

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELBERTA JONES)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2008-00565
)	
CORRECTIONAL BILLING SERVICES AND)	
EASTERN KENTUCKY CORRECTIONAL)	
COMPLEX)	
)	
DEFENDANT)	

O R D E R

On December 23, 2008, the complainant, Elberta Jones, submitted to the Commission a complaint alleging that the defendant, Correctional Billing Services ("CBS"),¹ overcharged her for inmate telephone calls from Eastern Kentucky Correctional Complex ("EKCC"), a prison facility operated by the Kentucky Department of Corrections ("KY DOC"). Ms. Jones alleges that, despite her written and verbal request in October 2008, CBS failed to provide her with an invoice concerning her payments. Ms. Jones states that she seeks a specific refund of \$150.00 for inmate calls

¹ CBS is a division of Evercom Systems, Inc. ("Evercom"). Evercom is an inmate telephone services provider and handles inmates' collect calls for various correctional facilities throughout the United States. CBS is responsible for providing billing and customer care services to the end-users accepting collect calls from inmates at correctional facilities served by Evercom. Securus Technologies, Inc. is the parent company to Evercom Systems. Evercom is registered as a utility with the Commission. Utility I.D. 5609400. See Evercom/CBS filing, submitted on February 3, 2009.

made to her from her family and friends who are incarcerated within EKCC since April 2008.

Additionally, Ms. Jones requests that “she be refunded in full all the money she has been overcharged by Correctional Billing Service [sic].”² Ms. Jones alleges that she has been overcharged by CBS because, on several occasions, she was prematurely disconnected from telephone calls with an inmate at EKCC. Inmate telephone calls from within KY DOC institutions are typically allowed to be 15 minutes in duration. Ms. Jones alleges that CBS and EKCC are both responsible for overcharging her for the inmate telephone calls. Although she alleges that she is owed a refund for an entire nine-month period, within her complaint Ms. Jones provides specific details only about premature disconnections occurring on or about December 6, 7, and 8, 2008.

In support of her claims, Ms. Jones cites the Commission’s Orders from the following cases: Administrative Case No. 368, Rates, Terms and Conditions for Inmate Telecommunications Services; and Administrative Case No. 378, The Establishment of an Operator Surcharge Rate for Collect Telephone Calls from Confinement Facilities.³ The Commission established each of these proceedings to address the range of issues associated with inmate prepaid calling card and payphone services, including rates and conditions of service. Specifically, in Administrative Case No. 378, the Commission set forth the surcharge and interLATA and intraLATA per-minute rates for inmate phone

² Complaint at 2.

³ Ms. Jones specifically refers to Administrative Case No. 378 in her complaint to the Commission. As attachments to her complaint, Ms. Jones provides copies of her affidavit and refund request, as submitted to the Kentucky Attorney General’s Office of Consumer Protection. Within her affidavit and request to the Attorney General, Ms. Jones also refers to Commission Administrative Case No. 368.

calls. In her complaint, Ms. Jones alleges that, in addition to its failure to refund her for the disconnected calls, CBS has also violated the Commission's Order that the surcharge for inmate calls not exceed \$1.50 per call. Ms. Jones alleges that CBS has charged her a \$5.00 surcharge per inmate call, in addition to premature disconnections.

DEFENDANTS' RESPONSES

On January 9, 2009, the Commission issued an Order ("January 9 Order") compelling CBS and EKCC to satisfy or answer the matters complained of in Ms. Jones' complaint. In its response to the Commission's January 9 Order,⁴ CBS stated that Ms. Jones maintains a prepay account with Evercom. With a prepay account, the costs for the inmate calls are deducted directly from Ms. Jones' personal banking account by CBS/Evercom. Inmates at KY DOC facilities can simply use telephones within the facilities (usually coin-operated telephones) to make collect calls to Ms. Jones' telephone number and the cost of those calls will be charged to Ms. Jones' prepay account, as established with CBS/Evercom. Within its response, CBS also stated that, pursuant to Ms. Jones' invoice request, in October 2008, it provided her with a written invoice of her calls and charges. CBS states that, although Ms. Jones alleges she is owed a refund beginning with calls initiated in April 2008, CBS's records reflect that no calls were made from KY DOC facilities to Ms. Jones in April 2008 but, rather, were received beginning in May 2008. As an attachment to its response, CBS provided a report containing details about telephone calls originating from several KY DOC facilities, including EKCC, and terminating to a telephone number registered to Ms. Jones. This report contains call details from May 2008 to December 2008. The report

⁴ The response was filed by Evercom on behalf of CBS.

provides for each call the date, time, originating telephone number, originating city, terminating telephone number, length of the call and total charge for the call.

