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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 16th  
day of December, 1997.

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

**ORDER SUSTAINING OBJECTION, ADOPTING PROCEDURAL  
SCHEDULE, AND LIMITING ISSUES**

***Background***

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 to investigate. The Commission further ordered SWBT not to discontinue Complainant's telephone service during the pendency of this case.

On May 19, Complainant filed a Further Complaint alleging continuing violations of Commission rules and the federal Fair Debt

Collection Practices Act, 15 U.S.C. § 1691 et seq. Additionally, Complainant requested SWBT produce "records of all disconnect notices mailed in Missouri in the year 1997..." and "records of tape recordings and transcripts of all telephone conversations between Complainant and [SWBT]..." SWBT filed its Response to Further Complaint on May 14, denying that SWBT violated either the Commission's rules or federal law. SWBT also denied taping or transcribing any conversations with Complainant. In addition, SWBT objected to Complainant's request for the production of all disconnect notices mailed in Missouri as irrelevant, immaterial, and an undue burden on SWBT.

On June 27, Staff filed a Memorandum recommending dismissal of this complaint. Staff related that the original complaint alleged violations by SWBT of various provisions of 4 CSR 240-33.070 with respect to Complainant's phone service. However, this rule regarding discontinuance of service applies to residential service only. "Service", as used in 4 CSR 240-33.070, is defined by 4 CSR 240-33.020(1)(T) as "the provision by a telephone utility of telephone service for residential purposes." Staff indicated it confirmed that Complainant's account is a business account.<sup>1</sup> Therefore, discontinuance of Complainant's telephone service is controlled by SWBT's tariff. Staff stated it reviewed the section of SWBT's tariff<sup>2</sup> which deals with the discontinuance of business services for nonpayment and believes SWBT acted in accordance with its tariff by sending

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<sup>1</sup> Staff included as Attachment I to its Memorandum a facsimile transmission from SWBT confirming Complainant's telephone service account was in fact a business account. In addition, the bills included by Complainant in his Further Complaint as Exhibits 1 and 3 are addressed to "C Harter & M Williams, DBA Williams & Harter..." This method of address clearly indicates the bill was for a business account.

<sup>2</sup> Attachment II to Staff's Memorandum.

a service interruption notice to Complainant at least five days prior to the date that his service was disconnected.

Staff also stated that the original Complaint alleged SWBT violated 4 CSR 240-10.010(2) by locating its collection office in Norman, Oklahoma. This rule requires that "[e]very public utility shall have an office in this state in which its accounts, records, memoranda, books, and papers carried in pursuance of a statute of this state or rules of this commission shall be kept..." Staff noted that information concerning customer accounts can be generated on numerous computers throughout SWBT's Missouri service area, as well as in Norman, Oklahoma. Staff stated that it believes the existence of a computer database that is readily accessible by computers in a SWBT office located in Missouri satisfies the requirements of the Commission's rule.

Additionally, Staff indicated Complainant's allegation in his Further Complaint that SWBT violated 4 CSR 240-13(5)(c), which regulates disconnection of service, is unsupportable. Chapter 13 applies only to electric, gas and water public utilities. It does not apply to telecommunications companies. Finally, Staff stated that it can make no recommendation regarding whether SWBT violated the federal debt collection laws.

Complainant replied to Staff's Memorandum on August 14, realleging that SWBT violated the Commission's rules regarding notice before disconnection. Complainant also stated his phone was a residence telephone and was the only residence line for two families. However, Complainant admitted his phone service was "entitled a business line" as demanded by SWBT.<sup>3</sup>

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<sup>3</sup> Complainant ran his law practice from his residence. As Complainant represented to SWBT that the 314-629-2002 phone line was for the attorney business partnership between Complainant and Mary Ann Williams, SWBT  
(continued...)

Also 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 admits that it "did interrupt" Complainant's service on the new number, though when the "interruption" commenced and its duration are

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<sup>3</sup> (...continued)  
properly required that Complainant's phone service be listed as a business line. Complainant used this single phone line as both his business phone and as his residence phone.

unclear. However, SWBT denies 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.

### ***Discussion***

#### **1. SWBT's Objection to Complainant's Request for the Production of Disconnect Notices.**

The parties took up the issue of SWBT's production of all disconnect notices mailed in Missouri in 1997 during the recorded portion of the November 19 prehearing conference. Following argument by the parties, SWBT's objection to Complainant's request for production was sustained as to any disconnect notice mailed to someone other than Complainant. Therefore, the Commission will only require SWBT to produce those disconnect notices which directly relate to Complainant's phone service at his various numbers.

