

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COIN PHONE MANAGEMENT COMPANY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO.
)	2002-00031
ADELPHIA BUSINESS SOLUTIONS OF)	
KENTUCKY, INC. and HYPERION)	
COMMUNICATIONS OF KENTUCKY, INC.)	
)	
DEFENDANTS)	

ORDER TO SATISFY OR ANSWER

Adelphia Business Solutions of Kentucky, Inc. and Hyperion Communications of Kentucky, Inc. (Defendants) are hereby notified that they have been named as defendants in a formal complaint filed on January 22, 2002, a copy of which is attached hereto.

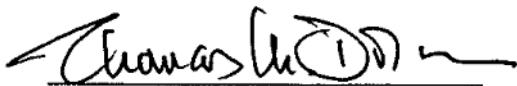
Pursuant to Administrative Regulation 807 KAR 5:001, Section 12, Defendants are HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 5th day of February, 2002.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas W. (T) [unclear]", written over a horizontal line.

Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

JAN 28 2002

COIN PHONE MANAGEMENT COMPANY)
Complainant)
v.)
ADELPHIA BUSINESS SOLUTIONS OF)
KENTUCKY, INC. and HYPERION)
COMMUNICATIONS OF KENTUCKY, INC.)
Defendants)

Case No. 2002-00031

COMPLAINT

COMES the Complainant, COIN PHONE MANAGEMENT COMPANY ("CPMC"), by and through counsel, and for its Complaint states as follows:

PARTIES AND JURISDICTION

1. CPMC is a Kentucky corporation with a principal office address of 1846 Cargo Court, Louisville, Kentucky 40299. CPMC is registered with the Commission as utility number 50007500, and its official contact is Thomas Rose.
2. Adelphia Business Solutions of Kentucky, Inc. ("Adelphia") is a Delaware corporation which is registered to do business as a foreign for-profit company in Kentucky. Adelphia's principal office address is One North Main Street, Coudersport, Pennsylvania, 16915. Adelphia is registered with the Commission under the name Adelphia Business Solutions Atlantic, Inc., utility number 5019900; the official contact is John Glickman.
3. Hyperion Communications of Kentucky, Inc. ("Hyperion") is a Delaware corporation which was previously registered to do business as a foreign for-profit company in Kentucky; that registration expired in July 1999. Hyperion's principal office address is Main

and Water Streets, Coudersport, Pennsylvania, 16915. Upon information and belief, Hyperion is a wholly owned subsidiary of Adelphia. Hyperion is not registered as a utility with this Commission.

4. The Public Service Commission has jurisdiction in this matter pursuant to KRS 278.040(2), which vests the Commission with power to regulate all utilities in this Commonwealth.

Relationship Between the Parties

5. CPMC is a payphone service provider ("PSP"), purchasing dialtone either directly from a local exchange carrier ("LEC") or from a reseller, and selling it to payphone customers.

6. Service purchased from the LEC or reseller is tracked by means of automatic number identification ("ANI"), and the PSP is billed for service purchased based on the ANI record for each line the PSP uses to serve its customers. Service from the LEC or reseller may be provided to the PSP at either the LEC's tariff rate or a special contract rate.

7. BellSouth Telecommunications, Inc. ("BellSouth") is the incumbent local exchange carrier ("ILEC") in much of the geographic area that CPMC serves. CPMC purchased dialtone from BellSouth for the 528 ANIs prior to selecting Adelphia as its competitive local exchange carrier ("CLEC").

8. In February 1998, CPMC commenced a process of migrating its ANIs from the ILEC, BellSouth, to CLEC Adelphia, which was providing dialtone service to PSPs through Hyperion. Upon information and belief, the service sold by Hyperion was purchased from BellSouth.

9. CPMC's ANIs were migrated one at a time; the process lasted from February 1998 to October 1998. CPMC purchased dialtone from Hyperion until May 3, 1999, at which time the relationship ceased.

Proceedings in PSC Administrative Case No. 361

10. On April 15, 1997, CPMC filed a formal complaint with the Commission, alleging that the tariff rates charged to PSPs by LECs (including BellSouth) for dialtone exceeded price caps set by the Federal Communications Commission. In response to the complaint, the Commission opened Administrative Case No. 361, *In the Matter of Deregulation of Local Exchange Companies' Payphone Service*.

