

CASE

NUMBER:

99-466

INDEX FOR CASE: 1999-466
EXCEL TELECOMMUNICATIONS, INC.
Complaints - Service
OF THOMAS B. GRAVES

IN THE MATTER OF THOMAS B. GRAVES VS. EXCEL COMMUNICATIONS,
INC.

SEQ NBR	ENTRY DATE	REMARKS
0001	11/15/1999	Application.
0002	11/22/1999	Acknowledgement letter.
0003	11/30/1999	Order to Satisfy or Answer; info due 12/10
M0001	01/12/2000	QUINT MCTYEIRE EXCEL-ANSWER AND SHOW OF SATISFACTION
0004	03/14/2000	FINAL ORDER DISMISSING COMPLAINT



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-466
EXCEL TELECOMMUNICATIONS, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on March 14, 2000.

Parties of Record:

Joel Ballew
Manager, Regulatory Affairs
Excel Telecommunications, Inc.
8750 N. Central Expressway
Suite 1600
Dallas, TX. 75231

Thomas B. Graves
2040 Evergreen Road
Frankfort, KY. 40601

Honorable Holland N. McTyeire,
Counsel for Excel Telecommunications
Greenebaum Doll & McDonald PLLC
3300 National City Tower
101 South Fifth Street
Louisville, KY. 40202

Stephanie J. Bell

Secretary of the Commission

SB/sa
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THOMAS B. GRAVES)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-466
)	
EXCEL TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

O R D E R

On November 15, 1999, Thomas B. Graves filed a formal complaint against Excel Telecommunications, Inc. ("Excel") for violation of KRS 278.535 (slamming statute). The Complainant alleged that Excel caused an unauthorized change of his prescribed primary interexchange carrier ("PIC") to Excel.

The complainant requests "the sum of one million dollars plus lawyer's fee" as his damages. KRS 278.535 provides that a telecommunications provider in violation of the PIC statute must pay all costs to switch the consumer back to his/her original interexchange provider and must pay "charges for usage subsequent to the change that are in excess of the amount the customer would have paid had the service not been changed." The Commission does not have jurisdiction to consider or resolve issues of damages that are punitive in nature such as are sought by this complaint.

Excel gave Complainant a credit for the PIC change and all of one long-distance call made by Complainant. In doing so, Excel exceeded the requirements of restitution in KRS 278.535.

Based upon the above facts, the Commission finds that Excel has made full satisfaction according to the requirements of the statute.

IT IS THEREFORE ORDERED that the complaint filed by Thomas B. Graves is dismissed.

Done at Frankfort, Kentucky, this 14th day of March, 2000.

By the Commission

ATTEST:


Executive Director

GREENEBAUM DOLL & McDONALD PLLC

3300 NATIONAL CITY TOWER
101 SOUTH FIFTH STREET
LOUISVILLE, KENTUCKY 40202-3197
502/589-4200

HOLLAND N. MCTYEIRE, V
502/587-3672
FAX 502/540-2223
E-MAIL hnm@gdm.com

RECEIVED

JAN 12 2000

PUBLIC SERVICE
COMMISSION

Via Hand Delivery

January 12, 2000

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, Kentucky 40602

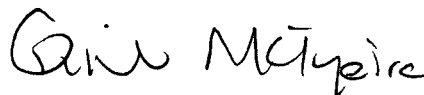
Re: In The Matter Of: Thomas B. Graves v. Excel Telecommunications, Inc., Case
No. 99-466

Dear Ms. Helton:

Enclosed herewith please find for filing with the Commission in the above-styled matter the original and ten copies of the Answer And Show Of Satisfaction Of Excel for filing with the Commission in the above-styled matter.

If you or your staff have any questions regarding the Answer And Show Of Satisfaction Of Excel, please do not hesitate to contact me.

Sincerely,



Holland N. McTyeire, V

HNM/jh
Enclosure

cc: Dale Wright
Robbin Johnson
Marianne Geeker
Ray V. Hartwell, III

LOU:531503.1

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 12 2000

PUBLIC SERVICE
COMMISSION

In the Matter of:

THOMAS B. GRAVES)

COMPLAINANT)

v.)

EXCEL TELECOMMUNICATIONS, INC.)

DEFENDANT)

CASE NO. 99-466

ANSWER AND SHOW OF SATISFACTION OF EXCEL

***** * * * *****

Excel Telecommunications, Inc. ("Excel"), through counsel, responds to the Commission's November 30, 1995 Order To Satisfy Or Answer the Complaint of Thomas B. Graves ("Graves") in the above-styled matter.

