

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SHIRLEY JACKSON)
)
COMPLAINANT)
)
v.) CASE NO. 2005-00006
)
DIALOG TELECOMMUNICATIONS, INC.)
)
DEFENDANT)

and

In the Matter of:

JOSEPH RANDOLPH WOOSLEY)
)
COMPLAINANT)
)
v.) CASE NO. 2005-00007
)
MOMENTUM TELECOM)
)
DEFENDANT)

and

In the Matter of:

BILLY RAY HINKLE)
)
COMPLAINANT)
)
v.) CASE NO. 2005-00025
)
BUDGET PHONE, INC.)
)
DEFENDANT)

and

In the Matter of:

MARY D. MINTON)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2005-00061
)	
MOMENTUM TELECOM)	
)	
DEFENDANT)	

ORDER

The Commission has received four complaints regarding the utility practice of labeling services as “unlimited” that have use limitations. On December 13, 2004, Shirley Jackson filed a formal complaint with the Commission against Dialog Telecommunications, Inc. (“Dialog”). On December 20, 2004, Joseph Randolph Woosley filed a formal complaint with the Commission against Momentum Telecom (“Momentum”). On January 10, 2005, Billy Ray Hinkle filed a complaint with the Commission against Budget Phone, Inc. (“Budget Phone”). On February 1, 2005, Mary D. Minton filed with the Commission a complaint against Momentum. Responses to all complaints have been filed.

The four Complainants listed above allege the same charge against the numerous defendants: it is unreasonable to call a calling plan for telecommunications service unlimited when the utility imposes limits on usage for the plan. The Defendants’ “unlimited plans” are all tariffed with the Commission. The Complainants were assessed charges for excessive use under the respective tariff provisions. It appears from the record that the Defendants acted pursuant to valid tariffs on file with the Commission, and, thus, the Complainants were properly billed by the Defendants.

Ms. Jackson was assessed additional charges by Dialog for excessive interstate long-distance charges. Mr. Hinkle's service with Budget Phone was discontinued for the same reason.

The Commission has jurisdiction over the rates and services 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 does not extend to interstate service. The Federal Communications Commission has jurisdiction over calls originating in Kentucky but terminating outside of Kentucky. 47 U.S.C.A. § 152. Accordingly, the Commission has no power to rule on Ms. Jackson's or Mr. Hinkle's billing disputes as they involve interstate telecommunications traffic.

It appears from the record that Momentum's plan for which both Mr. Woosley and Ms. Minton signed is called the MomentumFamilySM Unlimited Program.¹ Momentum's tariff states that the MomentumFamilySM plans are “designed for residential voice calling,” and are not “intended for phone lines that are connected to the internet for extended periods of time.” Pursuant to the tariff, Momentum may assess a “\$50.00 monthly recurring charge for each month in which such usage occurred.”

¹ Momentum Telecom's Kentucky PSC Tariff No. 1, Original Page 40.

The tariff also provides that “any usage in excess of 5,000 minutes per month shall be presumed to be not consistent with residential voice applications.” The records demonstrate that Ms. Minton’s and Mr. Jackson’s usage exceeded 5,000 minutes for the billing period at question or that Momentum did not properly assess charges according to its tariff.

As discussed above, the Commission, because the utility was acting properly under a filed tariff, cannot order the refund of any monies or find that the Complainants do not owe the charges assessed by the Defendants. While currently allowed by the Commission, the immediate complaints, as well as an increasing number of tariff filings with the Commission, have raised legitimate concerns over the use of the term “unlimited” to describe calling plans that are, in fact, limited. These concerns include, but are not limited to, customer notification of the limitations, notification of violation of the limitations, and the reasonableness of the use of the term “unlimited” in promoting these plans. While these concerns over the use of the term “unlimited” do not affect the outcome of these complaints, the Commission finds that, pursuant to KRS 278.260, further investigation is necessary and, in the near future, will establish a generic proceeding to address the Commission’s concerns.

IT IS THEREFORE ORDERED that:

1. The complaints are dismissed with prejudice.
2. A generic proceeding shall be established to investigate unlimited calling plans.

Done at Frankfort, Kentucky, this 28th 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. 2005-00006
Case No. 2005-00007
Case No. 2005-00025
Case No. 2005-00061