaza  
St. Louis, MO 63101  
Phone: (314) 552-6000  
Fax: (314) 552-7000  
Email: [shiggins@thompsoncoburn.com](mailto:shiggins@thompsoncoburn.com)  
[ahettinger@thompsoncoburn.com](mailto:ahettinger@thompsoncoburn.com)  
[kbousquet@thompsoncoburn.com](mailto:kbousquet@thompsoncoburn.com)

Ann Ahrens  
One AT&T Center, Room 3548  
St. Louis, MO 63101  
Phone: (314) 235-4099  
Fax: (314) 247-0881

Email: [ann.beck@att.com](mailto:ann.beck@att.com)

### **III. Nature of the Complaint and Complainant's Interest in the Complaint**

#### **Procedural History**

This Complaint is filed by undersigned counsel on behalf of the Complainants pursuant to an Order of the Honorable Anne Mesle, Judge of the Circuit Court of Jackson County, Missouri dated April 4, 2011. (Ex. A, 04/04/11 Order.) Litigation is pending before that Court with respect to the claims as described herein and, as the Court has held, the litigation is stayed pending resolution by this Commission of a discrete question of law. (*Id.*) As fully discussed below, Complainants allege that they and other Missouri customers of Respondent Southwestern Bell Telephone Company ("SBTC") were billed by SBTC for amounts voluntarily incurred by SBTC in settling its own litigation liabilities. (Ex. B, Petition; Ex. C, Memo. in Opposition to SBTC's Motion for Summary Judgment.) In the Circuit Court litigation, SBTC asserts that such settlement liabilities may properly be "passed through" to its Missouri customers pursuant to Section 17.11 of General Exchange Tariff No. 35. (Ex. D, Tariff; Ex. E, Answer of SBTC without exhibits; Ex. F, Motion and Memo. in Support of Summary Judgment without exhibits.) **The sole question before the Commission is "whether the settlement payments made by AT&T are to be passed through to AT&T customers pursuant to 17.11 General Exchange Tariff 35 or similar and related tariffs."** (Ex. A, 04/04/11 Order.)

#### **Allegations**

Complainants state and allege as follows:

### **Nature of the Case**

1. Complainants seek to stop SBTC's unlawful practice of billing customers to recover SBTC's losses from litigation settlements. Complainants further seek reimbursement for monies paid to SBTC for such unauthorized billing.

2. SBTC is a party to settlement agreements (the "Settlements") in lawsuits wherein it was sued by Missouri municipalities for failure to pay business license or gross receipt taxes for landline telephone operations. (Ex. G, Wellston Settlement; Ex. H, St. Louis County Settlement; Ex. I, Springfield Settlement.) Pursuant to these agreements, SBTC is to pay at least \$72,000,000 to the municipalities for its wrongdoing. Without any legal authority, customer agreement, authorization, consent, or even prior notification, SBTC has passed its liability on to its customers in the form of monthly charges disguised on telephone bills as a portion of "special municipal charges." This practice is wrongful, deceptive, and extremely lucrative for SBTC, which proceeds as though it is immune from the consequences of its wrongdoing. Indeed, SBTC need not worry about the costs of its illicit practices settled in other matters; customers will simply pay the bill.

3. In November of 2008, SBTC informed the Missouri Public Service Commission that it would no longer be subject to many of the billing regulations designed to protect consumers. SBTC is now attempting to take advantage of this newly unregulated environment by imposing patently unreasonable and deceptive surcharges on customers.

### **Parties**

4. Complainant Barry Road Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

5. Barry Road Associates, Inc. is a landline telephone customer of SBTC and has been billed by SBTC for charges attributable solely to SBTC' liability stemming from the Settlements.

6. Complainant The Main Street Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

7. The Main Street Associates, Inc. is a landline telephone customer of SBTC and has been billed by SBTC for charges attributable solely to SBTC' liability stemming from the Settlements.

8. Complainant Harry Mark Wooldridge is a citizen of the State of Missouri, residing in Boonville, Missouri.

9. Harry Mark Wooldridge is a landline telephone customer of SBTC and has been billed by SBTC for charges attributable solely to SBTC's liability stemming from the Settlements.

