

FILED²

MAR 03 2003

Missouri Public
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of the tariff filing of)
Southwestern Bell Telephone, L.P.) Case No. _____
d/b/a SBC Missouri concerning the) Tariff No. JI-2003-1528
payment of late fees on disputed charges.)

MOTION TO REJECT TARIFF, OR IN THE ALTERNATIVE, TO SUSPEND

The Office of the Public Counsel respectfully moves the Missouri Public Service Commission to reject, or in the alternative, suspend Tariff No. JI-2003-1528 filed by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri to amend the provisions concerning the customer's obligation to pay late fees on disputed charges and then seek refund of the late fees on the disputed charges. This tariff is inconsistent with the provisions of Public Service Commission telecommunications billing rule 4 CSR 240-33.080 (4) and (5) Disputes by Residential Customers. This tariff is contrary to the purpose and intent of the rule to create "reasonable and uniform standards . . . for handling disputes."

This tariff does not afford the ratepayer adequate protection from billing errors and is not in the public interest because it places an undue obligation on the customer to pay late charges on the disputed charges on the residential and business customers bill. The disputed amounts could very well be charges that are unauthorized, improper, and erroneous charges to SBC or to any other carrier SBC bills for under contract. It would be an important statistic to see how often a customer disputed amount or item is resolved in favor of the customer as well as the number of times these late charges on disputed amount would be estimated to be applied and the total amount at stake under the terms of the tariff. The tariff improperly shifts the risk of loss to the customer and places an

unreasonable burden on the customer to first pay and then seek a refund for late charges on unauthorized, improper, or incorrect billings (that the client may not owe) rather than allowing the customer to withhold not only the disputed payments, but also the late fees on those charges until the dispute is resolved. Using the reasonable rationale based on the theory that recovery of the interest usually follows the recovery of the principal, if the disputed amount can lawfully be withheld by PSC regulation, then it is reasonable that the late charges on the disputed amount be withheld pending resolution of the outcome. SBC's cover letter does not identify why the circumstances pose such a problem that the customer should have to pay late charges the customer may not owe.

The PSC's billing rule only allows late charges on a delinquent account:

4 CSR 240-33.040 Billing and Payment Standards for Residential

Customers

5) A telecommunications company may assess a penalty charge upon a delinquent account. Such charge shall be specifically stated in the company's tariff.

This rule must also be read in conjunction with the PSC rules that allow customers to pay the undisputed portion of their bills to avoid disconnection of utility service when there is a disputed bill. If the customer is able to avoid disconnection for nonpayment of disputed amounts, then it is reasonable for the customer to avoid a late charge for the nonpayment of a disputed amount.

The telecommunications billing rule for disputed payments provides in pertinent part:

4 CSR 240-33.080 Disputes by Residential Customers

PURPOSE: This rule establishes the procedures by which disputes between residential customers and telecommunications companies should be resolved so that reasonable and uniform standards exist for handling disputes.

* * *

(4) If a customer disputes a charge, the customer shall pay an amount to the telecommunications company equal to that part of the total bill not in dispute. The amount not in dispute shall be mutually determined by the parties. The parties shall consider the customer's prior usage, the nature of the dispute and any other pertinent factors in determining the amount not in dispute. The telecommunications company shall not discontinue service to a customer for nonpayment of charges in dispute while that dispute is pending.

(5) If the parties are unable to mutually determine the amount not in dispute, the customer shall pay to the telecommunications company, at the company's option, an amount not to exceed fifty percent (50%) of the charge in dispute or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute. The telecommunications company shall not discontinue service to a customer for nonpayment of charges in dispute while that dispute is pending.

(6) Failure of the customer to pay to the telecommunications company the amount not in dispute within four (4) working days from the date that the dispute is registered or by the delinquent date of the disputed bill, which ever is later, shall constitute a waiver of the customer's right to continuance of service and the telecommunications company may then proceed to discontinue service as provided in this rule.

(7) If the dispute is ultimately resolved in the favor of the customer in whole or in part, any excess moneys paid by the customer shall be refunded promptly.