#### **2. Staff's Motion to Establish Procedural Schedule.**

The parties were directed to file their proposals for a procedural schedule by December 1, 1997. Staff filed its proposal in its December 1 motion, and stated that SWBT agreed with Staff's proposed procedural schedule. Staff stated that it was unable to contact any other party, and no other proposals were filed. Although a tentative hearing date of February 2, 1998, was discussed at the prehearing conference, the Commission finds Staff's proposed procedural schedule to be reasonable and will adopt it without modification.

The Commission finds that the following conditions shall be applied to the schedule:

A. The Commission will require the prefiling of testimony in compliance with the requirements of 4 CSR 240-2.130, including the filing of testimony on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays in the proceedings caused by allegations of unfair surprise at the hearing.

B. Testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless a protective order has first been established by the Commission. Any testimony or schedule filed without a protective order first being established shall be considered public information.

C. The parties shall file a hearing memorandum setting out the issues to be heard and the witnesses to appear on each day of the hearing, definitions of terms used in describing those issues, and each party's position on those issues. The hearing memorandum will set forth the issues that are to be heard and decided by the Commission. Any issue not contained in the hearing memorandum will be viewed as uncontested and not requiring resolution by the Commission. The briefs to be submitted by the parties shall follow the same format established in the hearing memorandum. Initial briefs must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

The Commission Staff will be responsible for preparing and filing the hearing memorandum. The Commission wishes to emphasize the importance of the deadline for filing the hearing memorandum. Unless the Commission orders otherwise, the hearing memorandum shall be filed on the date set. Each party is expected to provide Staff with its position on each

unresolved issue at least two business days before the due date. If a party fails to provide its position by that date, the Staff is not obligated to include that party's position in the hearing memorandum.

D. The Commission's general policy provides for the filing of the transcript within two weeks after the conclusion of the hearing. Any party seeking to expedite the filing of the transcript shall tender a written request to the regulatory law judge at least five days before the hearing.

E. Initial briefs shall be limited to 30 pages and reply briefs to 15 pages. All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080(7).

### **3. Limitation of Issues for Evidentiary Hearing.**

The Commission has reviewed the parties' numerous pleadings and Staff's recommendation. With respect to the allegations raised in the Complaint, Further Complaint and Reply To Sherri Murphy Memorandum, the Commission finds that there is nothing in the facts of this case as set out by Complainant which could be interpreted as a violation by SWBT of its tariffs or Commission rules governing SWBT's operation. Regarding the issues raised by the Complaint of Disconnection, the Commission finds there are disputed issues of fact which will require a hearing to determine whether SWBT acted improperly in "interrupting" Complainant's phone service despite a Commission order directing them not to do so. Accordingly, evidence in this case shall be limited to the matter of SWBT's "interruption" of Complainant's telephone service.

#### **IT IS THEREFORE ORDERED:**

1. That Southwestern Bell Telephone Company's objection to Charles A. Harter's request for the production of "records of all

disconnect notices mailed in Missouri in the year 1997..." is sustained as to any disconnect notice mailed to someone other than Charles A. Harter.

2. That the following procedural schedule is adopted for this proceeding, subject to the conditions discussed above:

Complainant's Direct Testimony	January 16, 1998 3:00 p.m.
Other Parties' Rebuttal Testimony	January 30, 1998 3:00 p.m.
All Parties' Surrebuttal Testimony	February 13, 1998 3:00 p.m.
All Parties' Cross-Surrebuttal Testimony	February 27, 1998 10:00 a.m.
Hearing Memorandum	March 13, 1998 5:00 p.m.
Evidentiary Hearing	March 20, 1998 9:00 a.m.

3. That the evidentiary hearing will be held in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the hearing at: Consumer Services Hotline — 1-800-392-4211 or TDD Hotline — 1-800-829-7541.

4. That evidence presented in this case shall be limited to the question of whether Southwestern Bell Telephone Company acted improperly in "interrupting" Complainant's phone service despite a Commission order directing it not to do so.



5. That this order shall become effective on December 16, 1997.

**BY THE COMMISSION**

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

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

Hennessey, Regulatory Law Judge