

**CASE**

**NUMBER:**

99-448

HISTORY INDEX FOR CASE: 1999-448  
POWERTEL, INC.  
Complaints - Service  
OF ROBERT E. PLEDGER

IN THE MATTER OF ROBERT E. PLEDGER VS POWERTEL/KENTUCKY, INC

SEQ	ENTRY	
NBR	DATE	REMARKS
0001	11/16/1999	Order entered; amended complaint due 11/26 or case dismissed w/o further order



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

November 16, 1999

Edward C. Horner  
Chief Operating Officer  
Powertel, Inc.  
1233 O. G. Skinner Drive  
West Point, GA. 31833 1789

Honorable John E. Selent  
Attorney at Law  
Dinsmore & Shohl LLP  
2000 Meidinger Tower  
462 South Fourth Avenue  
Louisville, KY. 40202

RE: Case No. 99-448

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in black ink that reads "Stephanie J. Bell".

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT E. PLEDGER	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 99-448
	)	
POWERTEL, INC.	)	
DEFENDANT	)	

O R D E R

On August 4, 1999, Robert E. Pledger, by counsel, filed with this Commission a letter stating a formal complaint against PowerTel, Inc. ("PowerTel"), a wireless telecommunications provider doing business in Kentucky. Mr. Pledger alleges that he applied for PowerTel service, and that, for credit reasons, PowerTel offered Mr. Pledger only prepaid service at substantially higher rates than those offered in the service plan for which Mr. Pledger applied. The letter of complaint also alleges that Mr. Pledger's attorneys asked PowerTel to extend the less expensive service plan to Mr. Pledger "by requiring a deposit," and further states that Mr. Pledger's attorneys have concluded that PowerTel is obligated by law to extend the less expensive service plan to Mr. Pledger if a deposit is offered. Despite acknowledging that a more expensive prepaid service plan was made available to Mr. Pledger, the letter of complaint characterizes the incident as a denial of service.

Attached to Mr. Pledger's letter of complaint, among other things, is a letter dated July 20, 1999, from James H. Benson, Director of Legal Affairs, PowerTel, to John

Geoghegan of the Commission's Staff. Mr. Benson's letter states, among other things, that PowerTel has not refused service to Mr. Pledger; that the dispute concerns the rates Mr. Pledger will pay; and that this Commission has no jurisdiction over the rates of commercial mobile radio service ("CMRS") providers such as PowerTel.

Pursuant to 807 KAR 5:001, Section 12, the Commission must examine any formal complaint to determine whether it states a *prima facie* case. For the following reasons, the Commission finds this Complaint to be deficient as a matter of law.

47 U.S.C. § 332(c)(3)(A) states, in pertinent part, as follows:

No state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulation of the other terms and conditions of commercial mobile services.

Thus, the statute specifically preempts states from regulating the rates of CMRS providers, except under certain conditions that do not apply here. That same section preserves the states' authority over the terms and conditions, other than rates, under which commercial mobile services are provided. As one United States District Court succinctly put it, the "preemptive reach of 47 U.S.C. § 332(c)(3)(A) is limited on its face." Mountain Solutions, Inc. v. State Corporation Com'n of the State of Kansas, 966 F.Supp. 1043, 1048 (D. Kan. 1997). This Commission agrees that the statutory language is plain. Simply put, if a complaint concerns the rates a customer must pay for wireless telecommunications service, this Commission has no jurisdiction over the complaint.

It is undisputed that PowerTel refused to offer Mr. Pledger the more attractive rate given to customers who meet its credit requirements. It is undisputed that Mr.

Pledger wishes to obtain a lower rate. No violation of PowerTel's tariff (which does not, in any case, contain PowerTel's rates) is alleged. The basis of the complaint clearly is dissatisfaction with the rates PowerTel requires Mr. Pledger to pay for service rather than with another term or condition of service. In a competitive market, Mr. Pledger's dissatisfaction with the rates offered him by PowerTel should simply result in his seeking better terms from another wireless carrier.

The Commission, having been sufficiently advised, HEREBY ORDERS that:

1. Pursuant to 807 KAR 5:001, Section 12(4)(a), Mr. Pledger may, within 10 days of the date of this Order, file an amendment to his complaint.
2. If no amendment is filed within 10 days of the date of this Order, the Complaint shall be dismissed without further Order.

