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April 9, 2008

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APR 09 2008

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Hon. Stephanie Stumbo
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: *In the Matter of: Thomas Dean Stauffer v. Brandenburg Telephone Company, Case No. 2007-00399*

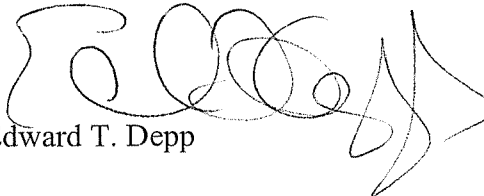
Dear Ms. Stumbo:

Enclosed for filing in the above-referenced case are the original and five (5) copies of Brandenburg Telephone Company's Response to the Commission's March 25, 2008 Order.

Thank you, and if you have any questions with regard to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP


Edward T. Depp

ETD/lb
Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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APR 09 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

**BRANDENBURG TELEPHONE COMPANY'S RESPONSE TO
THE COMMISSION'S MARCH 25, 2008 ORDER**

Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, for its responses to the data requests set forth in the March 25, 2008 order (the "Order") of the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), hereby states as follows.

INTRODUCTION

Page one of the Commission's Order finds that "further information is needed before the case proceeds." Brandenburg Telephone agrees, and it welcomes the opportunity to provide the requested information. In light of Complainant's obfuscations, however, the Commission may benefit from the recitation of a brief factual background that will help frame the issues, if any, in this case.

A. History of the Existing Account.

Ilissa Stauffer is the original responsible party on Complainant's account (the "Existing Account"). She signed as responsible party to the Existing Account on December

12, 1991. She did not add Complainant as a co-responsible party on the account until November 12, 1996. Ms. Stauffer remains a responsible party on the Existing Account.

B. History of the Delinquent Account.

On July 22, 2005, Ms. Stauffer signed as the responsible party on a separate account (the "Delinquent Account") by which Complainant's elderly parents received telephone services at a different address. On February 23, 2006, after the passing of Complainant's parents, Complainant's son David Stauffer signed as co-responsible party (along with his mother) on the Delinquent Account so that he could continue to receive telephone services at that address. On May 30, 2007, David Stauffer requested that Brandenburg Telephone disconnect service to the Delinquent Account. Brandenburg Telephone disconnected the Delinquent Account. At the time, the co-responsible parties (Ilissa and David Stauffer) had an outstanding balance on the Delinquent Account. That outstanding balance remains unpaid to this day.

C. Identification of Delinquent Account Balance on Existing Account Bill.

Because Ilissa Stauffer is responsible for payment of the outstanding balance on the Delinquent Account, Brandenburg Telephone shows that indebtedness on Ms. Stauffer's bills for the Existing Account. Brandenburg Telephone does this for two reasons. First, this practice serves to remind Ms. Stauffer that she owes unpaid charges to Brandenburg Telephone. Second, this practice allows Brandenburg Telephone to identify Ms. Stauffer as a credit risk.¹ Both rationales are consistent with protecting the company's paying customers from, in effect, subsidizing nonpaying customers like Ms. Stauffer.

¹ For example, if Ms. Stauffer were to apply for a new account with Brandenburg Telephone, the company would pull its bills to her on the Existing Account. It would then be able to determine that she remains in default on the Delinquent Account. As a result,

Brandenburg Telephone has not, however, taken any action against Complainant as a result of Ms. Stauffer's (and her son's) default on the Delinquent Account. It has not transferred Ms. Stauffer's (and her son's) liability on the Delinquent Account to Complainant. It has not sought to hold Complainant (as responsible party on the Existing Account) liable for the debt on the Delinquent Account. It has not threatened to disconnect services to Complainant for Ms. Stauffer's (or her son's) nonpayment of the indebtedness on the Delinquent Account. Likewise, Brandenburg Telephone has not instituted any court actions pertaining to the Existing Account. In short, Brandenburg Telephone treats the Delinquent Account and the Existing Account as separate obligations.²

D. Nonpayment of Undisputed Charges on Existing Account.

Of course, Complainant's failure to pay current undisputed charges on the Existing Account could result in disconnection of service on the Existing Account. Thus, for example, when Complainant stopped payment on a check for the current undisputed charges on his Existing Account "in order to put gas in [his] truck and transport [his] wife to Communicare in Elizabethtown," (Thomas Dean Stauffer's Response and Introduction of New Evidence at 5), it was reasonable and prudent of Brandenburg Telephone to commence with disconnection procedures on the Existing Account. Arguably, Brandenburg Telephone is even obligated to commence disconnection procedures in such circumstances in order to ensure compliance with Kentucky law's proscription against discriminatory practices that "give any unreasonable preference or advantage to any person. . . ." (*See* KRS 278.160(1); *see also* KRS 278.160(2).) Given the Commission's interest in this matter, however,

Brandenburg Telephone would take appropriate legal measures (for example, requiring a deposit) to help protect against Ms. Stauffer's credit risk.