(Emphasis supplied)

See also, similar billing rules for electric, gas, and water utilities (4 CSR 240-13.045 Disputes) Although this billing rule applies only to residential customers, it seems that SBC is applying the same standards and obligations to both business and residential

customers to pay late charges on disputed amounts. The same protections should apply to both classes under these circumstances.

The tariff also gives SBC broad and undefined discretion to apply the late charge or not apply the late charge for delinquent payments of disputed portions of the bill. The same standard for late charges may not be applicable for all customers within the same class under this discretionary application of a late charge on disputed charges.

For these reasons, Public Counsel asks the PSC to reject the tariff as inconsistent with the protection of ratepayers and inconsistent with the public interest (Section 392.185, RSMo 2000) for violation of if not the actual rules, but at least the spirit, intent, and purpose of the Commission rules concerning billing disputes cited above. In the alternative, Public Counsel asks the PSC to suspend the tariff and hold an evidentiary hearing to determine whether the proposed tariff is just, reasonable, and lawful and otherwise in the public interest.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:



Michael F. Dandino (Bar No. 24590)
Senior Public Counsel
200 Madison Street, Box 7800
Jefferson City, MO 65102
Telephone: (573) 751-5559
Facsimile: (573) 751-5562
E-mail: mdandino@ded.state.mo.us

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this 3rd day of March 2003 to the following:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Paul Lane
SBC Missouri
One Bell Center, Room 3520
St. Louis, MO 63101



FILE COPY

February 7, 2003.

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Dear Judge Roberts:

Southwestern Bell Telephone, L.P., d/b/a as SBC Missouri proposes to revise Section 17 of the General Exchange Tariff, P.S.C. Mo.-35. The purpose of the revision is to change the language concerning Late Payment Charges when a customer dispute is involved.

The current tariff language states that when a customer disputes a charge the Late Payment Charge is applied and will be adjusted later if the dispute is resolved in favor of the customer. SBC is making system modifications that in most cases will allow us to exempt the disputed amount from the late payment charge. We are proposing new tariff language to allow this process.

The proposed revisions are reflected on the attached tariff sheets. The issued and requested effective dates are February 7, 2003 and March 9, 2003 respectively.

Questions concerning this filing may be referred to Sherry Myers on 314-235-6380.

Very truly yours,

Sherry Myers

I certify that a copy of the foregoing, including attachments, is being forwarded postage prepaid or delivered to the Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri, 65102 this 7th day of February 2003.

Sherry Myers

Attachment

FEB 10 2003

No Supplement to this
tariff will be issued
except for the purpose
of canceling this tariff.

General Exchange Tariff
Section 17
7th Revised Sheet 12.01
Replacing 6th Revised Sheet 12.01

RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

17.6 PAYMENTS FOR SERVICE

17.6.1 Payment for Service

A. Residence Service

The customer is responsible for payment of all charges for services furnished the customer, authorized users, and any other charges for which the customer has agreed to be responsible, including but not limited to charges for services originated or charges accepted at the customer's telephone for exchange service; intrastate or interstate long distance service charges billed by the Telephone Company; any FCC-approved end user charge; any charges transferred to the customer's account from terminated accounts billed to the same customer; and any charges pursuant to Paragraph 17.4., preceding, where the customer has executed a Contract of Guaranty. A customer shall have at least 21 days from the rendition of a bill to pay the charges stated.

(CT) A Late Payment Charge of \$1.60 will be applied to accounts which have charges greater than \$5.00 carried over to the next monthly bill. When the balance carried over is in dispute, the Late Payment Charge may be applied and adjusted later, if appropriate, based on the resolution of the claim.

(AT) Where possible, the Company will exempt the disputed portion of the bill from the Late
(AT) Payment Charge until the claim is resolved. If the claim is resolved in favor of the Company, the Late Payment Charge will be applied if appropriate.

