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January 26, 2005

RECEIVED

JAN 31 2005

PUBLIC SERVICE
COMMISSION

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

Re: Case No. 2005-00007
Woosley 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.

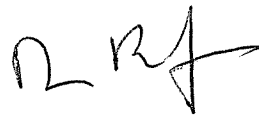
¹ Momentum's tariff is posted at:
<http://psc.ky.gov/tariffs/Telecommunications/Momentum%20Telecom.%20Inc/>

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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 stylized flourish extending to the right.

Douglas F. Brent

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