



Ernie Fletcher  
Governor

Teresa J. Hill, Secretary  
Environmental and Public  
Protection Cabinet

Timothy J. LeDonne  
Commissioner  
Department of Public Protection

Commonwealth of Kentucky  
**Public Service Commission**  
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Mark David Goss  
Chairman

John W. Clay  
Vice Chairman

Caroline Pitt Clark  
Commissioner

Honorable John E. Selent  
Attorney at Law  
Dinsmore & Shohl, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202

November 21, 2007

RE: Case No. 2007-00399

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

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell".

Beth O'Donnell  
Executive Director

BOD/rs  
Enclosure



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Thomas D. Stauffer  
420 Blevins Road  
Payneville, KY 40157

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J. D. Tobin, Jr.  
Brandenburg Telephone Company, Inc.  
200 Telco Road  
P. O. Box 599  
Brandenburg, KY 40108

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                               |   |                     |
|-------------------------------|---|---------------------|
| THOMAS DEAN STAUFFER          | ) |                     |
|                               | ) |                     |
| COMPLAINANT                   | ) |                     |
|                               | ) |                     |
| V.                            | ) | CASE NO. 2007-00399 |
|                               | ) |                     |
| BRANDENBURG TELEPHONE COMPANY | ) |                     |
|                               | ) |                     |
| DEFENDANT                     | ) |                     |

O R D E R

This case is before the Commission on complaint of Thomas Dean Stauffer against Brandenburg Telephone Company ("Brandenburg"). Mr. Stauffer alleges that Brandenburg is wrongfully holding him liable for a past-due account that he is not responsible for and also alleges that Brandenburg is incorrectly applying payments from his active account to the past-due account.

Brandenburg asserts that Mr. Stauffer has not paid on the disputed account and is delinquent on the undisputed active account and asks that the Commission enter an Order directing Mr. Stauffer to pay his undisputed charges and to recognize Brandenburg's right to terminate service if he does not stay current on undisputed charges.

The Commission will address, in part, Brandenburg's motion and Mr. Stauffer's complaint and will direct the parties to respond to Commission Staff's data requests.

## PROCEDURAL BACKGROUND

On September 11, 2007, Mr. Stauffer filed a formal complaint against Brandenburg alleging, among other things, that Brandenburg was incorrectly applying payments from his wife's telephone account to a past-due balance incurred on another account by their son. Mr. Stauffer requested that the Commission order Brandenburg to: (1) relieve Mr. Stauffer from liability for the past-due account; (2) extend service to Mr. Stauffer without requiring a bond or deposit; (3) refund any late fees assessed; (4) void any promissory notes; and (5) pay \$3000 in punitive damages.

On October 1, 2007, Brandenburg filed its answer denying all the material allegations of Mr. Stauffer. Additionally, Brandenburg stated that Mr. Stauffer had not timely paid for service, and, as a result, service could be terminated. Brandenburg, however, also stated that it would refrain from disconnecting service for the time being due to the complaint before the Commission.

On October 5, 2007, Brandenburg filed a motion requesting that the Commission require Mr. Stauffer to pay his "outstanding undisputed charges and keep his customer account with Brandenburg current."<sup>1</sup> In its motion, Brandenburg alleges that Mr. Stauffer disputes the past-due account for 270-496-4992, for which Mr. Stauffer is a responsible party. Brandenburg asserts that Mr. Stauffer also is a responsible party for the 270-496-4836 account, which is not in dispute. Brandenburg requested that the Order: (1) recognize Brandenburg's right to terminate service to Mr. Stauffer if Mr. Stauffer fails to keep his undisputed account current; (2) require Mr. Stauffer to pay the

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<sup>1</sup> Brandenburg Telephone Company's Motion to Require Complainant to Pay Outstanding Undisputed Charges and Keep Customer Account Current at 1.

currently outstanding undisputed charges of \$30.87 within 10 days and all future undisputed charges as they become due; and (3) authorize Brandenburg to terminate service to Mr. Stauffer in the event he does not keep his undisputed account current.<sup>2</sup>

Brandenburg alleges that Mr. Stauffer did not make payment on the undisputed account for the August 2007 billing period, but did make payment for the September 2007 billing period. Brandenburg argues that it is therefore entitled to disconnect Mr. Stauffer's service pursuant 807 KAR 5:006, Section 11.

