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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 11th
day of February, 1998.

Charles A. Harter,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-97-455</u>
)	
Southwestern Bell Telephone)	
Company,)	
)	
Respondent.)	
)	

**ORDER REJECTING COMPLAINANT'S PREFILED TESTIMONY,
DENYING STAFF'S MOTION FOR LEAVE TO FILE SURREBUTTAL,
AND DISMISSING CASE**

On April 14, 1997, Charles A. Harter (Complainant) filed a formal complaint with the Missouri Public Service Commission (Commission) alleging Southwestern Bell Telephone Company (SWBT) violated Commission rules regarding service disconnection and record-keeping. SWBT responded on May 2 by filing an Answer denying SWBT violated any Commission rule and a Motion to Dismiss asking the Commission to dismiss the complaint for failure to state a claim upon which relief may be granted. After considering the pleadings, the Commission found there were disputed issues of fact and issued an order on May 13 directing the Staff of the Commission (Staff) to investigate. The Commission further ordered SWBT not to discontinue Complainant's telephone service during the pendency of this case.

On August 14, Complainant filed a Complaint of Disconnection alleging SWBT disconnected his phone service for number 583-9771, even though he was not delinquent in payments regarding that number. Complainant alleged SWBT disconnected the 583-9771 number in direct contravention of the Commission's May 13 order because Complainant failed to make payments on his delinquent account for phone number 629-2002.

SWBT filed its Answer to Complaint to Disconnection and Other Allegations on August 18. SWBT indicated Complainant requested that his business service at 314-629-2002 be disconnected, although it is unclear whether Complainant made his request for disconnection on May 13 or requested his service actually be disconnected on May 13. SWBT stated Complainant first requested calls from the number being disconnected be forwarded to a residential number. One week later, he canceled the forwarding order. SWBT stated that on the following day, Complainant requested calls from the disconnected number be forwarded to his new business number, 314-583-9771. SWBT noted Complainant has never paid for any of the forwarding services. Service to the 314-629-2002 was disconnected on July 21 at Complainant's request. SWBT stated it sent repeated notices to Complainant demanding payment on the overdue account and informing him that SWBT would suspend service to Complainant's new business number (314-583-9771) if he failed to pay.

SWBT admitted that it "did interrupt" Complainant's service on the new number, though when the "interruption" commenced and its duration are unclear. However, SWBT denied disconnecting 314-583-9771 and states the number is currently working pursuant to the Commission's order.

The parties met in an early prehearing conference on November 19, and Staff filed a Motion to Establish a Procedural Schedule on December 1.

Staff's motion was granted on December 16 and the Commission adopted Staff's proposed procedural schedule without modification. Complainant filed his direct testimony on January 16, 1998, in compliance with the procedural schedule. However, Complainant's prefiled direct testimony failed to comply with the requirements of 4 CSR 240-2.130 and the Commission directed Complainant to file testimony which complies by January 30. On January 22, Staff filed a Motion for Leave to File Surrebuttal in Response to Direct and Rebuttal Testimony and Request for Clarification of Commission's Order. SWBT timely filed its rebuttal testimony on January 30. On February 2, Complainant filed a "corrected" copy of his testimony.

Discussion

The Commission notified Complainant on January 20 that his testimony was inadmissible because it failed to comply with the Commission's rule governing prefiled testimony. Although Complainant is an attorney and should have complied with the Commission's long established rules of practice and procedure at the outset, in the interest of justice the Commission allowed the Complainant ten days to correct the deficiencies in his prefiled testimony. However, Complainant failed to take advantage of this opportunity. He filed his testimony after the Commission's established deadline of January 30 without any explanation for his failure to comply with the Commission's order or request for leave to late-file his "corrected" testimony. Therefore the Commission will reject Complainant's direct testimony which was filed on February 2. Further, as the direct testimony filed by Complainant on January 16 fails to comply with Commission rules, the Commission will also reject Complainant's prefiled testimony. Moreover, as Complainant has offered no admissible evidence in

support of the allegations made in his Complaint, the Commission will dismiss this complaint on its own motion.

Since the Commission is dismissing this Complaint, Staff's Motion for Leave to File Surrebuttal in Response to Direct and Rebuttal Testimony and Request for Clarification of Commission's Order is moot and will be denied.

THEREFORE, IT IS ORDERED:

1. That the Direct Testimony of Charles A. Halter filed on February 2, 1998, is rejected in accordance with 4 CSR 240-2.080(11).
2. That the Direct Testimony of Charles A. Halter filed on January 16, 1998, is rejected in accordance with 4 CSR 240-2.080(11).
3. That Staff's Motion for Leave to File Surrebuttal in Response to Direct and Rebuttal Testimony and Request for Clarification of Commission's Order filed on January 22, 1998, is denied.
4. That this case is dismissed as Complainant has offered no admissible evidence which would support the allegations in his Complaint.
5. That this order shall become effective on February 11, 1998.
6. That this case shall be closed on February 24, 1998.

BY THE COMMISSION



(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Lumpe, Ch., Crumpton, Drainer
and Murray, CC., concur.

Hennessey, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION