

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MARILYN M. MUSE)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 98-542
)	
GTE SOUTH INCORPORATED)	
)	
DEFENDANT)	

O R D E R

On October 12, 1998, Marilyn M. Muse filed a complaint with the Commission against GTE South Incorporated ("GTE"). The complaint states that Wayne County residents should be not be required to pay long-distance charges for calls made within Wayne County. Ms. Muse is a resident of Wayne County but lives in the Burnside Local Exchange Area ("LEA").¹ Because of her location, Ms. Muse must pay long-distance charges for calls to those numbers in Wayne County which are outside of the Burnside LEA. The complaint further alleges that she and other Wayne County residents in the Burnside LEA are discriminated against because they must pay long-distance charges for calls within the county while residents in the Monticello LEA do not. Ms. Muse requests that she be charged the basic phone service rate for the Monticello LEA.

¹ There are two local exchange areas in Wayne County, Monticello LEA and Burnside LEA. Both are in the GTE service territory. The Burnside LEA serves customers in both Wayne and Pulaski counties while the Monticello LEA serves the majority of Wayne County customers.

Pursuant to Commission Regulation 807 KAR 5:001, Section 12(4)(a), upon receipt of a formal complaint the Commission must determine whether it sets forth sufficient facts to constitute a prima facie case. A prima facie case exists when, taking the facts set forth in the complaint as true, the complainant is entitled to the relief requested. In the complaint, Ms. Muse requests that she be charged the basic phone service rate for the Monticello LEA rather than the Burnside LEA basic phone service rate. The complaint fails to state a prima facie case.

In accordance with KRS 278.030, a utility is permitted to employ reasonable classifications of its service, patrons, and rates provided that it furnishes adequate, efficient and reasonable service to its customers. A utility is prohibited, however, from employing any classifications which are discriminatory. KRS 278.170 states:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantages, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

Ms. Muse does not claim that her phone service is insufficient or inadequate. The real basis of her complaint is that residents of Burnside are discriminated against because they must pay long-distance charges for calls in Wayne County, i.e. calls to numbers in the Monticello LEA and outside of the Burnside LEA. Because most Wayne County customers are served by the Monticello LEA, the majority of Wayne County customers do not have to pay long-distance charges for calls to numbers in the county. Essentially, Ms. Muse objects to the division of Wayne County into two local calling areas and the resulting difference in the charges paid by customers in Wayne County.

The fact that there are two exchange areas in Wayne County does not indicate that GTE has created an unreasonable classification among residents of Wayne County in violation of KRS 278.170. Historically, the local exchange areas in question are a product of a time when each area was served by an independent phone company. The boundaries between these independent companies did not necessarily coincide with the county lines. Despite the subsequent consolidation of the companies by GTE, the boundaries between the local exchange areas remain.

Similarly, the fact that residents in the two exchanges must pay different charges for calls does not indicate that GTE has established an unreasonable difference in rates between the local exchange areas. The charges that customers of one LEA pay to call a number in another LEA reflect the cost of providing the connection. In the instant case, Burnside LEA residents must pay toll charges for calls to numbers within the Monticello LEA because it costs more to provide service between the two LEAs than it does to provide service within one LEA. Monticello LEA customers must pay toll charges to call numbers in the Burnside LEA as well. It should also be noted that, according to Ms. Muse, Burnside customers have an alternative option available to them. Burnside customers can subscribe to a calling plan in lieu of paying toll charges for each call to the Monticello LEA. The plan allows for unlimited calls to the Monticello LEA for a flat monthly rate. As with the toll charge per call, however, the flat monthly rate reflects the cost of providing the calling plan to subscribers. In Marshall County v. South Central Bell Telephone Co., Ky., 519 S.W.2d 616, 619 (1975), Kentucky's highest court held that the Commission cannot order a telephone company to provide area calling unless the utility's cost is covered.


The Muse complaint does not allege that GTE has failed to provide adequate or reasonable service. The complaint also fails to provide sufficient facts to indicate that GTE has engaged in discrimination as to rates or service in violation of KRS 278.170. Moreover, because Ms. Muse lives within the Burnside LEA, the Commission is without authority to grant the request that she be charged Monticello LEA basic phone service rates or any rate other than that reasonably charged to other Burnside customers.


Based on the failure of the Muse complaint to state a prima facie case, the complaint will be dismissed. In the event that there are additional facts not set forth in the complaint for which relief can be granted, a new complaint should be filed.

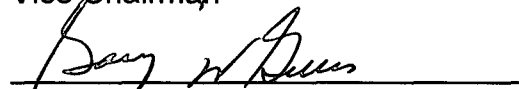
IT IS THEREFORE ORDERED that the Muse complaint is dismissed for failure to state a prima facie case.

Done at Frankfort, Kentucky, this 19th day of November, 1998.

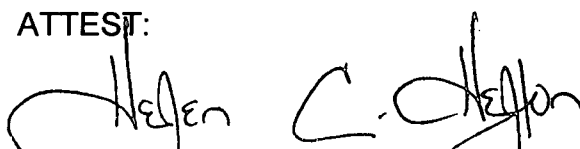
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director