

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GLORIA JEAN HOLLIS)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2000-110
)	
GTE WIRELESS)	
)	
DEFENDANT)	

O R D E R

On January 31, 2000, the Complainant, Gloria Jean Hollis, filed a formal complaint against GTE Wireless. Ms. Hollis alleged in her complaint that GTE Wireless's bill for her cellular phone use was confusing and that the charges on the bill seemed to be unusual and odd especially in relation to the roaming charges on the bill. In her complaint, Ms. Hollis prayed that the Commission order GTE Wireless and the other cellular telephone companies involved in the billing of her cellular phone bill to show clearly what each charge entails and the reason for each charge. Ms. Hollis also prayed that the Commission order the cellular telephone companies to reimburse over-charged customers if the charges on the cellular phone bills were not legitimate. On March 14, 2000, the Commission issued an Order to GTE Wireless directing it to satisfy or answer Ms. Hollis's formal complaint.

The Commission received GTE Wireless's answer to Ms. Hollis's formal complaint on March 24, 2000. In its answer GTE Wireless stated several affirmative defenses to Ms. Hollis's complaint. The gravamen of its answer was that the various taxes imposed upon cellular phone bills originate from the localities, which vary from state to state or even from county to county, and change according to the taxes and fees assessed against the local cellular carrier. According to GTE Wireless, the local cellular company incorporates these additional costs into a charge that it then remits to GTE Wireless. Upon receipt of this charge, GTE Wireless bills the customer for the charges and taxes and then remits payment to the local cellular company, which in turn pays the taxing authority.

GTE Wireless claims that it does not fix the tax rates, calculate the amount of tax due, or keep the taxes collected. GTE Wireless further claims that it must collect the taxes imposed by the various jurisdictions from which the calls originated, and it has no ability to change or waive those taxes. GTE Wireless, in the same vein, argues that the Commission does not have jurisdiction to change or waive taxes imposed on cellular service or to excuse GTE Wireless from collecting those taxes.

Having reviewed the evidence on record and being otherwise sufficiently advised, the Commission finds that:

1. A hearing on this matter is not necessary in the public interest or for the protection of substantial rights, and this complaint should be dismissed without a hearing.
2. The Commission lacks the proper jurisdiction to adjudicate this complaint. The Commission is without the power to order changes in local tax policies and is

without authority to exempt cellular communication providers from paying said taxes and fees. Moreover, the Commission lacks the power to exempt any utility from locally implemented taxes.

3. The Federal Communications Commission preempts the Commission's authority to regulate the rates and billings of cellular communications providers. Cellular communications providers are a utility as defined by KRS 278.010 and, absent federal preemption, the Commission has the authority to regulate cellular communications providers pursuant to KRS 278.040. Federal preemption, however, exists in this field, and, accordingly, the Commission is unable to adjudicate Ms. Hollis's complaint due to lack of jurisdiction.

IT IS THEREFORE ORDERED that the complaint herein is hereby dismissed with prejudice.

Done at Frankfort, Kentucky, this 12th day of May, 2000.

By the Commission

ATTEST:


Executive Director