On March 18, 2009, CBS submitted a Petition for Confidential Treatment⁵ of its response, specifically seeking confidential treatment of Ms. Jones' calling records, as compiled and submitted by CBS to the Commission. In support of its motion, CBS argues that disclosure of this information to the general public would constitute a clearly unwarranted invasion of personal privacy. CBS argues that the information contained in Ms. Jones' call records is classified as Customer Proprietary Network Information ("CPNI"). Under 47 U.S.C. § 222(c), (f) and (h), telecommunications carriers are prohibited from disclosing information about their customers that the carriers obtain by virtue of providing the customers with telecommunications services, including information contained in the bills pertaining to a telephone exchange service or telephone toll service received by a carrier. CBS requests that the Commission find that this information is entitled to be withheld from public inspection.

EKCC is a registered utility with the Commission and subject to the Commission's jurisdiction.⁶ In its response to the Commission's January 9 Order, EKCC, through the KY DOC, stated that it maintains a contractual agreement with Evercom for the provision of inmate phone services at each of the correctional facilities under its jurisdiction. EKCC moved to have itself dismissed from the complaint, alleging

⁵ See 807 KAR 5:001, Section 7, KRS 61.878(1)(a) and KRS 61.878(1)(k).

⁶ Utility I.D. 33000400. EKCC and several other KY DOC facilities are registered with the Commission to provide utility service in Kentucky. EKCC subsequently withdrew its registration as a utility in April 2009; however, at the time of filing this complaint and during the time frame that is the subject of the allegations, EKCC was an active utility and subject to the Commission's jurisdiction.

that, pursuant to the contractual agreement, Evercom is responsible for all inmate phone services and billing matters.

STATUTORY AUTHORITY

In 2006, the General Assembly passed House Bill 337, now codified as KRS 278.541 to KRS 278.544. House Bill 337 eliminated a portion of the Commission's designated authority to regulate basic and non-basic retail telecommunications rates and services. Prison inmate telephone services are categorized as non-basic services. However, KRS 278.542(1)(e) specifically reserves to the Commission the authority to review and investigate issues related to the accuracy of billing for telecommunications services, including non-basic services. Because the central issue of Ms. Jones' complaint concerns her allegation that CBS failed to properly credit her account for inmate telephone calls that were prematurely disconnected, the Commission, under KRS 278.542(1)(e), has the statutory jurisdiction to undertake a review of the accuracy of CBS's billing records pertaining to Ms. Jones' account and to order remedial action if necessary.⁷

MOTION FOR CONFIDENTIAL PROTECTION

The Commission has reviewed the motion by CBS for confidential protection of portions of the response filed on January 19, 2009. Having examined the telephone calling data supplied by CBS and having evaluated the law applicable to the issue, the Commission finds that the information contained therein qualifies as CPNI, since it

⁷ The Commission also notes that, as this complaint alleges premature disconnection of toll calls, the Commission would also have jurisdiction under KRS 278.542(1)(c), as the complaint concerns the quality of transmission of non-basic services. The Commission's final decision in this Order would be the same under either argument for the assertion of jurisdiction.

specifically provides details about the originating telephone numbers initiating exchange and toll service calls to Ms. Jones and provides details about the accrued costs of each telephone call, as paid by Ms. Jones. Under the plain and ordinary meaning of 47 U.S.C. § 222(c), (f) and (h), such data qualifies as CPNI and is, therefore, eligible for confidential protection by the Commission.⁸ The confidential portions of the response by CBS shall be withheld from public inspection. The Commission notes that, if the information that has been granted protection becomes publicly available or no longer warrants confidential treatment, CBS is required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