Done at Frankfort, Kentucky, this 16th day of November, 1999.

By the Commission

ATTEST:

  
Executive Director

# DINSMORE & SHOHL LLP

Attorneys at Law

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Covington  
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Website Address  
www.dinshohl.com

August 3, 1999

RECEIVED

AUG 04 1999

PUBLIC SERVICE  
COMMISSION

Helen C. Helton, Esq.  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, KY 40602-0615

RE: Robert E. Pledger/Powertel

CASE 99-448

Dear Ms. Helton:

We are legal counsel to Mr. Robert E. Pledger. Mr. Pledger's home address is: 8302 Woodsman Court, Louisville, Kentucky 40219.

In the capacity as his legal counsel, Mr. Pledger has requested us to file a formal complaint with the Public Service Commission of the Commonwealth of Kentucky against Powertel. As you know, Powertel is a provider of personal communications services in the Commonwealth of Kentucky.

In July of this year, Mr. Pledger went to the Powertel offices on Shelbyville Road in Louisville, Kentucky. At those offices Mr. Pledger applied for Powertel services. For credit reasons, Mr. Pledger was denied service. The only service he was offered was a prepaid service at substantially higher rates. Mr. Pledger advised Powertel that he could not afford the prepaid service and that the prepaid service did not satisfy his business needs.

Mr. Pledger then contacted us and we requested Powertel to extend Mr. Pledger service with a deposit, consistent with the rules and regulations of the Public Service Commission. Powertel refused. Powertel refused to extend service to Mr. Pledger by requiring a deposit, even though we advised Powertel that it was our opinion that Powertel was obligated to do so, and that by failing to

Helen C. Helton  
August 3, 1999  
Page 2

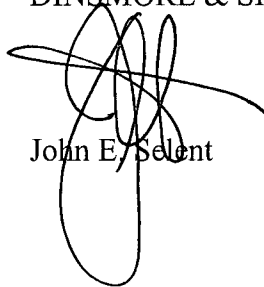
do so Powertel was violating the rules and regulations of the Public Service Commission and its applicable orders. Mr. Pledger therefore complained, through us, to Mr. John Geoghegan at the Public Service Commission. A copy of Powertel's response to our informal complaint to Mr. Geoghegan and our response to that letter are attached for the Commission's convenience.

In conclusion, Mr. Pledger would request the Commission to order Powertel to extend service to him, and others similarly situated, under the Commission's applicable deposit rules and regulations, and applicable orders.

Thank you, and if you have any questions, please call me..

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to read "John E. Selent", is written over the typed name. The signature is stylized with loops and a long horizontal stroke.

John E. Selent

JES/bmt  
Enclosures

cc: Amy Dougherty, Esq. (w/enclosures)  
Mr. John Geoghegan (w/enclosures)

Mr. Robert Pledger (w/enclosures)  
8302 Woodsman Court  
Louisville, KY 40219

0031330.01



**DINSMORE  
& SHOHL LLP**

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Fax (513) 977-8141

Website Address  
[www.dinshohl.com](http://www.dinshohl.com)

July 30, 1999

Mr. John Geoghegan  
Kentucky Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

RE: Complaint No. 19991824

Dear Mr. Geoghegan:

The purpose of this letter is to respond to the letter to you from Powertel dated July 20, 1999 in regard to the above-referenced matter.

Our response to that letter is two-fold.

First, Powertel states that it did not deny Mr. Pledger service because it offered him a prepaid account. The fact of the matter is that the prepaid account offered Mr. Pledger service at substantially higher rates than the post-pay account. In effect, therefore, service was denied. Powertel's argument is simply a smokescreen for the simple fact that service was effectively denied because the alternative was a prepaid service at substantially higher rates.