1. Graves was an Excel customer only from August 24, 1999 to August 31, 1999. Excel confirmed with BellSouth Telecommunications, Inc., Graves' Local Exchange Carrier, that Graves was returned to his preferred Interexchange Carrier on August 31, 1999.

2. Excel gave Graves a credit for the Primary Interexchange Carrier Charge and the one long distance call made by Graves while an Excel customer between August 24, 1999 and August 31, 1999.


3. Excel has given credit, or offered compensation, to Graves that exceeds any amounts required by KRS 278.535 and 807 KAR 5:062 including compensation for: (i) all charges associated with returning Graves to his original Interexchange Carrier; and (ii) any amounts paid to Excel by Graves.

4. Graves has refused to accept the additional sums offered by Excel.

5. Graves' Complaint should be dismissed because Excel has met or exceeded its statutory obligations to him.

For the reasons set forth above, Graves' Complaint should be dismissed.

Respectfully submitted,



Holland N. McTyeire, V

GREENEBAUM DOLL & MCDONALD PLLC
3300 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202
Telephone: (502) 589-4200
Facsimile: (502) 587-3695

COUNSEL FOR DEFENDANT,
EXCEL TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Answer And Show Of Satisfaction Of Excel, was served by United States Mail, postage pre-paid, to Thomas B. Graves, 2040 Evergreen Road, Frankfort, Kentucky 40601, Complainant, this 12th day of January, 2000.

J.N. McTyre

COUNSEL FOR DEFENDANT,
EXCEL TELECOMMUNICATION, INC.

LOU:529767.1



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

November 30, 1999

Joel Ballew
Manager, Regulatory Affairs
Excel Telecommunications, Inc.
8750 N. Central Expressway
Suite 1600
Dallas, TX. 75231

Thomas B. Graves
2040 Evergreen Road
Frankfort, KY. 40601

RE: Case No. 1999-466

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

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THOMAS B. GRAVES)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-466
)	
EXCEL COMMUNICATIONS, INC.)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Excel Communications, Inc. ("Excel") is hereby notified that it has been named as defendant in a formal complaint filed on November 15, 1999, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Excel is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 30th day of November, 1999.

By the Commission

ATTEST:


Executive Director

NOV 15 1999

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

Thomas B. GRAVES
(Your Full Name)
COMPLAINANT
VS.
EXCEL COMMUNICATIONS, INC.
(Name of Utility)
DEFENDANT

RECEIVED
NOV 16 1999
GENERAL COUNSEL
CASE 99-466

COMPLAINT

The complaint of Thomas B. GRAVES respectfully shows:
(Your Full Name)

(a) Thomas B. GRAVES
(Your Full Name)
2040 EVERGREEN Rd.
(Your Address) FRANKFORT, KY. 40601

(b) EXCEL TELECOMMUNICATIONS, INC.
(Name of Utility)
P.O. Box 650582
DALLAS, TEXAS 75265-0582
(Address of Utility)

(c) That: My long distance telephone carrier
(Describe here, attaching additional sheets if necessary,
was switched by Excel Communication
without my knowledge or authorization
the specific act, fully and clearly, or facts that are the reason
by said company by FORGING my signature
ON AN APPLICATION. This is not my signature
and basis for the complaint) and to my knowledge
did I NEVER ^{or my wife} speak with their representative
(Sharon Mitchell). ~~or my~~ ~~representative~~. AT NO TIME
did we authorize them to change carriers.

Formal Complaint

Thomas B. GRAVES vs. Excel TELECOMMUNICATIONS, INC.

Page 2 of 2

That is NOT my SIGNATURE, which I CAN
VERIFY by ~~me~~ ~~me~~ CONSUMERS AND BANKS
I do business with. Why would I change
CARRIERS FROM A COMPANY I'VE ALWAYS DONE
business with TO A COMPANY I NEVER HEARD
OF UNTIL THEY SWITCHED ME WITHOUT MY
KNOWLEDGE OR AUTHORIZATION.

Wherefore, complainant asks _____

(Specifically state the relief desired.)

I ASK FOR THE SUM OF ONE million DOLLARS plus
LAWYERS FEE IF NECESSARY, FOR FORGING MY NAME
ON A DOCUMENT TO OBTAIN BUSINESS WITHOUT MY
KNOWLEDGE OR AUTHORIZATION. IF THEY GO BY WITH
THIS, WHAT ELSE CAN BE DONE TO ME BY THIS
FORGERY. THIS IS ILLEGAL AND AGAINST THE LAW.

