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DOUGLAS F. BRENT
502-568-5734
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February 23, 2005

RECEIVED
FEB 24 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. 2005-00061
Minton 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 terms and conditions applied to this account were consistent with its Kentucky PSC Tariff No. 1 and with the actual notice provided to the customer.

I. Facts.

The Complainant, Mary D. Minton, is a current customer who began service with Momentum in 2003. Ms. Minton has objected to Momentum's tariffed charges for MomentumFamilySM service appearing on her invoice dated October 5, 2004. This invoice included call detail totaling 6183 minutes for the monthly period ending October 3, 2004. The majority of the usage detail during the period was for interstate long distance calling, including more than 4,000 interstate minutes of calling to Michigan.

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). Momentum applied this charge to the referenced bill. To place the charge in perspective, the customer's total bill, including all taxes and surcharges, totaled \$116.87. Dividing the total charges by the total minutes appearing on the invoice, the effective rate equals *less than 1.9 cents per minute*.

Elizabeth O'Donnell, Esquire

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II. Momentum's Billing was Lawful under Its Tariff.

Like other carriers, Momentum offers a flat-rated "unlimited" service which is designed to accommodate the vast majority of residential customers' local and 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, and its use as such under a flat rate pricing structure could prevent Momentum from recovering the underlying variable costs, e.g., switched access and transport, of providing the service.

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 accepted¹ by the Kentucky Public Service Commission and became effective for intrastate calling on May 8, 2004. 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.

Momentum's tariffed service is provided on a month to month basis. Any customer who determines that MomentumFamilySM service does not meet his or her individual needs is free to choose an alternative service from Momentum, or to choose another carrier. Considering that the lowest residential rates for 1+ interstate long distance are approximately 5 cents per minute, MomentumFamilySM service provides significant savings even for customers whose monthly usage may occasionally exceed 5,000 minutes. However, customers who nevertheless object to Momentum's tariffed terms and conditions may avoid them by choosing another service provider.

As the Commission determined in Administrative Cases 273, 323, 359, and 370, telecommunications carriers which do not possess market power and the ability to exert pricing power are considered non-dominant and are subject to relaxed regulation of rates. These principles of relaxed regulation apply to toll services and to local service provided by non-incumbent carriers like Momentum. Since Momentum is a non-dominant carrier without market power, Momentum's rates, terms and conditions are presumed to be reasonable. The marketplace, rather than strict regulation, determines whether rates and practices of non-dominant carriers are reasonable.

¹ Other carriers providing similarly designated "unlimited" services in Kentucky have filed tariff revisions using the same or similar criteria. Reasonable, tariffed conditions of service help ensure that carriers can continue to offer economically priced calling plans that will meet the needs of most residential customers.

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III. Momentum Provided Notice to Its Customers.

Momentum acted reasonably to provide advance notice to all customers concerning the tariff change to implement the \$50.00 fee for excess usage. Momentum provided actual notice to Ms. Minton and its other Kentucky customers via a bill insert. In addition, the Commission posts Momentum's Kentucky tariff on its public Internet site² 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 Ms. Minton's complaint makes clear, Momentum's customer service department provided an explanation of the additional charges and offered a one time goodwill adjustment. Momentum also provided to Ms. Minton additional information concerning the terms and conditions for MomentumFamilySM service.

IV. Conclusion.

Momentum provided service to the complainant and complied with the terms and conditions of its tariff. Momentum also acted reasonably in providing a one time adjustment of a disputed charge. For the reasons discussed above, Momentum requests that the Commission issue an order dismissing the complaint.

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,



Douglas F. Brent

² Momentum's tariff is posted at:
<http://psc.ky.gov/tariffs/Telecommunications/Momentum%20Telecom.%20Inc/>

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of Momentum Telecom has been furnished by U.S. Mail this 23rd day of February, 2005 to the following:



Douglas F. Brent

Mary D. Minton
P.O. Box 374
Hager Hill, KY 41222

**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.

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.

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

All long distance calls with the MomentumFamilySM 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: MomentumBiz 60SM, and MomentumBiz 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	

MomentumBiz 60SM Program includes 60 minutes of domestic 1+ long distance usage. The MomentumBiz 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