Upon nonpayment of any undisputed, delinquent charge due the Telephone Company, the Telephone Company may, after a written notice has been furnished to the customer, without incurring any liability, forthwith discontinue the furnishing of said service.¹ This written notice shall be sent or delivered to the customer at least ten (10) days prior to the date of the proposed discontinuance. Basic local telecommunications service may not be discontinued for customer non-payment of a delinquent charge for other than basic local telecommunications services. Basic local telecommunications service shall not be discontinued on a day when the offices of the Telephone Company are not available to facilitate reconnection of service or on a day immediately preceding such day.

(MT)

(MT)

- (1) Pursuant to paragraph 390 of the FCC's Final Report and Order in Case No. CC 96-45, a Lifeline customer's local service shall not be disconnected for non-payment of toll charges.

Issued: February 7, 2003

Effective: March 9, 2003

By CINDY BRINKLEY, President-Missouri
Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company
St. Louis, Missouri

No Supplement to this
tariff will be issued
except for the purpose
of canceling this tariff.

General Exchange Tariff
Section 17
2nd Revised Sheet 12.02
Replacing 1st Revised Sheet 12.02

RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

(AT) 17.6 PAYMENTS FOR SERVICE (cont'd)

(AT) 17.6.1 Payment for Service (cont'd)

(CT) A. Residence Service (cont'd)

(MT) The Company may place global toll blocking and eliminate any optional, non-basic calling
features and functions for customer nonpayment of delinquent charges for other than basic
(MT) local telecommunications service.

At least 24 hours preceding a discontinuance, the Telephone Company shall make reasonable efforts to contact the customer to advise him of the proposed discontinuance and what steps must be taken to avoid it.

The Telephone Company shall postpone a discontinuance for a time not in excess of 21 days if the telephone is necessary to obtain emergency medical assistance for a person who is a member of the household where the service is provided and where such a person is under the care of a physician. Any person who alleges such emergency shall, if requested, provide the Telephone Company with reasonable evidence of such necessity. 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.

Issued: February 7, 2003

Effective: March 9, 2003

By CINDY BRINKLEY, President-Missouri
Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company
St. Louis, Missouri

No Supplement to this
tariff will be issued
except for the purpose
of canceling this tariff.

P.S.C. Mo.- No. 35

General Exchange Tariff
Section 17
4th Revised Sheet 13
Replacing 3rd Revised Sheet 13

RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

(AT) 17.6 PAYMENTS FOR SERVICE (cont'd)

(AT) 17.6.1 Payment for Service (cont'd)

B. Business Service

The customer is responsible for payment of all charges for services furnished the customer, authorized users, and any other charges for which the customer has agreed to be responsible, including but not limited to charges for services originated or charges accepted at the customer's telephone for exchange service; intrastate or interstate long distance service charges billed by the Telephone Company; any FCC-approved end user charge; any charges transferred to the customer's account from terminated accounts billed to the same customer; and any charges pursuant to Paragraph 17.4., preceding, where the customer has executed a Contract of Guaranty. A customer shall have at least 10 days from the rendition of a bill to pay the charges.

(CT) A Late Payment Charge of one and one half percent (1.5%) will be applied to all charges carried over to the next monthly bill. The Late Payment Charge may be applied to any disputed amount and will be adjusted if the claim is settled in the customer's favor.

(AT) Where possible, the Company will exempt the disputed portion of the bill from the Late
(AT) Payment Charge until the claim is resolved. If the claim is resolved in favor of the Company, the Late Payment Charge will be applied if appropriate.

The State of Missouri and its State agencies are exempted from the late payment charge unless or until §34.055 RSMo (1994) is revised to authorize telecommunications utilities to impose late penalties if the State does not pay for goods or services within 30 days.

Upon non-payment of any sum due the Telephone Company, the Telephone Company may, after a written notice has been furnished to the customer, without incurring any liability, forthwith discontinue the furnishing of service. This written notice shall be sent or delivered to the customer at least five days prior to the date of the discontinuance. If, in the judgment of the Telephone Company, unusual risk of financial loss exists, service may be suspended after 48 hours' written notice has been furnished to the customer.

Issued: February 7, 2003

Effective: March 9, 2003

By CINDY BRINKLEY, President-Missouri
Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company
St. Louis, Missouri