Dated at Frankfort, Kentucky, this 9th day
(Your City)

of November, 1999.
(Month)

Thomas B. Graves -
(Your Signature)

(Name and address of attorney, if any)



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

November 22, 1999

Joel Ballew
Manager, Regulatory Affairs
Excel Telecommunications, Inc.
8750 N. Central Expressway
Suite 1600
Dallas, TX. 75231

Thomas B. Graves
2040 Evergreen Road
Frankfort, KY. 40601

RE: Case No. 1999-466
EXCEL TELECOMMUNICATIONS, INC.
(Complaints - Service) OF THOMAS B. GRAVES

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received November 15, 1999 and has been assigned Case No. 1999-466. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/jc

By

RECEIVED
NOV 15 1999
PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

<u>Thomas B. GRAVES</u>)	
(Your Full Name))	
COMPLAINANT)	
VS.)	CASE 99-466
<u>EXCEL COMMUNICATIONS, INC.</u>)	
(Name of Utility))	
DEFENDANT)	

COMPLAINT

The complaint of Thomas B. GRAVES respectfully shows:
(Your Full Name)

- (a) Thomas B. GRAVES
(Your Full Name)

2040 EVERGREEN Rd.
(Your Address) FRANKFORT, Ky. 40601
- (b) EXCEL TELECOMMUNICATIONS, INC.
(Name of Utility)
P.O. Box 650582
DALLAS, TEXAS 75265-0582
(Address of Utility)
- (c) That: My LONG DISTANCE TELEPHONE CARRIER
(Describe here, attaching additional sheets if necessary,
was switched by EXCEL Communication
without my knowledge or authorization
the specific act, fully and clearly, or facts that are the reason
by said company by FORGING my SIGNATURE
ON AN APPLICATION. This is NOT my SIGNATURE
and basis for the complaint) and to my KNOWLEDGE
NOR did I EVER ^{OR MY WIFE} SPEAK WITH THEIR REPRESENTATIVE
(Sharon Mitchell). ~~at any time~~. AT NO TIME
did we authorize them to change carriers.

Formal Complaint

Thomas B. Graves vs. Excel Telecommunications, Inc.

Page 2 of 2

That is NOT my SIGNATURE, which I CAN
VERIFY by ~~SEE~~ ~~SEE~~ CONSUMERS AND BANKS
I DO BUSINESS WITH. WHY WOULD I CHANGE
CARRIERS FROM A COMPANY I'VE ALWAYS DONE
BUSINESS WITH TO A COMPANY I NEVER HEARD
OF UNTIL THEY SWITCHED ME WITHOUT MY
KNOWLEDGE OR AUTHORIZATION.

Wherefore, complainant asks _____

(Specifically state the relief desired.)

I ASK FOR THE SUM OF \$ ONE million DOLLARS plus
LAWYERS FEE IF NECESSARY, FOR FORGING my NAME
ON A DOCUMENT TO OBTAIN BUSINESS WITHOUT MY
KNOWLEDGE OR AUTHORIZATION. IF THEY GOBY WITH
THIS, WHAT ELSE CAN BE DONE TO ME BY THIS
FORGERY. THIS IS ILLEGAL AND AGAINST THE LAW.

Dated at Frankfort, Kentucky, this 9th day
(Your City)

of November, 1999.
(Month)

Thomas B. Graves
(Your Signature)

(Name and address of attorney, if any)

807 KAR 5:001. Rules of procedure.

Section 12. Formal Complaints.

(1) **Contents of complaint.** Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this administrative regulation).

(2) **Signature.** The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) **Number of copies required.** At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) **Procedure on filing of complaint.**

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) **Satisfaction of the complaint.** If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) **Answer to complaint.** If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good

cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this administrative regulation).

807 KAR 5:001. Rules of procedure.

Section 15. Forms.

(1) In all practice before the commission the following forms shall be followed insofar as practicable:

- (a) Formal complaint.
- (b) Answer.
- (c) Application.
- (d) Notice of adjustment of rates.
- (2) Forms of formal complaint.
- (3) Form of answer to formal complaint.
- (4) Form of application.
- (5) Form of notice to the commission of adjustment of rates

Before the Public Service Commission

(Insert name of complainant))
Complainant)
vs.) No. _____
(Insert name of each defendant)) (To be inserted by
Defendant) the secretary)

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day
of _____, 19 _____.

(Name of each complainant)

(Name and address of attorney,
if any)