

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CONNIE C. MARSHALL)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2009-00094
)	
MICHAEL WILNER, BARBARA HUBER AND)	
INSIGHT PHONE OF KENTUCKY, LLC)	
)	
DEFENDANT)	

O R D E R

On February 27, 2009, Connie C. Marshall filed with the Commission a complaint against Insight Phone of Kentucky, LLC (“Insight”)¹ and two individual persons, Michael Wilner and Barbara Huber. In her complaint, Ms. Marshall outlined numerous allegations against the defendants, including claims that the defendants illegally disconnected her services and fraudulently charged her for telephone, cable, and internet services that were not provided.

On March 26, 2009, the Commission entered an Order (“March 26 Order”) dismissing Michael Wilner and Barbara Huber as defendants. In the March 26 Order, the Commission also dismissed portions of Ms. Marshall’s complaint and compelled

¹ Insight is registered with the Commission to provide local exchange telephone services and interexchange telephone services in Kentucky.

Insight to either answer or satisfy the remaining allegations. As outlined within the March 26 Order, the only portions of the complaint for which the Commission will undertake a review are Ms. Marshall's allegations of wrongful charges for telecommunications services that were not provided and wrongful discontinuance of telecommunications services.

INSIGHT'S RESPONSE

On April 10, 2009, Insight submitted an Answer to the remaining portions of the complaint. Insight states that it began providing services to Ms. Marshall in October 2005. Insight states that it discontinued her services in December 2006 because of repeated investigations of numerous service complaints filed by Ms. Marshall. Insight states that the investigations yielded no evidence that she had experienced interruptions to her services. Insight states that, in December 2006, Ms. Marshall owed the company \$170.00 for services, but the company did not seek to collect any portion of that amount.²

Insight states that, in November 2008, Ms. Marshall again obtained services from the company and also began filing complaints alleging interruptions to her services by government agencies. Insight conducted investigations into Ms. Marshall's services but did not locate evidence of any problems. Insight states that Ms. Marshall made repeated complaints that local, state, and federal agencies and officials were deliberately disrupting her services, causing damage to her telephone, and interrupting her internet access. Insight states that it attempted to troubleshoot the alleged problems on several occasions, as reported by Ms. Marshall; however, she was

² See Insight Response at 3.

uncooperative and was often verbally abusive to Insight employees. Insight terminated Ms. Marshall's services on February 3, 2009.

Insight states that it maintains a tariff with the Commission that provides notice to the public, including subscribers, as to the rates, terms, and conditions for the company's provision of telephone service in Kentucky.³ Within the tariff, Insight outlines its regulations for addressing behavior by a customer whom Insight classifies as "abusive." In Tariff No. 1, Section 2.1.6 A.3, Insight provides:

The Company may, at its discretion, terminate service to any customer who establishes a pattern of behavior with respect to the Company that is intended to vex, harass, threaten or annoy the Company, its employees or agent. A pattern of behavior is intended to vex, harass, threaten or annoy if its purpose is to disturb, irritate or interrupt the Company's operations through continued and repeated acts.

This portion of Insight's tariff has been on file with the Commission since December 10, 2004 and has been effective since January 10, 2005.⁴ Insight claims that, in light of Ms. Marshall's behavior in relation to the numerous, unsubstantiated service complaints and her repeated refusals to participate in Insight's investigative and troubleshooting process, it believes the company was entitled to rely and act upon the portion of its tariff allowing the disconnection of services when a customer exhibits frequently annoying and harassing behavior intended to irritate and interrupt Insight's business operations. Insight states that, as of February 3, 2009, the date of the final disconnection, Ms. Marshall owed \$71.17 and is also responsible for any Insight equipment in her possession.

³http://psc.ky.gov/tariffs/Telecommunications_DM/Insight%20Phone%20of%20Kentucky,%20LLC/ (accessed August 6, 2009).

⁴ See 807 KAR 5:011, Section 9(1).

On May 8, 2009, Ms. Marshall submitted a response to Insight's Answer.⁵ In her response, Ms. Marshall alleges that Insight has committed fraud and has misled the public by falsely marketing its services under the name of Insight Communications instead of Insight Phone of Kentucky, LLC. Ms. Marshall further states that she has not abused Insight's representatives but, rather, she has been abused by Insight's employees. Additionally, Ms. Marshall states that illegal acts were committed by Insight and the Federal Bureau of Investigation, and she states that those "illegal acts are above and beyond the guidelines allowed by the Patriot Act and do not follow protocol."⁶ Ms. Marshall alleges that Insight's employees have found numerous problems with her service and she has repeatedly allowed Insight's representatives to correct the problems. Having reviewed the record, the Commission finds that this matter is now ripe for final decision.

STATUTORY AUTHORITY

The Commission has jurisdiction to regulate and investigate the intrastate provision of telephony by Insight. Insight is a utility subject to Commission jurisdiction. The Commission's jurisdiction extends only to Insight's provision of telephone services and not to its broadband internet⁷ or cable services. Insight provides telephony, which is defined as basic and non-basic service under KRS 278.541. The Commission's statutory jurisdiction to investigate consumer complaints as to the quality of non-basic

⁵ On March 25, 2009, Ms. Marshall also submitted written, additional evidence in support of her complaint against Insight ("March 25 filing").

⁶ May 8, 2009 Response at 3.

