

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

C. MAXWELL BROWN, JR., M.D.	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 2004-00441
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
DEFENDANT	)	

ORDER

On November 8, 2004, C. Maxwell Brown, Jr., M.D. filed a formal complaint with the Commission against BellSouth Telecommunications, Inc. (“BellSouth”) requesting that the Commission order BellSouth to drop charges stemming from Dr. Brown’s cancellation of the contract his office had with BellSouth. On November 29, 2004, BellSouth filed its response with the Commission, admitting that it had entered into a contract with Dr. Brown and asserting that it was entitled to all monies under the contract. There are no disputes as to material facts.

Background

In November 2003, a marketing representative from BellSouth contacted Dr. Brown’s office<sup>1</sup> offering a service contract titled “Key Customer Program Subscriber Election.” Dr. Brown’s office manager accepted the offer and a contract was executed on November 26, 2003. The terms of the contract were for 36 months and provided a formula

---

<sup>1</sup> (502) 348-9038 and (502) 348-9039.

for calculating termination charges in the event the customer cancelled the contract before the contract had expired. No party contests the office manager's authority to enter into the contract or that the contract was executed.

Dr. Brown, upon learning of the execution of the contract and reviewing its terms, determined that it was not a good deal because he had been planning to close his office and retire in 2004. Dr. Brown claims that his office contacted BellSouth and cancelled the contract. A note on Dr. Brown's complaint reads, "[m]y notes indicate-[sic] we called 1-866-260-6000 [sic] end of November 2003 and cancelled." The exact date of the phone call cannot be determined, and BellSouth denies that it received such a call from Dr. Brown's office.

Dr. Brown did not notice a reduction in his office's phone bill and assumed that the contract had been cancelled before the lower rates had gone into effect. Although the record reflects that he was receiving the benefits and discounts, Dr. Brown's office's telephone service was voluntarily terminated on August 19, 2004. BellSouth issued to Dr. Brown's office a final bill of \$668.32, which included the termination charges from the contract. Dr. Brown claims that he was unaware the contract had not been cancelled until he received the bill for the termination charges.

Dr. Brown contacted BellSouth to dispute the charges, believing that the contract had been cancelled. According to his complaint, he was "rudely" told that he would have to pay the bill. This complaint followed.

### Discussion

Dr. Brown cites no legal authority to support his prayer for relief that the Commission order BellSouth to remove the termination charges from his office's bill. Dr. Brown does

not dispute that his office manager was authorized to enter into the contract. Dr. Brown also does not claim any legal grounds for why the contract should be found void or be voided. He has alleged no fraud in the inducement, no material misrepresentations of the terms of the contract, or any other grounds that may call the validity of the contract into question. The record indicates that the contract was valid and enforceable.

Dr. Brown received the discounts and benefits of the contract for eight months. Complainant should have been aware that he was receiving benefits under the contract, as they appeared on his bill. Assuming, arguendo, that BellSouth had cancelled the contract when Dr. Brown claimed he called BellSouth at the end of November, Dr. Brown still would have been liable for the early termination fees contained in the contract.

The Commission conducted an investigation into the rates billed by BellSouth. It acquired a copy of scripts, training materials, and other documentation associated with the marketing of the "Key Customer Program Subscriber Election" offer. Having considered the record in this proceeding, the Commission has determined that BellSouth correctly billed the Complainant, including the termination fees associated with the early termination of service. It is ultimately the responsibility of the customer to ensure that they are being charged the rates that they desire. The Commission is unable to grant Dr. Brown any relief.

IT IS THEREFORE ORDERED that this complaint is dismissed with prejudice and removed from the Commission's active docket.

Done at Frankfort, Kentucky, this 29<sup>th</sup> day of April, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director

Case No. 2004-00441