11. The Kentucky Payphone Association joined CPMC as a complainant, arguing that the tariffed rates charged did not comply with Section 276 of the federal Telecommunications Act of 1996, 47 U.S.C. § 101 *et seq.*

12. After conducting an administrative investigation and requiring the LECs, including BellSouth, to provide cost data for the services purchased by CPMC and other KPA members, the PSC determined that "the cost-based rates [for the services in question] are lower than the existing tariffed rates and therefore BellSouth ... shall provide credits or refunds back to April 15, 1997." 1/5/1999 Order in Administrative Case No. 361, at 7-8. The Commission ordered that:

- a. The LECs (including BellSouth) set payphone access line rates at \$28.83.
- b. BellSouth and the other affected LECs file amended tariffs by February 5, 1999 stating that refunds or credits would be made on this service going back to April 15, 1997.

- c. BellSouth and the other affected LECs file a plan with the PSC by February 5, 1999, outlining the procedure to issue the specified refunds or credits.

1/5/1999 Order, ¶¶ 1, 3-4.

Impact of Administrative Case No. 361 on the Parties

13. During the time that CPMC purchased service directly from BellSouth for the ANIs, CPMC was listed as the customer of record for each line. As each ANI was migrated away from BellSouth, Hyperion became the listed customer of record for that ANI. However, Hyperion's role in the transaction was merely to purchase service from BellSouth and resell it to CPMC; it was not the end-user of the service purchased from BellSouth, and did not provide payphone service.

14. In accordance with the PSC Order, BellSouth made a refund directly to CPMC of the overcharges attributable to BellSouth's tariff price, which was above the price cap set by the PSC. The refund paid to CPMC on each ANI covered the period from April 15, 1997 (the date of CPMC's complaint in Administrative Case No. 361) to the particular date in 1998 on which that ANI was migrated to Hyperion.

15. Because Hyperion was listed as the customer of record for each ANI after a particular date in 1998, BellSouth either paid the refund or gave a credit for overcharges on the affected ANIs to Hyperion rather than to CPMC, the party which paid the overcharges during the relevant period in 1998-99.

16. CPMC has approached Adelphia repeatedly in an effort to obtain the refund attributable to overcharges for the 528 ANIs; the most recent attempts were in November and December 2001. Requests for a negotiated settlement of this matter have been unsuccessful.

17. Upon information and belief, during the period that CPMC purchased service from the Defendants, neither Adelphia nor Hyperion was able to provide accurate periodic billing statements or invoices. As a result, CPMC paid for service based on its own internal reports of usage for the 528 ANIs, and a copy of the report was provided to Defendants along with payment.

18. A similar ANI report, attached hereto as an exhibit, lists the affected ANIs, the dates of service from Adelphia/Hyperion to CPMC for each ANI, and the refund due on each ANI.

19. As noted on page 11 of the attached exhibit, the total refund amount or credit due from BellSouth for overcharges on the affected ANIs as calculated by CPMC per the Order in Administrative Case No. 361 is \$43,891.60. Adelphia/Hyperion has retained these monies since 1999.

WHEREFORE Complainant, Coin Phone Management Company, respectfully requests that the Commission:

A. Investigate whether retention by Adelphia or Hyperion of the amounts claimed due and payable to CPMC was wrongful;

B. Enforce the mandate of the Commission's 1/5/1999 Order by requiring Defendants to make the required refund in the amount of \$43,891.60 plus interest at the legal prejudgment rate of 8% per annum pursuant to KRS 360.010(1), and granting Complainants their costs and attorney's fees expended herein.

C. Grant any such additional relief as Complainant may appear entitled to receive.

Respectfully submitted,

Katherine K. Yunker, Esq.
David A. Cohen, Esq.
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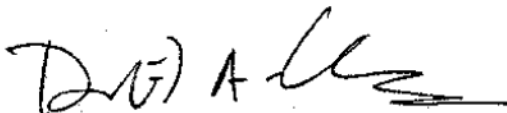
By: 

ATTORNEYS FOR COIN PHONE MANAGEMENT
COMPANY

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 22nd day of January, 2002, a copy of the foregoing Complaint was filed with the Public Service Commission, and was served by first class mail, postage pre-paid, on:

John Glickman, Esq.
S. Shane Turley, Esq.
Adelphia Business Solutions
One North Main Street
Coudersport, Pennsylvania 16915
Counsel for Adelphia Business Solutions, Inc.



ATTORNEYS FOR COIN PHONE MANAGEMENT
COMPANY