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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 4th
day of June, 1997.

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|-----------------------------|---|--------------------------|
| Gerald W. Masters, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | <u>CASE NO. TC-97-80</u> |
| |) | |
| Southwestern Bell Telephone |) | |
| Company, |) | |
| |) | |
| Respondent. |) | |

ORDER DENYING REHEARING, MOTION TO CLARIFY
AND STRIKING PLEADINGS FILED OUT OF TIME

On March 7, 1997, the Commission issued an Order Granting Motion to Dismiss in this case. That order had an effective date of March 17, 1997. The underlying complaint was filed by Gerald W. Masters (Masters or Complainant) who complained that Southwestern Bell Telephone Company (SWBT or Respondent) had refused to provide Masters with per-line blocking. Complainant requested relief in the form of an order directing SWBT to provide per-line blocking, although Masters does not qualify for per-line blocking as set out in SWBT's tariff. The Commission has previously ordered that per-line blocking shall be available only to certain agencies and the Commission's order further held that per-call blocking was an adequate method of preserving customer privacy and safety. See In re Southwestern Bell Telephone Company, Case No. TR-93-123, Report and Order (March 19, 1993).

On March 14, the Office of the Public Counsel (Public Counsel) filed its Motion For Rehearing or Motion To Clarify Order in which it

requested the Commission grant a rehearing and also issue an order to compel SWBT to respond to certain data requests. Public Counsel noted in its motion that the Commission did not rule on Public Counsel's motion to compel answers to its data requests.

On March 20, SWBT filed its Response to Motion for Rehearing or, in the Alternative, Motion to Clarify Order. SWBT notes that the complainant has made no allegation that SWBT is failing to offer its caller I.D. service under the terms and conditions of a lawfully effective tariff. SWBT further noted that the Commission has previously reviewed the FCC docket to which Public Counsel referred in its motion for rehearing. In its Order Approving Tariff and Order Denying Motion to Suspend, In re GTE Midwest Incorporated, No. TT-96-296 (March 29, 1996) the Commission held that "The FCC docket to which Public Counsel refers does not indicate that this issue requires relitigation. The Commission finds the tariff provisions for per-line blocking for domestic violence intervention agencies and law enforcement agencies along with other provisions, such as per-called blocking, provide an adequate method of preserving customer privacy and safety."

On April 8, the complainant filed a letter which attempted to reargue the issues in this case and which appeared to suggest that this matter should be reheard. On April 10, 1997, SWBT filed its motion to strike in which it claimed that pursuant to 4 CSR 240.2-160 applications for rehearing must be filed within 10 days of the date the order was issued and Mr. Masters' request filed on April 8, was untimely. On April 15, the complainant filed "Gerald W. Masters' Response to SWBT's Motion to Strike." Pursuant to the rule, as cited by SWBT, the complainant's filing of April 8, was untimely.

The complainant has failed to state a claim upon which relief can be granted. Pursuant to 4 CSR 240-2.070 (3), a formal complaint may be made only upon an act omitted to be done or in violation of law and no such allegation was proffered herein. Pursuant to 4 CSR 240-2.070 (6) the Commission, without argument and without hearing, may dismiss a complaint for failure to state facts upon which relief can be granted or may strike irrelevant allegations.

Public Counsel's suggestion that the Commission has relied upon *stare decisis* as a grounds for rejection when that principal does not apply to administrative agencies is incorrect. Administrative agencies are not bound by *stare decisis* but it is not correct to suggest that an administrative agency may not follow its own precedent where it finds such a precedent appropriate. Public Counsel has also argued that the Commission's order of March 7 was incomplete where it failed to rule upon Public Counsel's motions to compel answers to its data requests. However, it should be clear that the dismissal of a complaint in its entirety would make moot pending motions which address that complaint. Inasmuch as the Commission has dismissed the complaint herein, this order will make clear for the record that all pending motions in this case are hereby denied.

IT IS THEREFORE ORDERED:

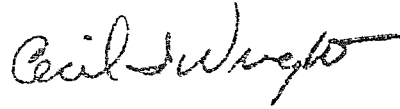
1. That the Motion For Rehearing or, In The Alternative, Motion to Clarify Order as filed on March 17, 1997, by the Office of the Public Counsel is denied.

2. That the pleadings which were filed on April 8 and April 15 by the complainant, Gerald W. Masters, were filed out of time and no leave to file out of time was requested or granted.

3. That the motions to compel data requests as filed by the Office of the Public Counsel and all other motions pending in this case are hereby denied.

4. That this Order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Cecil I. Wright", with a long horizontal flourish extending to the right.

Cecil I. Wright
Executive Secretary

(S E A L)

Crumpton, Murray,
and Drainer, CC., Concur.
Zobrist, Chm., Dissent.

ALJ: Roberts