

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 24th
day of June, 1992.

C. W. Hopkins,)	
)	
Complainant,)	
)	
v.)	<u>CASE NO. TC-92-24</u>
)	
Southwestern Bell Telephone)	
Company,)	
)	
Respondent.)	

ORDER DISMISSING COMPLAINT

On August 29, 1991, C. W. Hopkins (Complainant) filed a complaint against Southwestern Bell Telephone Company (Respondent) alleging that Respondent had inappropriately classified two telephone service lines to his home as commercial rather than residential. On September 27, 1991, Respondent filed an answer to the complaint stating that the lines were properly classified as commercial as they are being used to conduct business.

On January 10, 1992, the Staff of the Commission (Staff) filed a report on its investigation into the complaint. Staff indicated that it believed the commercial classification of the lines to be proper. On January 16, 1992, Complainant filed a response to Staff's report. On February 3, 1992, Respondent filed its response to Staff's report.

On April 10, 1992, Complainant, Respondent, Staff and the Office of the Public Counsel (collectively, the parties) filed a stipulation formally agreeing to a particular set of facts from which the dispute could be resolved. The parties also waived a hearing in this matter. The parties subsequently filed briefs. The Commission's decision in this matter is based solely on the facts stipulated and agreed to by the parties.

The issue to be resolved is whether the services lines in dispute are properly classified as commercial. All the parties have agreed that the dispute is governed by Respondent's General Exchange Tariff Section 17.31 (tariff). As the parties have agreed that Complainant conducts business over the disputed lines, proper application of the tariff is the determinative factor. The tariff, in pertinent part, states:

Business rates apply at the following locations: . . .
At residential locations when the customer has no regular business telephone and the use of the service by himself, members of his household, his guests or parties calling him can be considered as more of a business than of a residence nature. . . .

The tariff provides two criteria for applying commercial rates at a residential location. First, the customer must have no regular business telephone. Although Respondent has disputed such an interpretation of the tariff, the Commission finds the tariff language to be clear and unambiguous on this point. Respondent's only recourse would be to file a change in the tariff language.

Complainant claims his regular business telephone is (913)345-9090 in Overland Park, Kansas, listed under John Hancock Financial Services. However, the Commission finds that this number is not Complainant's regular business telephone. Complainant does not pay any portion of the expenses associated with this number, nor does he determine how the number is listed. The account for this number is not in Complainant's name and, moreover, the receptionist at this number stated Complainant works outside that office, but could be reached at the number for the service lines in dispute. In order for Complainant's business customers to contact him, they must use the disputed service lines. Thus, the Commission finds that (913)345-9090 is not Complainant's regular business telephone.

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The second criterion of the tariff requires the use of the service be considered as more of a business than a residence nature. Complainant argues that this provision means more than 50 percent of the calls must be of a business nature. However, the Commission finds that Complainant's rationale is erroneous. Such an interpretation would not only force the Commission to monitor all residential telephone services, but would also have an adverse affect on residential rates as telephone companies would be forced to recoup lost commercial class revenues from other sources.

The Commission is of the opinion that a service line's proper classification can be determined by the nature of the calls. Complainant is an insurance salesman who works out of a business office located in his home. Complainant answers the disputed service lines by saying, "Hopkins and Associates," and the answering machine on the disputed service lines begins its message with, "Thank you for calling Hopkins and Associates." In contrast, calls to Complainant's other telephone number, an undisputed residential service line, are answered in a manner indicating an expectation of a personal call.

In addition, Complainant uses a hunt group service for the disputed service lines. When the hunt group service was first implemented, the undisputed residential service line was inadvertently included in the hunt group. At Complainant's request, the undisputed residential service line was removed from the hunt group which was limited to the disputed service lines. Further, the listing for the disputed service lines has always been different from the listing for the undisputed residential service line.

Complainant is making the disputed service lines available and holding them out to the public as his business telephone number. Complainant's use and treatment of the disputed service lines indicate that they are used primarily for business rather than residential calls.

The Commission finds that Complainant has no regular business telephone and the use of the disputed service lines can be considered as more of a business nature than of a residence nature. Thus, the Commission determines that the disputed service lines are properly classified as commercial and that the complaint should be dismissed.

IT IS THEREFORE ORDERED:

1. That the complaint of C. W. Hopkins against Southwestern Bell Telephone Company is hereby dismissed.

2. That this Order shall become effective on July 7, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC., Concur.