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RECEIVED

JAN 26 2005

PUBLIC SERVICE
COMMISSION

January 26, 2005

Elizabeth O' Donnell, Esquire
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

RECEIVED

JAN 26 2005

PUBLIC SERVICE
COMMISSION

Re: Case No. 2004-00498
Basham v. Momentum Telecom, Inc.

Dear Ms. O'Donnell:

The undersigned is Kentucky counsel to Momentum Telecom, Inc. ("Momentum"). Pursuant to 807 KAR 5:001, Section 12, please accept this letter as Momentum's Answer to the above referenced complaint. As discussed below, this complaint fails to state a cause of action upon which relief may be granted. Momentum's billing practice for excessive usage is consistent with its Kentucky PSC Tariff No. 1 and with the actual notice provided to this customer.

I. Facts.

The Complainant, Joseph Woosley, is a former customer who has refused to pay Momentum's tariffed charges for MomentumFamilySM service provided prior to August 24, 2004. At the heart of this matter is the customer's objection to a \$50.00 monthly fee for customers whose monthly usage exceeds 5,000 minutes (approximately 2.8 hours per day).

Like other carriers, Momentum offers a flat-rated "unlimited" service which is designed to accommodate the vast majority of residential customers' long distance needs. This inexpensively priced service is designed for residential voice

calling only. The service was never intended to be a substitute for high volume calling services or private line services, nor is it intended for use as a substitute for a dedicated Internet connection. Accordingly, in April 2004, Momentum made tariff revisions to clarify that any usage in excess of 5,000 minutes per month would be subject to an additional charge of \$50.00. Momentum notified its Kentucky customers of this change via a billing insert. The referenced tariff page and bill insert are enclosed.

These tariff revisions were accepted by the Kentucky Public Service Commission and have been effective for more than eight months. The additional charge described in the tariff is seldom applied, because the vast majority of Momentum's customers use fewer than 5,000 minutes per month.

However, under Kentucky law, Momentum is required to collect the tariffed charge for usage exceeding 5,000 minutes. KRS 278.160 (2) provides: "No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered...than that prescribed in its filed schedules..." As the Commission has stated, KRS 278.160 (2) codifies the common law "filed rate doctrine." *Kruempelman v. Cincinnati Bell Tel. Co.*, Case No. 99-108 (July 12, 1999). Thus, once effective, the filed rate must be collected. *Id.*

Momentum expressly denies any claim that it has "hidden" the \$50.00 fee for excess usage. Momentum provided actual notice to Mr. Woosley via a bill insert. In addition, the Commission posts Momentum's Kentucky tariff on its public Internet site¹ for review by prospective and current customers. This availability is constructive notice to the customer and is legally binding. *See Berea Healthcare Center v. Blue Grass Energy Cooperative Corp.*, Case No. 99-344 (November 5, 1999) (dismissing rate complaint "as a matter of law" upon showing that filed tariff was publicly available). Moreover, as Mr. Woosley's complaint makes clear, he has reviewed Momentum's interstate terms and conditions on the Momentum website, and is aware of the conditions of service.

¹ Momentum's tariff is posted at:
<http://psc.ky.gov/tariffs/Telecommunications/Momentum%20Telecom.%20Inc/>

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January 26, 2005
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For the reasons discussed above, Momentum requests that the Commission issue an order dismissing the complaint and ordering the complainant to pay the tariffed charges.

Please indicate receipt of this filing by placing your file-stamp on the extra copy and returning to me in the enclosed, self-addressed, stamped envelope.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. Brent', with a long horizontal flourish extending to the right.

Douglas F. Brent

cc: Joseph Woosley, 225 Oxford Dr., Apt. 19, Winchester, KY 40391

Momentum Telecom, Inc.
2700 Corporate Drive, Suite 200
Birmingham, Alabama 35242

Kentucky PSC Tariff No. 1
Original Page 40

Repeat dialing
Call forwarding
Call block
Call return
30 code speed dial
900/976 blocking.

Momentum**FamilySM 60** Program includes 60 minutes of long distance usage. Each additional minute above 60 will be billed at \$.05 per minute. The Momentum**FamilySM Unlimited** Program includes unlimited domestic 1+ long distance usage.

All long distance calls with the Momentum**FamilySM** Programs are domestic 1+ interstate and intrastate calling, which will be billed in whole minute increments. Any fractional minutes will be rounded to the nearest whole penny. Unused minutes will not roll over to the next month.

All MomentumFamilysm products are designed for residential voice calling only. These products are not intended for phone lines that are connected to the Internet for extended periods of time. If it is determined that usage is not consistent with residential voice applications, Momentum may immediately suspend, restrict or cancel the customer's service without prior notice and assess an additional \$50.00 monthly recurring charge for each month in which such usage occurred. Incidental Internet and other data usage is permitted provided however, that any usage in excess of 5,000 minutes per month shall be presumed to be not consistent with residential voice applications and shall be subject to the conditions above.

5.6 MomentumBiz sm Packages

Two packages have been designed to reward business customers by providing a discount for local and long distance services: Momentum**Biz 60sm**, and Momentum**Biz 600sm**. With both Programs, subscribers will receive a business line as well as any of the following features:

Caller ID	Call trace
Call waiting	Call block
Three-way calling	Call return
Repeat dialing	900/976 blocking
Call forwarding	30 code speed dial
Hunting	

Momentum**Biz 60sm** Program includes 60 minutes of domestic 1+ long distance usage. The Momentum**Biz 600sm** Program includes 600 minutes of domestic 1+ long distance usage. Each additional minute above 60 will be billed at \$.059 per minute. Unused minutes will not roll over to the next month. Both Programs include unlimited expanded area calling.

Issued: April 8, 2004

Effective: May 8, 2004

Issued by: Alan L. Creighton, President and Chief Executive Officer
Momentum Telecom, Inc.
2700 Corporate Drive, Suite 200
Birmingham, Alabama 35242
1-800-466-2210

**PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE**

MAY 08 2004

**PURSUANT TO 807 KAR 5:011
SECTION 9 (1)**

BY  **EXECUTIVE DIRECTOR**

Notice
Effective May 15, 2004

The Momentum Family Products are designed for residential voice calling only, as well as periodically checking your email, surfing the Internet or sending faxes.

These products are not intended for usage not consistent with residential voice services, such as commercial use, auto dialing, telemarketing, extended internet access, or other causes of excessive usage.

Under Momentum's Terms of Service*, monthly usage in excess of 5000 minutes per month is considered not consistent with residential voice service and shall be subject to an additional \$50 monthly recurring charge for each month in which such usage occurs.

Very few of our customers currently exceed the 5000 minute usage.

* Momentum's Terms of Service are on file with the applicable state regulatory agency.