

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

OLDHAM COUNTY VETERINARY SERVICES	)	
	)	
COMPLAINANT	)	
	)	CASE NO.
V.	)	2018-00308
	)	
BIRCH COMMUNICATIONS, LLC	)	
	)	
DEFENDANT	)	

ORDER

On August 27, 2018, Leigh Ann Ford filed a formal complaint, pursuant to KRS 278.260, ostensibly on behalf of Oldham County Veterinary Services (Oldham County Vet), against Defendant, Birch Communications, LLC (Birch Communications), arising from its alleged switching of Oldham County Vet’s telephone service from Impact Telecom to Birch Communications’ service without proper authority. Ms. Ford alleged that she learned of the change in service when she received an invoice from Birch Communications and questioned who had authorized the change. Ms. Ford stated Birch Communications played a recording from an 18-year-old “helper” who allegedly authorized the change in service. Ms. Ford asserted that she had the service switched back to Impact Telecom and refused to pay Birch Communications, which then caused service by Impact Telecom to be interrupted until the invoice was paid. Ms. Ford seeks a return of fees paid to Birch Communications and lost income allegedly arising from Oldham County Vet’s loss of phone service.

A formal complaint filed with the Commission must state the full name and address of the complainant and the defendant.<sup>1</sup> Further, a formal complaint must state:

Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure.<sup>2</sup>

Finally, a formal complaint must state the relief sought by the complainant.<sup>3</sup>

Upon receiving a complaint, the Commission is required to examine the complaint to determine whether it establishes a *prima facie* case.<sup>4</sup> “A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontroverted by other evidence, would entitle the complainant to the relief requested.”<sup>5</sup> If a complaint does not establish a *prima facie* case, the Commission must give the complainant an opportunity to amend the complaint, but the Commission must dismiss the complaint if the complainant fails to do so.<sup>6</sup>

Here, the Commission would likely be unable to grant all of the relief requested, because the Commission does not generally have authority to address claims for unliquidated damages such as lost income (which are generally handled by courts if a

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<sup>1</sup> 807 KAR 5:001, Section 20(1)(a)–(b).

<sup>2</sup> *Id.* at Section 20(1)(c).

<sup>3</sup> *Id.* at Section 20(1)(d).

<sup>4</sup> *Id.* at Section 20(4).

<sup>5</sup> *Diane L. Deaton v. Duke Energy Kentucky, Inc.*, Case No. 2017-00174, 1 (Ky. PSC May 22, 2017).

<sup>6</sup> *Id.* at Section 20(4).

valid claim exists).<sup>7</sup> However, the Commission does have the authority, under certain circumstances, to determine that an improper or unreasonable rate or charge must be reimbursed or paid by a provider. Moreover, while the Commission has limited jurisdiction over the services of telephone companies, the Commission does have jurisdiction over the practices of telecommunications providers in switching a customer's service.

Specifically, KRS 278.535(2) prevents a telecommunications provider from initiating contact with a customer and switching that customer to its service without written or electronically recorded consent. "If a telecommunications provider initiates a switch of provider that the customer has not authorized under this section, that provider, upon request by the customer, shall reverse the change within five (5) business days." KRS 278.535(4). A customer subjected to an unauthorized change in service "is not responsible for any charges associated with the unauthorized change, including charges for usage subsequent to the change that are in excess of the amount the customer would have paid had the service not been changed." KRS 278.535(5). Moreover, a telecommunications provider that willingly violates KRS 278.535 may be subject to penalties pursuant to KRS 278.990.

Ms. Ford's complaint, if taken as true, appears to establish a *prima facie* case for a violation of KRS 278.535; though it would be necessary to clarify exactly the type of service involved. However, although it is not explicitly stated, the telephone service at issue in this matter appears to be in the name of Oldham County Vet, which is organized as a Kentucky Professional Services Corporation, and Ms. Ford does not appear to be

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<sup>7</sup> See *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126 (Ky. App. 1983) (indicating that KRS Chapter 278 does not provided the Commission exclusion jurisdiction to handle a claim for tortious breach of a contract for telephone service).

licensed to practice law in the Commonwealth of Kentucky. Commission regulations prohibit non-attorneys from representing corporations, which are considered separate legal persons, in formal matters before the Commission.<sup>8</sup> Thus, assuming the telephone service is in the name of the corporation and Ms. Ford is not a licensed attorney, this complaint would be improper on its face.

To determine whether this matter can proceed as a formal complaint, the Commission requests that Ms. Ford or Oldham County Vet supplement the complaint by identifying the type of telephone service at issue (e.g. long distance service, competitive local exchange service, voice over IP), and the name of the customer for the telephone service. If the telephone service is the name of a natural person (i.e., an individual such as Ms. Ford), then that person is permitted to represent themselves before the Commission in this complaint case, but if the service is in the name of corporation, then it will be necessary for the corporation to obtain counsel to represent it in an action brought pursuant to KRS 278.260.

IT IS THEREFORE ORDERED that:

1. Oldham County Vet and Ms. Ford shall have 28 days from the date this Order is entered to supplement this complaint by filing a paper indicating the type of service at issue and name of the customer as listed on the bill provided by the companies providing telephone service.

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<sup>8</sup> See 807 KAR 5:001, Section 4(4) (“A person shall not file a paper [in a case] on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2).”); see also Kentucky Supreme Court Rule 3.020 (which prohibits a non-attorney from practicing law on behalf of a corporation or partnership except in small claims court); *Bobbett v. Russellville Mobile Home Park*, No. 2007-CA-000684, 2008 WL 4182001 (Ky. App. 2008) (in which the court found that the owner of a limited liability corporation (LLC) could not represent the LLC in a forcible detainer action, because the LLC was a separate legal person and the action was not in small claims court).

2. If the telephone service was in the name of a corporation during the period at issue, then the corporation shall have 28 days from the date of this Order to obtain counsel to represent it in this matter.

3. The Commission will dismiss the complaint without prejudice if Oldham County Vet or Ms. Ford does not provide the information requested in numerical paragraph 1, or if the service is in the name of a corporation and no attorney enters an appearance on behalf of the corporation within the period prescribed by numerical paragraph 2.

4. Birch Communications shall have no obligation to file an answer or responsive pleading to the complaint or any supplement or amendment thereto until ordered to do so by this Commission.

5. Nothing in this Order shall be construed as limiting the authority of the Commission to open an independent investigation based on the factual allegations made in the complaint pursuant to another provision of KRS Chapter 278 or applicable administrative regulations.

By the Commission

ENTERED  
OCT 05 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
For Executive Director

Case No. 2018-00308

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