

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 26th  
day of March, 1993.

Gene Curry,	)	
	)	
Complainant,	)	
	)	
vs.	)	<u>CASE NO. TC-93-245</u>
	)	
Southwestern Bell Telephone Company,	)	
	)	
Respondent.	)	

ORDER DISMISSING COMPLAINT

On February 16, 1993, a Complaint was filed by Gene Curry (Complainant), against Southwestern Bell Telephone Company (SWB), alleging SWB improperly omitted Complainant's residential listing from its 1992-93 residential telephone directory. Complainant requested as a remedy the removal or modification of SWB Tariff Section 17.8.2 which states as follows:

"Errors-The Telephone Company's liability for damages arising from errors or omissions in the making up or printing of its directories or in accepting listings as presented by customers or prospective customers shall be limited to the amount of actual impairment of the customer's service, and in no event shall it exceed the amount paid for the service during the period covered by the directory in which the error or omission occurs."

An Answer and Motion to Dismiss was filed by SWB on March 18, 1993. In that Answer SWB maintained that, when the situation was brought to the attention of SWB, all reasonable action was taken to mitigate the error in omitting Complainant's listing from the service directory, including placing Complainant's listing in the directory assistance database within 24 hours. SWB admits the error and can ascertain no valid reason or excuse as to why the omission was made. SWB does point out that the omission was made during the course of a transfer of service from an old residence to a new one by Complainant. SWB moves to dismiss this matter based on 4 CSR 240-2.070(6), which

empowers the Commission to dismiss any complaint, without hearing, which fails to state facts upon which relief can be granted.

After review of both the Complaint, Answer, and facts surrounding this Complaint, the Commission finds that the Complaint should be dismissed under 4 CSR 240-2.070(6), for reason that SWB has complied with their tariff requirements in regard to mitigation of error in omitting Complainant's listing. The Commission finds that SWB acted per its prescribed tariffs and in a reasonable fashion in dealing with Complainant. In addition, Complainant has not requested relief which the Commission may grant over and above the mitigation already provided by SWB. Complainant has requested the tariff limiting SWB's liability be cancelled or amended. The Commission holds that such abrogation would be ill-advised. It is well established in the regulation of public utilities that the imposition of damages of this nature over and above those already imposed by the instant tariff can cause subsidization of one ratepayer at the expense of the remaining ratepayers. The Commission considers this contrary to public policy.

IT IS THEREFORE ORDERED:

1. That the Complaint filed on February 16, 1993 by Gene Curry is, for the reasons as set out above, dismissed.
2. That this Order shall become effective on the 6th day of April, 1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

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