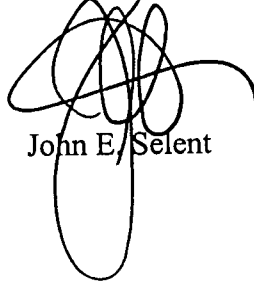
Second, Powertel argues that the deposit regulations and orders of the Public Service Commission do not apply to Commercial Mobile Radio Service Providers ("CMRS") such as Powertel pursuant to Section 332 of the Telecommunications Act of 1996. We do not so interpret Section 332 of the Telecommunications Act of 1996. Moreover, Powertel's position is inconsistent with the Commission's regulations at 807 KAR 5:006, Section 7, and the Commission's order in Administrative Case No. 97-312, a copy of which is attached for your convenience.

Mr. John Geoghegan  
July 30, 1999  
Page 2

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, consisting of several overlapping loops and a long vertical stroke at the bottom.

John E. Seient

JES/bmt  
Enclosure

cc/Robert E. Pledger (w/enclosure)

0031108.01

DINSMORE  
& SHOHL<sup>LLP</sup>

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BLUEGRASS CELLULAR )  
FOR A WAIVER OF DEPOSIT REGULATIONS ) CASE NO. 97-312  
FOR CELLULAR SERVICE )

ORDER

On July 27, 1997, Kentucky RSA #3 Cellular General Partnership, Kentucky RSA #4 Cellular General Partnership, and Cumberland Cellular Partnership (collectively, "Bluegrass Cellular") filed an application with the Commission requesting that the utility be granted an exemption from the requirements of 807 KAR 5:006, Section 7. The regulation sets forth the terms, conditions, and amount of deposit which may be charged to applicants or customers to ensure payment of charges.

In the alternative, Bluegrass Cellular requested in its application that the Commission allow a deviation from the particular requirements of 807 KAR 5:006, Section 7, which govern the condition and dollar amount of deposits which can be charged to applicants and customers. Bluegrass Cellular wants to charge up to one-half of the yearly estimated usage as a deposit, with no ceiling on the dollar amount. Bluegrass Cellular makes the request pursuant to the provision of KRS 278.512.

As grounds for its application, Bluegrass Cellular states that cellular telephone service is unlike a traditional monopoly utility service.<sup>1</sup> All cellular telephone companies

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<sup>1</sup> Application at 5-7.

have at least one direct competitor and will have additional competitors due to the introduction of other wireless technologies such as personal communication systems. In addition, cellular service is a discretionary service. Disconnection for non-payment would not cause disconnection of a customer's traditional wireline telephone service. Therefore, a cellular customer would not have the same level of incentive to pay for cellular service in the event of financial difficulty.

Finally, cellular rates are based upon usage; cellular customers generally pay a per minute usage charge on every call. This charge can include local cellular charges as well as charges for the use of other cellular systems known as "roaming" charges. With the inclusion of these charges, the rate for cellular usage can exceed \$1.00 per minute. The customer's serving cellular utility must pay these "roaming" charges prior to collection from the customer. The end result is that monthly usage can vary greatly and can reach high levels by the time that payment is due. Bluegrass Cellular therefore argues that it should not be subject to the same deposit requirements as wireline utilities.

Bluegrass Cellular acknowledges that it has the authority to terminate service to delinquent customers.<sup>2</sup> However, the utility argues that this is not the most effective means of ensuring payment in a competitive market. Additionally, uncollectible payment losses must be recovered either in increased rates or, as more likely in a competitive environment, decreased opportunities for reduced rates to remaining customers. Therefore, the utility seeks flexibility in the collection of deposits from applicants and customers.

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<sup>2</sup> Application at 8.

The Commission has reviewed Bluegrass Cellular's application and is of the opinion that Bluegrass Cellular has provided a reasonable basis to justify a deviation in its deposit rules from the requirements of 807 KAR 5:006, Section 7. However, such deviation must be limited to ensure that applicants for service and existing customers are not subject to arbitrary treatment or discrimination in the utility's determination of appropriate deposit amounts.

807 KAR 5:006, Section 7(1)(a), allows a deposit amount not to exceed two-twelfths of the actual or estimated bill where bills are rendered monthly. However, if bills are rendered quarterly, the regulation allows a deposit amount not to exceed four-twelfths of the actual or estimated bill. Due to the competitive nature of the cellular telephone industry and the fact that cellular service is billed in arrears, which often means that billings include calls made one to two months after the fact, it is reasonable to allow deviation to the extent that deposit amounts may be allowed which do not exceed four-twelfths of the actual or estimated bill.