10. SBTC is a Missouri Corporation with its headquarters and principal place of business in the State of Texas, doing business in Missouri as "AT&T Missouri" and "AT&T."

11. SBTC provides local telephone services to Complainants as their local exchange carrier and is responsible for the bills Complainants receive. SBTC is a party to the Settlements.

#### **Common Facts**

12. Complainants Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from SBTC dated December 9, 2009 for telephone number 816-407-9000 containing a charge of \$5.32 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

13. Complainants Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from SBTC dated December 17, 2009 for telephone number 816-436-8818 containing a charge of \$17.50 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

14. Complainants Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from SBTC dated December 17, 2009 for telephone number 816-741-2737 containing a charge of \$28.00 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

15. Complainant Harry Mark Wooldridge received an invoice from SBTC dated December 17, 2010 for telephone number 660-882-6589 containing a charge of \$1.99 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

16. Each of the invoices referenced herein contains a paragraph, under the heading "News You Can Use" stating as follows:

**MUNICIPAL CHARGES**

Beginning November 1, 2009, you may see increases in the amount of Special Municipal Charges billed on your account. These increases will help cover payments made to municipalities to settle claims related to past gross receipts taxes they imposed, and also includes such taxes on services covered by the settlement going forward. Should you have any questions please call the toll free number on your bill. Thank you for using AT&T Missouri.

17. The “increases” referred to are not increases at all, but rather constitute new charges not previously appearing on customers’ bills. The new charges are a result of SBTC passing on its liability under the Settlements to Complainants and other customers.

18. Complainants did not authorize or agree to allow SBTC to charge them for such additional amounts alleged herein arising from losses or liabilities from any lawsuit or settlement agreement.

19. The charges at issue are not “one-time” charges. Rather, SBTC is continuing to bill customers for such unauthorized charges. Further, SBTC intends on billing its customers for such unauthorized charges for years to come.

20. SBTC failed to inform the Complainants that SBTC would bill them to recoup its losses and liabilities stemming from the Settlements before sending such bills.

21. SBTC represented on invoices to Complainants that “Special Municipal” charges were the rightful responsibility of Complainants when, in fact, the amounts billed were not legally or rightfully chargeable to customers.

22. SBTC represented on invoices to Complainants that the “Special Municipal” charges were “one-time” charges, when, in fact, they were recurring.

23. SBTC failed to inform Complainants that the “Special Municipal” charges appearing on their bills were SBTC’s own liabilities and not those of Complainants.

24. SBTC collected and accepted amounts from Complainants for liabilities for which SBTC alone was responsible.

25. SBTC has filed no schedule, rate, or tariff with the Missouri Public Service Commission that indicates that a fee, surcharge, or pass-through stemming from their payments

to settle litigation may appear on customer invoices, and no tariff presently on file covers such charges.

26. SBTC failed to give notice to Complainants and the Class of the “special municipal charge,” as required under 4 C.S.R. 240-33.040(4).

27. SBTC failed to file tariff pages disclosing their waivers by December 6, 2008, as ordered by the Missouri Public Service Commission on November 10, 2008.

**SBTC’s Tariff is Inapplicable**

28. Section 17.11 of General Exchange Tariff 35 (the “Tariff,” Ex. D) states, in part, as follows:

There shall be added to the customer's bill or charge, as a part of the rate for service, a surcharge equal to the pro rata share of any franchise, occupation, business, license, excise, privilege or other similar tax, fee or charge (hereafter called "tax") now or hereafter imposed upon the Telephone Company by any taxing body or authority, whether by statute, ordinance, law or otherwise and whether presently due or to hereafter become due.

29. No portion of the Special Municipal Charges appearing on Claimants’ bills constitutes a pro rata share of any franchise, occupation, business, license, excise, privilege or other similar tax, fee or charge.

30. No portion of the Special Municipal Charges appearing on Claimants’ bills was imposed upon SBTC.

31. No portion of the Special Municipal Charges appearing on Claimants’ bills was imposed upon SBTC by any taxing body or authority, whether by statute, ordinance, law or otherwise.