⁷ KRS 278.5462(1).

services and to investigate the accuracy of the billing for basic and non-basic services is outlined within KRS 278.542(1)(c) and (e). As the substance of the remaining portions of Ms. Marshall's complaint concern the billing and disconnection of her telecommunications services, the Commission has the authority to undertake a review, investigate the complaint, and order remedial action, if necessary.

DISCUSSION

The Commission has reviewed the allegations against Insight and has reviewed the evidence submitted to the record; however, the Commission finds that Ms. Marshall's allegations that Insight illegally disconnected her telephone service and wrongfully charged her for services cannot be substantiated and that there is no basis in the record that would compel further investigation of her complaint.

The Commission also notes that Ms. Marshall's allegations that Insight has fraudulently marketed services under the name Insight Communications are without merit. The Commission addressed that issue within the March 26 Order. The Commission takes administrative notice of the fact that the larger corporate entity of Insight Communications Company, L.P. is an owner of Insight Phone of Kentucky, LLC and that Insight Phone of Kentucky, LLC is also managed by Insight Communications Company, L.P. Insight Phone of Kentucky, LLC is formally registered to do business in the Commonwealth of Kentucky. Since the companies are extensively inter-related and information regarding that relationship is transparent and available to the public, the

Commission finds that Insight has not committed any act of fraud or false advertising. Ms. Marshall's claims to the contrary shall be dismissed.⁸

As stated previously within this Order, Insight maintains an active tariff with the Commission. The tariff contains a provision of service wherein Insight asserts its right to disconnect the services of a customer when and if that customer exhibits a pattern of behavior that can be classified as vexing, harassing, threatening, or annoying Insight or its employees when such behavior irritates or disrupts Insight's ability to conduct business. In its response, Insight outlined its long history with Ms. Marshall, starting in 2005. Insight states that, during the course of the last few years, Ms. Marshall has repeatedly made numerous service requests and complaints concerning having her telephone calls "interrupted and intercepted [or monitored] by the Federal Bureau of Investigation" or a variety of other local, state, and federal agencies.⁹ All the complaints have been unsubstantiated after investigation. In addition to causing Insight to inspect her services, Ms. Marshall has a history of making service complaints but then refusing to allow Insight to schedule service calls and, instead, she accuses Insight's employees of serving as "agents" for government entities.¹⁰

⁸ Kentucky Secretary of State, <http://apps.sos.ky.gov/corpscans/40/0522440-06-99996-20050916-ARP-436988-PU.pdf> (accessed August 3, 2009).

⁹ Insight Answer at 2.

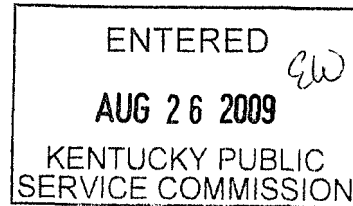
¹⁰ As noted by Insight, Ms. Marshall also has an established history of filing federal lawsuits against the company, all of which have been dismissed by the courts. Ms. Marshall has also filed complaints against Insight with the Federal Communications Commission and has filed numerous informal complaints against Insight with this Commission's Division of Consumer Services. All these actions have concerned the same allegations, behaviors, or events enumerated by Ms. Marshall in this complaint proceeding.

The Commission finds no evidence that Ms. Marshall was charged for any services other than those provided to her by Insight. Ms. Marshall is obligated to pay any remaining balances owed for services rendered. The Commission also does not find any evidence that Insight wrongfully disconnected Ms. Marshall's services. The complainant before an administrative agency has the burden of proof.¹¹ The Commission notes that the record does reveal that Ms. Marshall has a consistent pattern of making service complaints (in an often abusive tone to employees) and alleging unsubstantiated interruptions to her service based upon her belief that Insight is somehow working in a conspiratorial fashion with a variety of government agencies to keep her from making or receiving telephone calls. The Commission considers such behavior by a customer to be disruptive to a utility's ability to provide service and conduct daily business. When a utility has to devote an inordinate amount of time to researching and investigating the unsubstantiated complaints of one customer, the utility loses the ability to devote a fair and reasonable amount of time to assisting other customers who genuinely need the company's assistance. The Commission finds that, due to the duration and repeated nature of those complaints, Insight was correct in relying upon Section 2.1.6 A.3 of its Tariff No. 1 in qualifying Ms. Marshall's behavior as abusive and terminating her telephone services. For these reasons, the Commission will dismiss the remaining portions of this matter in its entirety and close this proceeding.

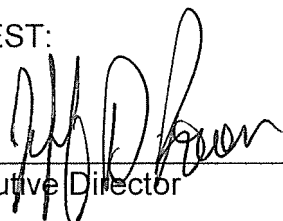
¹¹ Energy Regulatory Comm'n v. Kentucky Power Co., 605 S.W.2d 46, 50 (Ky. App. 1980).

IT IS HEREBY ORDERED that the remaining portions of the complaint are dismissed with prejudice and this proceeding is hereby closed and removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

Trish Kirby
Compliance Reporting Specialist
Insight Phone of Kentucky, LLC
P. O. Drawer 200
Winter Park, FL 32790-0200

Connie Marshall
1814 South 23rd Street
Louisville, KY 40210

Honorable Janice M Theriot
Attorney at Law
Pedley Zielke Gordinier & Pence
2000 Meidinger Tower
462 South Fourth Street Avenue
Louisville, KY 40202-2555