

Katherine C. Swaller
Senior Counsel

Southwestern Bell Telephone
One Bell Center
Room 3556
St. Louis, Missouri 63101
Phone 314 235-4099
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September 17, 1999

FILED

SEP 20 1999

Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, MO 65101

Dear Judge Roberts:

Re: Case No. TC-2000-56

Enclosed for filing with the Commission in the above-referenced case are an original and fourteen (14) copies of Southwestern Bell Telephone Company's Motion to Dismiss and in the Alternative Answer.

Also enclosed is an additional copy to be file stamped and returned to us in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "K Swaller".

Enclosures

cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
SEP 20 1999
Missouri Public
Service Commission

Tom Cupples,)
Complainant,)
vs.) Case No. TC-2000-56
)
Southwestern Bell Telephone Company,)
)
Respondent.)

**MOTION TO DISMISS AND IN THE ALTERNATIVE ANSWER OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

COMES NOW Southwestern Bell Telephone Company (Southwestern Bell) and
for its Motion to Dismiss and in the Alternative Answer states as follows:

MOTION TO DISMISS

1. As fully explained in the affidavit of Ella B. Oatts, attached hereto as Exhibit A, a variety of circumstances which started with Complainant's request to transfer his service led to this billing dispute. However, Southwestern Bell has credited Complainant for all charges associated with any alleged errors, both errors of Complainant and of Southwestern Bell, and all charges now reflected on Complainant's account are for services actually rendered and are past due and owing. Southwestern Bell has requested mediation and believes such a process could resolve this Complaint, but files this Motion to Dismiss and Answer in the event that Complainant rejects the mediation proposal.

ANSWER

1. Southwestern Bell admits the allegations in paragraph 1.

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2. Southwestern Bell admits the allegations contained in paragraph 2.a., but further states that Complainant did not request that the service at the High Land Hill address be disconnected until February 15, 1999.

3. Southwestern Bell admits the allegations contained in paragraph 2.b.

4. Southwestern Bell denies the allegations contained in paragraph 2.c. and further states that "double billing occurred". Rather, Complainant received bills for service at both addresses during February and in fact used the phone at the old address for purposes of contacting directory assistance during that month. Nevertheless, SWBT credited Complainant's account for service at the first address for all charges incurred after the new service was established.

5. Southwestern Bell admits the allegations contained in paragraph 2.d.

6. Southwestern Bell denies the allegations contained in paragraph 2.e., but states that Southwestern Bell agreed to credit Complainant for charges related to service at his old address for the period of time January 15-February 15, 1999.

7. Southwestern Bell denies the allegations contained in paragraph 2.f.-g. and states, as further explained in the affidavit of Ella B. Oatts, attached hereto as Exhibit A, that the confusion regarding billing originated first from Complainant's relocation and was then complicated by his request to discontinue automatic bill payment. The request to discontinue automatic bill payment took a few days to process and thus one more automatic withdrawal was made after Southwestern Bell received the request to discontinue automatic bill payment. Per Complainant's request, Southwestern Bell issued a check to Complainant's bank to "reverse" the automatic bill payment. Unfortunately, however, Complainant's account held insufficient funds at the time of the

automatic bill payment and so Southwestern Bell never received those funds. Compounding the problem, Southwestern Bell's check to "reverse" the automatic bill payment was deposited in Complainant's account and never returned to Southwestern Bell. Accordingly, Complainant did not pay his February bill, but nevertheless received an unmerited credit in the amount of the total charges on the bill.

8. Southwestern Bell admits the allegations in paragraph 2.h.

9. Southwestern Bell denies the allegations contained in paragraph 2.i., but states that Southwestern Bell intends to credit Complainant's account a \$4.80 late fee for failure to pay for the service at the first address, since Southwestern Bell has already credited Complainant for the service at that address.

10. Regarding paragraph 2. j., Southwestern Bell admits that Complainant's check for \$144.50 was originally applied to the wrong account. The error resulted from Complainant sending the check to the President's office, rather than the billing office. Southwestern Bell cleared up the error and Complainant did receive credit on his account for the amount of the check. Southwestern Bell further states that it did confirm the proper application of the check to Complainant.

11. Southwestern Bell denies the allegation contained in paragraph 2.l., but further states that prior to Complainant's action before this Commission, Southwestern Bell did send a disconnect notice because Complainant was refusing to pay undisputed amounts, as well as disputed amounts.

