

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENNETH SCHEISS and LOUANN SCHEISS)	
)	CASE NO.
COMPLAINANTS)	2006-00401
)	
v.)	
)	
INSIGHT PHONE OF KENTUCKY, LLC)	
)	
DEFENDANT)	

O R D E R

Complainants, Kenneth Scheiss and Louann Scheiss, filed this action requesting that the Commission order Insight Phone of Kentucky, LLC ("Insight") to correct an allegedly inaccurate telephone bill. Specifically, Complainants dispute charges for 17 calls to the Netherlands on their Insight bill. Finding that the Commission lacks jurisdiction over these international calls, the Commission dismisses this matter with prejudice.

BACKGROUND

Complainants contend that: the calls did not originate from their home; they did not authorize the calls; they have no knowledge or information as to who made the calls or how they were made; and they have no connection to anyone in the Netherlands. The 17 calls at issue totaled 61 minutes and were billed at a rate of \$1.56 per minute for a total of \$95.16 plus tax.

The Insight bill submitted to Complainants shows the calls as having originated from Complainants' telephone number.¹ While Complainants dispute the calls, they acknowledge that "[d]uring the time period in question no one except Kenneth Scheiss and Louann Scheiss had access to the telephone."² The Complainants further state that during the relevant time herein, there was a computer in the home connected to Insight service that was used to access the Internet.³

Nothing in the record demonstrates any error in Insight's bills or billing practices as they pertain to the facts of this case. Complainants have made no claim related to their telephone service other than to contest the subject calls.

DISCUSSION

Insight transmits or conveys messages by telephone for the public for compensation in the Commonwealth of Kentucky. The Commission has been granted authority to regulate the intrastate activities of utilities operating within the Commonwealth.⁴ Insight is a utility subject to Commission jurisdiction.⁵

The Commission's authority to regulate public utilities is not without limit.⁶ The commerce clause of the Federal Constitution delegates to the United States Congress the

¹ Insight's Answer to the Commission Staff's First Data Requests at 1 (Jan. 10, 2007).

² Response of Complainants to Commission Staff's First Data Request at 1 (Dec. 21, 2006).

³ Id.

⁴ KRS 278.040.

⁵ KRS 278.010(3)(e), the Commission's jurisdiction extends only to Insight's provision of telephone service and not to its Internet service.

⁶ See, e.g., Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky. App. 1983).

power to regulate interstate commerce.⁷ In exercising this power, Congress enacted the Communications Act of 1934, as amended,⁸ to, among other things, establish the Federal Communications Commission (“FCC”). It was created:

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States. . .a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense. . .and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication. . . .⁹

It was the intent of Congress that the FCC should have jurisdiction over and power to regulate within its terms all interstate and foreign communication and transmission of energy by wire and radio.¹⁰ While Congress reserved to the states jurisdiction over intrastate telephone communications, it granted the FCC sole and exclusive jurisdiction over interstate and foreign telephone service.

CONCLUSION

Complainants before an administrative agency have the burden of proof.¹¹ It was incumbent upon Complainants to state a cause of action within the Commission’s jurisdiction. These international telephone calls do not constitute intrastate activities within

⁷ U.S.C.A. Const. art. 1, § 8, cl. 3.

⁸ Communications Act of 1934, as amended, 47 U.S.C.A. § 151 et seq.

⁹ 47 U.S.C.A. § 151.

¹⁰ 47 U.S.C.A. § 152; see also, Sablowsky v. U. S., 101 F.2d 183 (3rd Cir. 1938).

¹¹ Energy Regulatory Comm’n v. Kentucky Power Co., 605 S.W.2d 46, 50 (Ky. App. 1980).

the Commission's jurisdiction.¹² The Commission therefore finds that this complaint should be dismissed from this forum with prejudice.

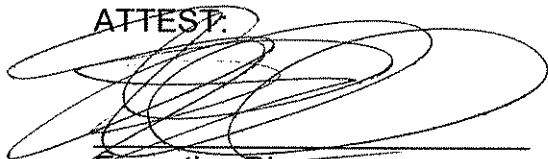
Given that the complaint is dismissed from the Commission with prejudice, Complainants may file a complaint with the FCC if they choose. However, the Commission is not an appropriate forum.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 20th day of June, 2007.

By the Commission

ATTEST:



Executive Director

¹² See, e.g., Kentucky Natural Gas Corporation v. Public Service Commission of Kentucky, 28 F.Supp. 509 (E.D.Ky. 1939); affirmed by Public Service Commission of Kentucky v. Kentucky Natural Gas Corp., 119 F.2d 417 (6th Cir. 1941).

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