On October 17, 2007, Mr. Stauffer filed with the Commission his response to Brandenburg's October 5, 2007 motion. In his response, Mr. Stauffer claims that the August 2007 billing in question is part of his complaint.

#### DISCUSSION

In his prayer for relief, Mr. Stauffer requests that the Commission award him \$3,000 in punitive damages for "harm done"<sup>3</sup> to Mr. Stauffer's family. The Commission is without jurisdiction to grant punitive damages.<sup>4</sup>

Furthermore, KRS Chapter 278 does not delegate to the Commission any authority to adjudicate claims for damages arising out of a utility's wrongful behavior. KRS 278.260 grants the Commission only "original jurisdiction over complaints as to

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<sup>2</sup> Id. at 2-3.

<sup>3</sup> Complaint at 4.

<sup>4</sup> See Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky. App. 1983) (and cases cited therein) (discussing the line to be drawn between Public Service Commission jurisdiction and that of the courts, and specifically noting the inability of the Commission to award damages).

rates or service of any utility.”<sup>5</sup> No reference to awarding damages for wrongful conduct is made, nor can the authority to adjudicate such claims be reasonably inferred consistent with the Kentucky Constitution.<sup>6</sup> Accordingly, the Commission is without authority to adjudicate Mr. Stauffer’s claim for damages resulting from Brandenburg’s alleged wrongful actions, but maintains jurisdiction over Mr. Stauffer’s other claims.

Brandenburg moves the Commission to require Mr. Stauffer to pay any past-due amounts on his undisputed accounts and stay current on the undisputed account. The Commission, however, will neither direct Mr. Stauffer to pay his undisputed account nor will it grant Brandenburg’s other requested relief. If Mr. Stauffer does not stay current on undisputed charges, Brandenburg may disconnect service pursuant to its tariff on file with the Commission and 807 KAR 5:006. The Commission, however, cautions Brandenburg that it must strictly adhere to its disconnection procedures in the event of nonpayment lest it be subject to potential penalties under KRS 278.990.

There appear to be material issues of fact that remain in dispute between the parties, and the Commission finds that further information is needed before the case proceeds. Therefore, Brandenburg should provide the following information:

1. The billing history for the disputed account (270-496-4992) and the undisputed account (270-496-4836) beginning with the January 2006 billing period through the current period.
2. A description of its policy regarding transfer of past-due balances to active accounts with references to relevant tariff provisions, if any.

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<sup>5</sup> See also KRS 278.420(2).

<sup>6</sup> See Kentucky Constitution § 14.



3. Any documents in possession of Brandenburg that Mr. Stauffer, his wife, or their representative have signed.

4. A description of Brandenburg's policy of applying payments to arrears for inactive accounts when payment is made on an active account.

5. Any documents or records that name the responsible party for the disputed account 207-496-4992.

IT IS THEREFORE ORDERED that:

1. Mr. Stauffer's request for damages is dismissed.

2. Brandenburg's motion is denied.

3. The information requested above shall be provided in the following manner:

a. The information requested herein is due within 15 days of the date of this Order. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to questions related to the information provided, with copies to all parties of record and 5 copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

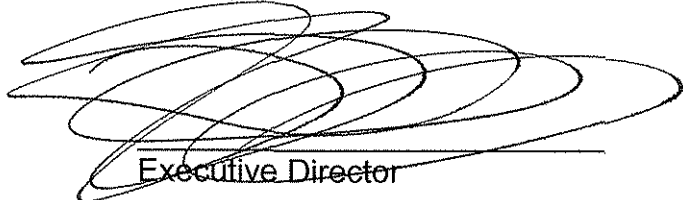
c. Any party shall make timely amendment to any prior responses if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any requests to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Done at Frankfort, Kentucky, this 21st day of November, 2007.

By the Commission

ATTEST:

A large, complex, handwritten signature in black ink, consisting of multiple overlapping loops and flourishes, covering the signature line.

Executive Director