12. Southwestern Bell admits the allegations contained in paragraph 2.m.

13. Southwestern Bell admits the allegations contained in paragraphs 3.a.-3.d. and further states that Southwestern Bell has made substantial efforts to resolve the issues

contained in this Complaint, including numerous explanations of the bill and numerous calls to Complainant.

WHEREFORE, Southwestern Bell urges the Commission to dismiss the Complaint and for such relief as may be just and proper.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY *schwall*
PAUL G. LANE #27011
LEO J. BUB #34326
ANTHONY K. CONROY #35199
KATHERINE C. SWALLER #34271
Attorneys for
Southwestern Bell Telephone Company
One Bell Center, Room 3536
St. Louis, Missouri 63101-1976
314-235-4099 (Telephone)
314-331-2193 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class postage prepaid, U.S. Mail on September 17, 1999.



Katherine C. Swaller

OFFICE OF THE PUBLIC COUNSEL
P. O. BOX 7800
JEFFERSON CITY, MO 65102

GENERAL COUNSEL
MISSOURI PUBLIC SERVICE COMMISSION
P. O. BOX 360
JEFFERSON CITY, MO 65102

MR. TOM CUPPLES
211 SUTTERS MIKLL ROAD
ST. PETERS, MO 63376

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

Tom Cupples,)	
)	
vs.)	Case No. TC-2000-56
)	
Southwestern Bell Telephone Company,)	
)	
Respondent.)	

AFFIDAVIT OF ELLA B. OATTS

COMES NOW Ella B. Oatts being duly sworn states as follows:

1. I am Ella Oatts. My title is Residence Account Manager. I have been employed by Southwestern Bell Telephone Company (SWBT) for 34 years. I have been in direct contact with Mr. Cupples concerning the subject matter of his complaint and have reviewed SWBT's records concerning the matter. As such I have personal knowledge of the matters contained in this affidavit.

2. Mr. Cupples moved in January of 1999 and requested service at his new address on January 15, 1999. At the time of his relocation Mr. Cupples used automatic bill payment to pay his bills. Automatic bill payment allows customers to pay their telephone bill by authorizing a direct draw from their bank account.

3. Mr. Cupples received telephone bill dated February 13, 1999 for service at both the new and old addresses in the amount of \$235.42, which included a service connection charge for one of two lines at the new address and the monthly charge for service at the new address from January 15, 1999 through March 12, 1999.

4. Mr. Cupples also received a bill for service at the new address in the

amount of \$200.22, which included the service connection charge for the main number at the new address, the monthly rate for service from January 15, 1999 through March 13, 1999 Internet service and Call Notes.

5. On February 26, 1999, Mr. Cupples called and requested that automatic bill payment be discontinued. SWBT discontinued automatic bill payment for service at the new address. At that time the balance for service at that address was \$200.22.

6. On February 26, 1999, Mr. Cupples called and stated the bill for \$239.42 was incorrect for telephone number 636-939-2446, 627. Mr. Cupples stated the telephone services for both numbers at the old address should have been disconnected on January 16, 1999. The representative explained it was disconnected on the date of his request, but agreed to adjust the monthly charge for both numbers from January 16, 1999 through February 15, 1999 for a credit of \$103.89, plus all other charges for an additional credit of \$135.53. The cancellation of automatic bill payment had not yet taken effect and so the amount shown due when the bill was prepared was withdrawn from Complainant's bank account.

7. On March 15, 1999, the automatic payment of \$239.42 was applied toward the bill at the new address in the amount of \$200.22, leaving a credit balance of \$39.20

8. On March 19, 1999, Mr. Cupples called and stated that SWBT had not cancelled automatic bill payment and that his checks would not clear unless the debited amount was returned immediately.

9. SWBT had the \$239.42 returned to Mr. Cupples' account and faxed him a confirmation of the transaction. (See Exhibit 1-C).

10. On or about March 20, 1999, Mr. Cupples received his March 13, 1999 bill in the amount of \$18.44. The current charges were \$57.64, which reflected the credit applied after the disconnection of both telephone numbers at his old address with an effective stop billing date of February 15, 1999, less the credit balance from the prior bills of \$39.20.

11. On March 22, 1999, the request to return the funds of \$239.42 posted and would have debited Mr. Cupples' account by that amount, except that the automatic bill payment was reversed by the bank for insufficient funds. Accordingly, although SWBT did not receive the automatic bill payment amount due to insufficient funds, it nevertheless "returned" that amount to Mr. Cupples' account.

