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May 5, 2008



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PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Hon. Stephanie Stumbo  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

*Re: In the Matter of: Thomas Dean Stauffer v Brandenburg Telephone Company*

Dear Ms. Stumbo:

I have enclosed for filing in the above-styled case the original and eleven (11) copies of Brandenburg Telephone Company's Motion to Dismiss. Please file stamp and return one copy to the individual delivering these documents.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to read 'John E. Selent', written over a large, loopy initial 'J'.

John E. Selent

Enclosures

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

*In the Matter of:*

THOMAS DEAN STAUFFER )  
 )  
 ) COMPLAINTANT )  
 )  
 v. ) CASE NO. 2007-00399 )  
 )  
 ) BRANDENBURG TELEPHONE COMPANY )  
 )  
 ) DEFENDANT )

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**BRANDENBURG TELEPHONE COMPANY'S  
MOTION TO DISMISS**

Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, hereby moves the Public Service Commission of Kentucky (the "Commission") to dismiss the complaint of Complainant, Thomas Dean Stauffer, in the above-captioned matter. In support of its motion, Brandenburg Telephone states as follows.

**STATEMENT OF FACTS**

This case revolves around two accounts for which Ilissa Stauffer is responsible. She is a signatory on an account for telephone number 270-496-4992 (the "4992 account") with her son, David Stauffer, and another individual, Stacy Kelley. She is a signatory on an account for telephone number 270-496-4836 (the "4836 account") with her husband, Complainant. Complainant is not a signatory on the 4992 account and, therefore, bears no liability for the 4992 account.

On May 30, 2007, David Stauffer requested that Brandenburg Telephone disconnect service to the 4992 account. Brandenburg Telephone disconnected service to

that account. However, David Stauffer and Ilissa Stauffer continue to have an outstanding balance on the 4992 account. Because Ilissa Stauffer is responsible for the outstanding amount on the 4992 account, Brandenburg Telephone shows her indebtedness for the 4992 account on her bills for the 4836 account. This serves to protect Brandenburg Telephone's paying customers by reminding Ilissa Stauffer of her outstanding obligation and identifying her as a credit risk.

On or about September 11, 2007, Complainant filed a complaint against Brandenburg Telephone (the "Complaint"). In the Complaint, Complainant alleged that Brandenburg Telephone was wrongfully holding him liable for the past-due 4992 account and also alleged that Brandenburg Telephone was incorrectly applying payments from the 4836 account to the 4992 account.

Complainant asked the Commission "for relief from the matter of the [4992 account]" and further asked that his wife, Ilissa Stauffer, be relieved of liability for the 4992 account, despite the fact that she is signatory to that account. (Complaint, ¶7.) Additionally, he asked that "any and all promissory notes signed by [his wife] be made null and void" by reason of her alleged mental disability. (Id.) Complainant also asked the Commission to award him \$3,000 in punitive damages. (Id.)

In a November 21, 2007 order in this matter, the Commission informed Complainant that it was without jurisdiction to grant punitive damages and dismissed Complainant's claim for punitives. The Commission also noted in the order that it was "without authority to adjudicate Mr. Stauffer's claim for damages resulting from Brandenburg [Telephone]'s alleged wrongful actions."

Because, pursuant to KRS 278.260, the Commission only has original jurisdiction over "complaints as to [the] rates or service of any utility" and lacks the authority to adjudicate claims for damages, Brandenburg Telephone filed a claim against Ilissa Stauffer and David Stauffer in the Meade Small Claims Court on February 13, 2008, pursuant to KRS 24A.230. Brandenburg Telephone sought judgment against Ilissa and David Stauffer for the amount of the outstanding balance on the 4992 account.

On March 25, 2008, the Meade Small Claims Court held a hearing and, on April 3, 2008, granted judgment in favor of Brandenburg Telephone, ordering Ilissa Stauffer and David Stauffer to pay the entire balance due on the 4992 account, as well as court costs.<sup>1</sup> The Meade Small Claims Court held that Ilissa Stauffer and David Stauffer, jointly and severally, were liable for the entire amount due on the 4992 account. Furthermore, the Meade Small Claims Court held that Ilissa Stauffer's alleged mental disability does not interfere with her intellectual functioning and does not relieve her from liability for the past-due 4992 account.

### **ARGUMENT & ANALYSIS**

The mootness doctrine is "the principle that, when the matter in dispute has already been resolved, there is no actual controversy that would be affected by a judicial decision." *Black's Law Dictionary* 697 (6<sup>th</sup> abr. ed. 1991). The Commission recognizes the application of the mootness doctrine to matters before it. *See Order*, In the Matter of: Looney v. Harrison County Water Association, Inc., Commission Case No. 99-284, March 29, 2000.

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<sup>1</sup> On April 23, 2008, Ilissa Stauffer and David Stauffer appealed the small claims judgment (through Complainant) to the Meade District Court. However, pursuant to KRS 24A.340, Ilissa and David Stauffer only had until April 14, 2008 (10 days from the date of the small claims judgment) to appeal the judgment and the statute requires that they appeal to the Meade Circuit Court, not the Meade District Court. Accordingly, the small claims judgment is final and nonappealable.

A determination regarding the central issue of the Complaint – whether Complainant is liable for the 4992 account – has been made. Complainant is not responsible for the 4992 account. Ilissa Stauffer and David Stauffer are liable and have been ordered, by judgment of the Meade Small Claims Court, to pay the outstanding balance on the 4992 account.

As a result, there no longer remains a justiciable controversy before the Commission. The matter in dispute has been resolved and there remains no actual controversy that would be affected by any Commission decision regarding the Complaint. The Complaint is moot. Accordingly, it should be dismissed.

On or about April 29, 2008, Complainant, along with Ilissa and David Stauffer, two parties that have not properly intervened in this matter, filed a request for a formal hearing with the Commission.<sup>2</sup> Complainant's request for a formal hearing does not change the fact that the Complaint in this matter is moot.

Complainant, and presumably Ilissa and David Stauffer, is dissatisfied with the judgment granted by the Small Claims Court. The Commission, however, lacks the jurisdiction to overturn that judgment, or even entertain an appeal of that judgment. Ilissa and David Stauffer had the opportunity to appeal to the Meade Circuit Court, but failed to appeal to that court in a timely manner. As correctly noted by the Commission in its April 25, 2008, order, the judgment of the Meade Small Claims Court has rendered the Complaint moot.

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<sup>2</sup> In attempting to join his wife and son as complainants in this matter, Complainant is ignoring the Commission's March 28, 2008 order denying his motion to add them as co-complainants.

**CONCLUSION**

For the foregoing reasons, Brandenburg Telephone respectfully requests that the Commission dismiss Thomas Dean Stauffer's complaint in this matter.

Respectfully submitted,



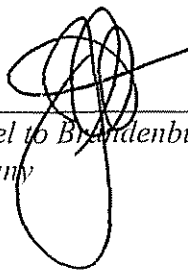
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*Counsel to Brandenburg Telephone  
Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been filed and served via first class United States mail, sufficient postage paid on this 5<sup>th</sup> day of May upon the following:

Thomas Dean Stauffer  
420 Blevins Road  
Payneville, KY 40157

  
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*Counsel to Brandenburg Telephone  
Company*

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