DECISION

Having reviewed the arguments of the parties and the evidence presented, the Commission finds that Ms. Jones' complaint will be dismissed in its entirety and this proceeding will be removed from the Commission's docket. One portion of Ms. Jones' complaint regarding the rates charged for her prepay account to facilitate telephone calls from KY DOC facilities is that CBS is charging rates that are not in compliance with the Commission's Orders in Administrative Case Nos. 368 and 378. The Commission has reviewed the call detail report provided by CBS for the time period complained of by Ms. Jones and does not find any indication within the report that CBS charged Ms. Jones for a call-duration longer than what is enumerated in the record. Ms. Jones specifically alleges premature phone call disconnections on December 6, 7, and 8, 2008. The call detail record provided by CBS does indicate several inmate calls made

⁸ ICG Communications, Inc. v. Allegiance Telecom, et al., 211 F.R.D. 610, 612-13 (N.D. Ca. 2002) and U.S. West, Inc. v. FCC, 182 F.3d 1224, 1236 (10th Cir. 1999).

to Ms. Jones on those dates, and several of those calls are shorter than the typical 15-minute increments provided for inmate toll calls under the CBS/Evercom and KY DOC system. However, the record demonstrates that those short calls were also billed at a reduced cost, as would be expected for a call not reaching the complete 15-minute maximum time period. The Commission has reviewed the call detail records for Ms. Jones' account with CBS for the other months complained of; however, the Commission does not find any discrepancies in the logging of calls or the rates charged to her account. The Commission finds it necessary to note that, in its response to the Commission's January 9 Order, CBS stated that it also reviewed its records for evidence of premature disconnections to Ms. Jones' account. CBS stated that it found no evidence of those occurrences during the time period complained of by Ms. Jones. However, CBS stated that, due to her informal complaints directly to CBS, the company provided credits to her account in July 2008 and December 2008 as a customer courtesy for the calls Ms. Jones had disputed as being disconnected.⁹

As to the portion of Ms. Jones' complaint wherein she alleges that CBS is charging rates and surcharges that are not in compliance with the Commission's Orders in Administrative Case Nos. 368 and 378, the Commission finds that, due to the passage of House Bill 337, as discussed previously, the Commission's prior Orders on rates for inmate telephone services are no longer enforceable for non-basic services.¹⁰ Providers of inmate telephone services no longer have to explicitly and solely charge the rates outlined within those cases. A provider of non-basic services has the option of

⁹ CBS Response at 3.

¹⁰ See KRS 278.544.

filing tariffs with the Commission denoting the provider's new and most current rates and services, but House Bill 337 does not expressly mandate such filings.¹¹ Therefore, although the Commission can no longer limit or design the rates specific to inmate telephone services, the Commission does maintain the statutory authority to investigate allegations as to the quality of those services and the accuracy of the billing for those services.

The Commission has thoroughly reviewed the allegations against CBS and EKCC and has thoroughly reviewed the evidence submitted to the record; however, the Commission finds that Ms. Jones' allegations that she is entitled to a refund from CBS for charging rates not in compliance with prior Commission Orders and for premature disconnection of telephone calls cannot be substantiated and that there is no basis in the record that would compel further investigation of her complaint. For these reasons, the Commission will dismiss this matter in its entirety and close this proceeding.

MOTION FOR DISMISSAL OF EKCC

Having reviewed the arguments of EKCC, the Commission finds that EKCC's motion for dismissal from the action is denied as moot, since the Commission has stated that the complaint, in its entirety, is being dismissed and removed from the Commission's docket.

IT IS THEREFORE ORDERED that:

1. This complaint is dismissed in its entirety.
2. EKCC's motion to dismiss is denied as moot.

¹¹ See KRS 278.544(1).

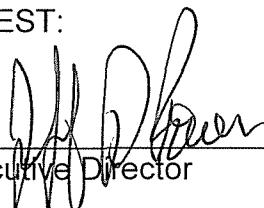
3. The motion by CBS for confidential treatment of information contained within its response is granted.

4. This matter is closed and shall be removed from the Commission's docket.

By the Commission

ENTERED *EW*
AUG 26 2009
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Eastern Kentucky Correctional Complex
U.S. 460, Index Hill
P.O. Box 636
West Liberty, KY 41472

Elberta Jones
3437 Newburg Road
Apt 3
Louisville, KY 40218

Dennis J Reinhold
General Counsel
Correctional Billing Services c/o Evercom
14651 Dallas Parkway, Suite 600
Dallas, TX 75254-0000