12. On April 10, 1999, Mr. Cupples requested a statement of charges and credits faxed to him. SWBT complied on April 12, 1999.

13. On April 19, 1999, SWBT mailed another breakdown of charges for both accounts, the old and new one, attached is a copy of each including a fax from Mr. Cupples.

14. On or about April 20, 1999, Mr. Cupples received his April 13, 1999 bill for \$629.92, which included current charges of \$144.50 and a balance of \$485.42. The \$485.42 represents the two debits of \$239.42 which resulted from the cancellation of the automatic bill payment and the "return" of those funds by SWBT (less a credit from AT&T of \$11.86).

15. On April 27, 1999 in response to his request, SWBT sent a letter to Mr. Cupples explaining the bills. (See Exhibits 3-C and 4-C).

16. Mr. Cupples' May 13, 1999 bill was issued for \$763.89. This included the

past due balance of \$629.92 and current charges of \$133.97. On May 19, 1999, a notice was mailed requesting payment of the balance of \$629.92 by May 28, 1999 to avoid suspension.

17. On May 26, 1999, SWBT's Executive Office received a copy of Mr. Cupples' complaint and a check for \$144.50. Because this check was not received in the Business Office it was not immediately applied to Mr. Cupples' account. Ultimately, Mr. Cupples account was properly credited.

18. On June 2, 1999, a statement was mailed to Mr. Cupples per his request. (See Exhibit 5-C). Collection of past due amount was suspended until resolution of the complaint.

19. I made two attempts (June 4 and June 9, 1999) to reach Mr. Cupples to discuss the complaint and left voice mail on both occasions. Mr. Cupples did not return these calls.

20. Mr. Cupples' June 13, 1999 bill reflected a balance due of \$897.19, which included the unpaid charges of \$763.89 and current charges of \$133.30.

21. On June 21, 1999, I called and spoke with Mr. Cupples regarding his dispute and explained that his May 13, 1999 was now past due in the amount of \$763.89 (which included the \$485.42 related to the reversed debit and the "returned" funds). Mr. Cupples requested a different format showing payments, credits and charges back to December, 1998. I prepared a copy of charges billed and a copy of what charges would have been billed if service had been disconnected at the old address in January, 1999 and forwarded that information to Mr. Cupples.

22. On July 7, 1999, I spoke with Mr. Cupples again. He still insisted the bill was incorrect and that he was going to re-contact the PSC because we had not returned the \$239.42 to his bank as agreed. I offered to be on three-way call with his bank to verify that his account had not been credited. Mr. Cupples said he would not do since it was error we would need to fix it.

23. On July 17, 1999, a collection representative called Mr. Cupples and he stated he would pay the current charges of June 13, 1999 bill for \$133.30 and July 13, 1999 bill for \$133.97 and that he will be filing a formal complaint with the PSC against SWBT.

24. On or about August 20, 1999, the August 13, 1999 bill was rendered for \$757.45, which included a balance of \$620.09 and current charges of \$137.36.

25. The foregoing information is true and correct to the best of my knowledge and belief.

Ella B. Oatts

Ella B. Oatts

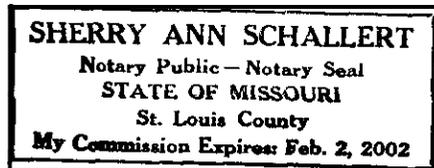
State of Missouri)
) SS.
City of St. Louis)

I, Sherry Schallert, a Notary Public do hereby certify that on this 17th
day of September, 1999, personally appeared before me Ella B. Oatts who declared that
all of the information contained herein above is true, to the best of her knowledge and
belief.

Sherry Ann Schallert
Notary Public

My Commission Expires:

02-02-2002



March 19, 1999

**Tom Cupples
211 Sutters Mill Rd
Saint Peter's, MO 63376**

RE: 314 939-2448,627

Dear Mr. Cupples,

**This faxed letter confirms our earlier conversation.
Southwestern Bell automatically withdrew \$239.42 from your
checking account on March 15, 1999 in error. We regret this
error occurred.**

**Please call our business office at 1-800 585-7928 if you or your
bank has any questions.**

Sincerely,



**Tonya Cunningham
Service Representative**

Friday, April 16, 1999

Southwestern Bell Telephone
Attn: Matt Rivera, or concerned party
FAX#: 1(785)368-7902

Mr. Rivera, or concerned party:

In reference to your letter dated April 13, 1999, I am in full dispute of the monies listed therein. I have requested, on several occasions, full disclosure of the transactions on my accounts. I have requested, and have not received, all detail of transactions on my account from the Billing Date (Statement Date) of my December 1998 billing to the present. This should be for the Telephone #'s (314)939-2446 and (314)939-3998 for both addresses, 2266 Highland Hill, Saint Peters, MO 63376 and 211 Sutters Mill Road, Saint Peters, MO 63376

Until I receive such documentation as I have requested herein, and until I have been given the opportunity to prove your errors on my accounts by discussing these documents with you or your representative, I will not pay any further amounts.