However, Bluegrass Cellular should be aware that if an applicant or customer files either a formal or informal complaint with the Commission concerning the amount of a required deposit, then Bluegrass Cellular must demonstrate that the proposed deposit represents either an actual historic or reasonable estimated billing.

Additionally, 807 KAR 5:006, Section 7(1)(c), requires a recalculation of the customer's deposit, based upon actual usage, after 18 months upon customer request. To ensure fair and reasonable treatment of all customers, it is reasonable to require Bluegrass Cellular to recalculate deposits in accordance with the regulation without requiring a

customer request where Bluegrass Cellular has required a deposit in excess of two-twelfths of actual or estimated usage.

IT IS HEREBY ORDERED that:

1. Bluegrass Cellular is granted a deviation from the requirements of 807 KAR 5:006, Section 7(1)(a), but only to the extent that the utility may charge a deposit to applicants or customers not to exceed four-twelfths of an actual or estimated bill.
2. Bluegrass Cellular shall be required to clearly demonstrate the reasonableness of the deposit should an applicant or customer file a complaint with the Commission concerning the amount of a required deposit.
3. Bluegrass Cellular shall recalculate deposits in accordance with 807 KAR 5:006, Section 7(1)(c), without a specific customer request where the utility has required a deposit in excess of two-twelfths of the actual or estimated bill.
4. Within 30 days of the date of this Order, Bluegrass Cellular shall file amended tariffs to reflect the changes ordered herein.

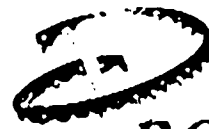
Done at Frankfort, Kentucky, this 23rd day of September, 1997.

By the Commission

ATTEST:



\_\_\_\_\_  
Executive Director



*powertel.*

20 July 1999

RECEIVED

JUL 22 1999

PSC Consumer Services

Mr. John Geoghegan  
Kentucky Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

RE: Complaint Number 19991824, John Selent for Robert Pledger

Dear Mr. Geoghegan:

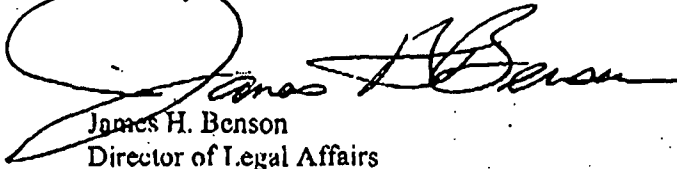
This letter is in response to the above referenced complaint. In his complaint, Mr. Selent states that Powertel denied Mr. Pledger service due to "his lack of credit." This is not a correct statement. Powertel did not deny Mr. Pledger service. More accurately, Powertel did not grant Mr. Pledger a post-pay (credit) account because Mr. Pledger did not meet Powertel's standard credit requirements for a post-pay account. These standard credit requirements are applied to all new prospective customers on a non-discriminatory basis. However, Powertel did offer service to Mr. Pledger on a pre-paid basis. Mr. Pledger refused Powertel pre-paid service.

Based on the legal analysis provided to Powertel, the rules and regulations of the Kentucky Public Service Commission ("PSC") concerning carriers' rates do not apply to Commercial Mobile Radio Service ("CMRS") Providers, like Powertel. In fact, Section 332 of the Telecommunications Act of 1996 prohibits any State or local government from regulating the rates that a CMRS Provider charges its customers. This prohibition against State or local government rate regulation includes a carrier's acceptance (or not) of a deposit as security for providing service on a post pay (credit) basis. Therefore, the Kentucky PSC's deposit regulation do not apply to CMRS Providers, and thus, it is Powertel's position that the regulation does not apply to Powertel.

Again, Powertel did not deny Mr. Pledger service. Powertel merely offered Mr. Pledger a pre-paid account just as Powertel offers prepaid accounts to other prospective customers that do not meet Powertel's standard credit requirements for a post pay account.

If you have any questions about this response, contact me at 706-634-1086 immediately.

Sincerely,

  
James H. Benson  
Director of Legal Affairs

Cc: Jill Dorsey, Vice-President/General Counsel  
Rebecca Davis, Customer Support Specialist