

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GEORGIA ANN BASHAM)	
COMPLAINANT)	
v.)	CASE NO. 2004-00498
)	
MOMENTUM TELECOM, INC.)	
)	
DEFENDANT)	

O R D E R

On December 2, 2004, Georgia Ann Basham filed with the Commission a formal complaint against Momentum Telecom, Inc. ("Momentum") alleging that the modem on her computer had been hijacked by a "dialer" program, and that, as a result, she incurred long-distance charges of \$2,120.48, whereas her normal monthly bill is \$35.00. Ms. Basham argues that she should not be responsible for any of the long-distance charges because they were placed without her knowledge or consent.

Momentum responded on January 4, 2005, arguing that the complaint should be dismissed for failing to state a cause of action upon which relief may be based and for want of Commission subject-matter jurisdiction.

BACKGROUND

It is undisputed that long-distance calls were placed on Ms. Basham's line. It appears from the record that these calls were placed by Ms. Basham's computer modem to Sao Tome, a small island nation located off of the Western African Coast in the Gulf of

Guinea.¹ Ms. Basham did not place these calls voluntarily. Rather, it appears that a program, designed to hijack modems, placed these calls from Ms. Basham's modem without Ms. Basham's knowledge. These programs download to a user's computer, "hijack" the modem, and connect the modem by dialing an international long-distance number.² The "hijacked" calls occurred when Ms. Basham's modem began placing calls at one- to two-minute intervals beginning at 11:29 p.m. on October 22, 2004 and ending at 1:29 p.m. on October 23, 2004, incurring over \$2,500.00 in international charges.

Ms. Basham first learned of these calls when she noticed her long-distance service was not operating. She contacted Momentum and was informed that it appeared her modem had been hijacked by the "Saotome dialer," which placed the international calls. Momentum offered to settle the bill for approximately 25 percent of the total. Ms. Basham declined the settlement, arguing that she did not place the calls and, thus, should not be held liable for the charges. This complaint followed.

DISCUSSION

The Commission has jurisdiction over the rates and service of utilities providing service in this state. KRS 278.040(2). The Commission's jurisdiction extends to the investigation of the rates and services of those utilities. KRS 278.260. Certain exceptions to the Commission's jurisdiction over utilities exist. See, e.g., KRS 278.040(2) ("[N]othing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions"). Commission jurisdiction can also be preempted by the

¹ The World Factbook <http://www.cia.gov/cia/publications/factbook/geos/tp.html> (Last viewed 1/10/05).

² More information may be viewed about these programs at www.fcc.gov/cgb/consumerfacts/ModemScam.html (Last viewed 1/10/05).

federal government. The Federal Communications Commission has jurisdiction over calls originating in Kentucky but terminating outside of Kentucky. 47 U.S.C.A. § 152.

Having reviewed the record and having been sufficiently advised, the Commission finds that the complaint must be dismissed on jurisdictional grounds. This Commission is empowered to regulate intrastate telecommunications; the complaint concerns billing that is within the jurisdiction of the Federal Communications Commission.

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

Done at Frankfort, Kentucky, this 31st day of January, 2005.

By the Commission

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

ATTEST:


Executive Director