Please do not delay in providing this documentation. Additionally, I will expect you to cease and desist all collection efforts on these balances until such time that these issues are resolved. This cessation should include your threats to discontinue services to my residence.

I await your immediate response. Such documentation should be mailed to the address: 211 Sutters Mill Road, Saint Peters, MO 63376. Additionally, you may wish to FAX this documentation to (314)939-3998 and to my attention.

Sincerely,



Tom Cupples



April 27, 1999

Mr. Tom Cupples
211 Sutters Mill Rd.
Saint Peters, MO 63376
314 939-2446, 314 939-3998

Dear Mr. Cupples:

This letter is in response to your April 16, 1999 faxed letter. Per your request, attached are all transactions made to account telephone numbers (old) 314 939-2446 627, 314 939-3998, and (new) 314 939-2446-058, 314 939-3798.

This covers the December 13th billing through the last transaction on February 26, 1999, for 314 939-2446 627. This also covers all transactions made from January 15, 1999, the date of activation through May 11, 1999, the date the current bill is due.

This information requested in your letter should help clarify any questions concerning your accounts with us. If you have any further questions regarding your account, please call us at 1 800 203-4040, Monday through Friday 7:00 A.M. to 9:00 P.M., Saturday 7:00 A.M. through 6:00 P.M.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Rivers".

Matt Rivers
Service Representative

STATEMENT OF ACCOUNT

Telephone Account

314 939-2446 627, 314 939-3998

Beginning Balance 12/13/1998 \$131.01

Payments and Credits

12/14/1998 Bank Draft \$131.01

01/11/1999 Bank Draft \$142.74

02/10/1999 Bank Draft \$145.12

02/26/1999 SWB Adjustment \$239.42

Total Payments and Credits \$658.29

Refunds and Charges

Bill Cycle Date Bill Due Date Amount
12/13/1998 01/11/1999 \$142.74

01/13/1999 02/10/1999 \$145.12

02/13/1999 03/15/1999 \$239.42

\$527.28

+ \$131.01 Balance

Total Refunds and Charges \$658.29

02/26/1999 Ending Balance \$0.00

STATEMENT OF ACCOUNT

New Telephone Account

314 939-2446 058, 314 939-3998

Beginning Balance 01/15/1999 \$0.00

Payments And Credits

03/15/1999 Bank Draft \$239.42
 05/30/1999 AT&T Adjustment \$ 11.86

Total Payments and Credits \$251.28

Refunds And Charges

Bill Cycle Date Bill Due Date Amount
 02/13/1998 03/15/1999 \$200.22

Refund 3/15/1999 Draft
 Debit Back To Acct. 03/22/1999 \$239.42

Returned Check 3/15/1999
 Debit Back To Account 03/23/1999 \$239.42

03/13/1999 04/12/1999 \$ 57.64

04/13/1999 05/11/1999 \$144.50

\$881.20
 + \$ 0.00 Balance

Total Refunds And Credits \$881.20

Ending Balance 05/11/1999 \$629.92



636-939-2446 and 636-939-3998

Partial Monthly Service from 1-15 through 2-12-99	
SWBT	\$ 90.59
Internet	\$ 17.02
Call Notes	\$ 5.66
	<u>\$113.27</u>
Monthly Service from 2-13 through 3-12-99	
SWBT	\$100.86
Internet	\$ 21.95
Call Notes Mo & Re-connection	\$ 20.14
SWBT Toll & DA Charges	\$ 4.01
	<u>\$146.96</u>
Monthly Service from 3-13 through 4-12-99	
SWBT	\$100.86
Internet	\$ 21.95
Call Notes	\$ 10.84
AT&T	\$ 16.32
SWBT Toll	\$.49
	<u>\$150.46</u>
Connection Charges both numbers	\$ 86.59
TOTAL	\$497.28
AT&T Credit	\$ 11.86
	<u>\$485.42</u>
Current Charges 4-13-99	\$485.42
	<u>\$144.50</u>
	<u>\$629.92</u>