

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF TELECOMMUNICATIONS )  
SERVICES BY AMERICALL DIAL-O )  
SERVICES, INC. )  
\_\_\_\_\_) CASE NO.  
90-001  
ALLEGED VIOLATIONS OF KRS CHAPTER 278 )

O R D E R

On January 8, 1990, the Commission, by Order, initiated this investigation based upon a prima facie finding that AmeriCall Dial-O Services, Inc. ("Dial-O") is operating as a utility in violation of the provisions of KRS Chapter 278. On January 29, 1990, AmeriCall filed an application for rehearing of the Commission's Order initiating this investigation.

In seeking a rehearing of the Order initiating an investigation, AmeriCall employs a procedure that clearly was not contemplated nor intended by KRS 278.400. In establishing this proceeding, the Commission seeks to investigate the activities of Dial-O. Thus, the discussion contained in AmeriCall's application for rehearing for Dial-O would be appropriately presented to the Commission at the time of the hearing in this proceeding. In its application for rehearing, AmeriCall states that the Commission has prejudged Dial-O and that there is a lack of partiality necessary for a meaningful opportunity to be heard, citing Utility Regulatory Commission v. Kentucky Water Services Company, Ky.App.,

642 S.W.2d 591, 593 (1982). However, AmeriCall's reliance on this case is misplaced. The case states at 593:

It has been said no hearing in the constitutional sense exists where a party does not know what evidence is considered and is not given an opportunity to test, explain or refute.

The Commission's January 8, 1990 Order establishing this investigation clearly sets forth the basis upon which the Commission made a prima facie finding that Dial-O is operating as a utility in violation of the provisions of KRS Chapter 278. The Order then sets a hearing date providing Dial-O an opportunity to test, explain or refute the basis upon which the Commission established its prima facie showing.

The Commission, having considered Dial-O's application for rehearing and having been otherwise sufficiently advised, hereby denies the application for rehearing.

IT IS HEREBY ORDERED that Dial-O shall provide within 5 days of the date of this Order a list of witnesses who will be presented and made available for cross-examination at the hearing in this matter and a summary description of the testimony of each witness.

Done at Frankfort, Kentucky, this 13th day of February, 1990.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

\_\_\_\_\_  
Executive Director

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Commissioner