32. In the *Wellston* and *St. Louis County* settlement agreements, the term “Back Tax Payment” is specifically defined, and therefore cannot be given its common meaning, or any other meaning than that indicated in the agreements. Ex. G at 12; Ex. H at 6, 8-9.

33. The definition of “Back Tax Payment” included in the *Wellston* and *St. Louis County* settlement agreements relates to sums paid according to the agreements themselves; the definition does not include actual taxes. Ex. G at 12; Ex. H at 6, 8-9.

34. In the *Springfield* settlement agreement, the term “Back Tack Payment” is undefined but, in context, clearly has the same meaning as that attributed to it in the *Wellston* and *St. Louis County* settlement agreements. Ex. I at 2.

35. The Settlements make clear that the payments being made by SBTC are not tax payments, but rather are voluntarily made in consideration for the Plaintiffs’ dismissal of the lawsuits and release of claims; in fact, in all three agreements SBTC unequivocally denies that it is agreeing to pay taxes. Ex. G at 3 (“Defendants have denied and continue to deny any and all liability with respect to the allegations raised against them in the various lawsuits involving the applicability of Plaintiffs’ and other Municipalities’ respective Business License Tax ordinances to Defendants’ products and services.”); Ex. G at 37 (stating that the agreement was entered into “[i]n order to effectuate the Parties’ desire to fully, finally and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation.”); Ex. G at 43 (“Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiation or proceedings is or shall be construed as deemed to be legal evidence of an admission by Defendants with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by any of the Class members in the

Action, or the liability of Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Aside from the obligation to pay Business License Taxes going forward. . . **this settlement agreement is not intended to, and shall not be construed as imposing any other obligation on Defendants under the Class member's respective ordinances**, including without limitation any rate regulation or customer service requirements.) (Emphasis added); Ex. H at 3, 20-21, 23 (same); Ex. I at 1 (“**AT&T denies any and all liability for taxes** and will continue to defend itself in litigation and otherwise absent execution of this Agreement.”) (Emphasis added.); Ex. I at 2, ¶1 (expressly agreeing that there was no determination on the merits of the municipalities’ claims); Ex. I at 4, ¶11.

36. Merely calling the payments “back taxes” does not make them actual taxes.

37. As a direct result of SBTC’ violation of the law and Commission order, Complainants have incurred and continue to incur damages.

#### **IV. Relief Requested**

Pursuant to the Order of the Circuit Court of Jackson County, Missouri dated April 4, 2011, and pursuant to Section 392.350, RSMo. and Section 17.11 of Southwestern Bell Telephone Company’s General Exchange Tariff No. 35, Complainants respectfully request a determination that the settlement payments made by AT&T as described herein are not to be passed through to AT&T customers including Claimants, and such other relief as the Commission deems lawful and proper.

#### **V. Statement Regarding Prior Contact with Respondent**

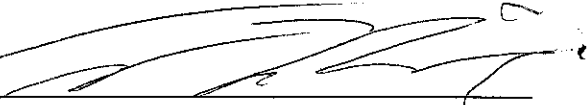
Each of the Complainants has engaged and authorized the undersigned counsel to bring both the pending Circuit Court litigation and this Complaint against SBTC, and each has had direct prior contact with SBTC or its counsel about the subject of this Complaint.

**VI. The Commission's Jurisdiction**

The Commission has jurisdiction over the subject matter of this Complaint pursuant to the April 4, 2011 Order of the Circuit Court of Jackson County, Missouri, (Ex. A, 04/04/11 Order), and pursuant to Sections 386.040 and 386.390, RSMo.

Respectfully Submitted,

EDGAR LAW FIRM LLC

By 

John F. Edgar MO #47128

Anthony E. LaCroix MO #60793

1032 Pennsylvania Ave.

Kansas City, MO 64105

Telephone: (816) 531-0033

Facsimile: (816) 531-3322

Email: [jfe@edgarlawfirm.com](mailto:jfe@edgarlawfirm.com)

Email: [tel@edgarlawfirm.com](mailto:tel@edgarlawfirm.com)

ATTORNEYS FOR COMPLAINANTS