

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT E. PLEDGER)	
COMPLAINANT)	
v.)	CASE NO. 99-448
POWERTEL, INC.)	
DEFENDANT)	

O R D E R

On August 4, 1999, Robert E. Pledger, by counsel, filed with this Commission a letter stating a formal complaint against PowerTel, Inc. ("PowerTel"), a wireless telecommunications provider doing business in Kentucky. Mr. Pledger alleges that he applied for PowerTel service, and that, for credit reasons, PowerTel offered Mr. Pledger only prepaid service at substantially higher rates than those offered in the service plan for which Mr. Pledger applied. The letter of complaint also alleges that Mr. Pledger's attorneys asked PowerTel to extend the less expensive service plan to Mr. Pledger "by requiring a deposit," and further states that Mr. Pledger's attorneys have concluded that PowerTel is obligated by law to extend the less expensive service plan to Mr. Pledger if a deposit is offered. Despite acknowledging that a more expensive prepaid service plan was made available to Mr. Pledger, the letter of complaint characterizes the incident as a denial of service.

Attached to Mr. Pledger's letter of complaint, among other things, is a letter dated July 20, 1999, from James H. Benson, Director of Legal Affairs, PowerTel, to John

Geoghegan of the Commission's Staff. Mr. Benson's letter states, among other things, that PowerTel has not refused service to Mr. Pledger; that the dispute concerns the rates Mr. Pledger will pay; and that this Commission has no jurisdiction over the rates of commercial mobile radio service ("CMRS") providers such as PowerTel.

Pursuant to 807 KAR 5:001, Section 12, the Commission must examine any formal complaint to determine whether it states a *prima facie* case. For the following reasons, the Commission finds this Complaint to be deficient as a matter of law.

47 U.S.C. § 332(c)(3)(A) states, in pertinent part, as follows:

No state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulation of the other terms and conditions of commercial mobile services.

Thus, the statute specifically preempts states from regulating the rates of CMRS providers, except under certain conditions that do not apply here. That same section preserves the states' authority over the terms and conditions, other than rates, under which commercial mobile services are provided. As one United States District Court succinctly put it, the "preemptive reach of 47 U.S.C. § 332(c)(3)(A) is limited on its face." Mountain Solutions, Inc. v. State Corporation Com'n of the State of Kansas, 966 F.Supp. 1043, 1048 (D. Kan. 1997). This Commission agrees that the statutory language is plain. Simply put, if a complaint concerns the rates a customer must pay for wireless telecommunications service, this Commission has no jurisdiction over the complaint.

It is undisputed that PowerTel refused to offer Mr. Pledger the more attractive rate given to customers who meet its credit requirements. It is undisputed that Mr.

Pledger wishes to obtain a lower rate. No violation of PowerTel's tariff (which does not, in any case, contain PowerTel's rates) is alleged. The basis of the complaint clearly is dissatisfaction with the rates PowerTel requires Mr. Pledger to pay for service rather than with another term or condition of service. In a competitive market, Mr. Pledger's dissatisfaction with the rates offered him by PowerTel should simply result in his seeking better terms from another wireless carrier.

The Commission, having been sufficiently advised, HEREBY ORDERS that:

1. Pursuant to 807 KAR 5:001, Section 12(4)(a), Mr. Pledger may, within 10 days of the date of this Order, file an amendment to his complaint.
2. If no amendment is filed within 10 days of the date of this Order, the Complaint shall be dismissed without further Order.

Done at Frankfort, Kentucky, this 16th day of November, 1999.

By the Commission

ATTEST:

Executive Director