

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 13th
day of April, 1993.

Robert L. Ingalls, 10956 Margate Hall,
Bridgeton, Missouri 63044,

Complainant,

vs.

Southwestern Bell Telephone Company,
P.O. Box 29229, St. Louis, Missouri
63126,

Respondent.

Case No. TC-93-247

ORDER DISMISSING COMPLAINT

On February 17, 1993, Robert L. Ingalls (hereinafter referred to as Ingalls) filed a complaint against Southwestern Bell Telephone Company (SWB) alleging that SWB was denying him telephone service based on a 1987 past due account and requesting that the Commission order SWB to provide him telephone service notwithstanding the past due account. On March 25, 1993, SWB filed its response requesting that the Commission dismiss the complaint. From the pleadings, the following facts are undisputed: an unpaid balance of \$240.70 exists in Ingalls' account from October 1987; Ingalls received telephone service from SWB from February, 1991, through April, 1992, wherein no outstanding balance is due; in December, 1992, Ingalls was denied telephone service based on the October, 1987, past due balance; and that SWB's General Exchange Tariff Section 17.6.1 allows SWB to deny telephone service based on the failure to pay balances due for service furnished under a former contract.

Ingalls contends that he had no knowledge of the past due balance and that as SWB provided him telephone service from February, 1991, to April, 1992, without informing him of the outstanding balance he should not be denied service based on the balance due from the 1987 contract for service. SWB contends that the October, 1987, balance was discovered upon Ingalls' request for service in December, 1992, because of its computerized D-Search service. SWB contends that

the October, 1987, past due balance was not discovered upon Ingalls' request for service in February, 1991, because the D-Search Service was not implemented until 1992. SWB further alleges that in an effort to resolve this dispute, it has agreed to provide service to Ingalls upon his agreement to pay the past due balance at the rate of \$50.00 per month with the last payment being \$40.47. SWB conditioned this agreement upon receiving the first \$50.00 payment before connecting the service.

The Commission, upon review of the pleadings in this case, finds that no hearing is necessary as the relevant facts are not in dispute and determines that the complaint should be dismissed for failure to state a claim upon which relief can be granted. There is no dispute as to the fact that Ingalls owes the money, and since he owes the money he must pay it prior to the telephone company being required to provide new service regardless of the intervening period of telephone service. The controlling tariff is Southwestern Bell's General Exchange Tariff, Section 17.6.1, (tariff) which states:

Any applicant or one for whom an application is made, owing the Telephone Company for service furnished under a former contract, shall pay or make satisfactory arrangements for paying any bill outstanding and unpaid for such service before any additional service will be furnished.

General Exchange Tariff, Section 17.6.1

The Commission finds that the tariff, on its face, clearly provides SWB with the express authority to deny service to any applicant seeking telephone service with an outstanding balance due on a former service contract. A tariff approved and authorized by the Commission is considered prima facie lawful and reasonable until found otherwise. Section 386.260, RSMo (1986). Furthermore, Missouri case law supports the contention that a public utility has a right to collect past due balances for service rendered regardless as to who is responsible for the past due balance being uncollected. Laclede Gas Co. v. Solon Gershman, Inc. 539 S.W.2d 574 (Mo. App. 1976).

IT IS THEREFORE ORDERED:

1. That the compliant filed on February 17, 1993, by Robert L. Ingalls against Southwestern Bell Telephone Company be, and is, hereby dismissed.

12. That this order shall become effective on April 23, 1993.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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