² Ms. Stauffer and her son are liable for the debts incurred on the Delinquent Account. Ms. Stauffer and Complainant are liable for the debts incurred on the Existing Account.

Brandenburg Telephone has temporarily placed any disconnection procedures against Complainant on hold.³

E. Summary.

In summary, this matter is far less complicated than Complainant would have the Commission believe. Complainant's wife (Ms. Stauffer) owes Brandenburg Telephone for charges incurred on her Delinquent Account. She refuses to pay those charges. Brandenburg Telephone, in turn, continues to notify her of that fact and to track that indebtedness by referencing it on her bills for the Existing Account. Brandenburg Telephone has also pursued legal action against Ms. Stauffer and her son to recover the damages associated with their refusal to satisfy the outstanding balance on the Delinquent Account.⁴

Brandenburg Telephone does not commingle liability for the Delinquent Account with liability for the Existing Account. In fact, Brandenburg Telephone's bills show detail identifying the charges owed on each separate account. For example, Complainant has highlighted this detail with respect to the Delinquent Account (identified as "Disc" on the bill) at Exhibit C to his Complaint. The fact that Ms. Stauffer's liability appears on Complainant's bills is merely a byproduct of the fact that Ms. Stauffer is a responsible party and customer of record on both the Existing Account and the Delinquent Account.

Moreover, Brandenburg Telephone has not taken – nor will it take – any action whatsoever against Complainant as a result of Ms. Stauffer's (or her son's) long-running

³ Complainant still has not paid the charges due when he stopped payment on his check. Therefore – but for the Commission's orders to date – Brandenburg Telephone retains the right to: (i) disconnect Complainant's service for nonpayment; or (ii) commence a lawsuit for collection of Complainant's indebtedness on the Existing Account.

⁴ That legal action has no relation to the Existing Account or Complainant, nor does it seek any finding or remedy associated with the Existing Account or Complainant.

indebtedness on the Delinquent Account.⁵ Brandenburg Telephone will only take action against Complainant in the event that either Complainant or Ms. Stauffer (both of whom are responsible parties on the Existing Account) fail to pay the current undisputed charges on that Existing Account. And, unless Complainant (or his wife) undertake that modicum of responsibility to pay the current charges on the Existing Account, Brandenburg Telephone believes the Commission should affirm its ability to disconnect Complainant for nonpayment.

With these clarifications, Brandenburg Telephone provides the following responses to the data requests set forth in the Order.

RESPONSES TO DATA REQUESTS

In addition to the foregoing clarifications, Brandenburg Telephone hereby responds to the Commission's second set of data requests as follows.

1. Does Brandenburg have a policy regarding the transfer of responsibility for payment of bills from one spouse to another spouse?
 - a. If yes, provide a copy of the tariff page upon which the policy appears.
 - b. If no, cite to the statute or administrative regulation that authorizes Brandenburg to transfer a balance in such a manner.

Responsible Witness: Allison T. Willoughby

RESPONSE: Brandenburg Telephone has not sought to hold Complainant responsible for his wife's (or son's) outstanding indebtedness on the Delinquent Account. Brandenburg Telephone holds Ms. Stauffer and her son responsible on the Delinquent Account.

⁵ It bears noting that this dispute would be entirely moot if Ms. Stauffer or her son would simply pay the outstanding balance on the Delinquent Account.

Brandenburg Telephone holds Ms. Stauffer and Complainant responsible on the Existing Account.

2. Does Brandenburg consider the spouse of an individual with an account to be a responsible party to the account if that spouse's name does not appear on the account? If yes, provide support or documentation.

Responsible Witness: Allison T. Willoughby

RESPONSE: No.

3. What is the minimum amount the unpaid balance must reach before Brandenburg initiates an action in a court of law for the recovery of the unpaid balance?

Responsible Witness: Allison T. Willoughby

RESPONSE: Brandenburg Telephone's decisions regarding whether to institute legal action to recover damages for breach of contract are made on an individualized basis in light of a variety of considerations germane to each individual situation. Brandenburg Telephone has not set a monetary threshold below which it will blindly permit individuals to avoid legal responsibility for nonpayment of charges due and owing to the company.

Brandenburg Telephone further notes that this data request implies that the Commission may contemplate attempting to regulate Brandenburg Telephone's ability to sue for money damages when a customer refuses to pay for service. The Commission has recognized that it has no jurisdiction to award damages. (*See* November 21, 2007 Order in

this Matter at 3, n.4.) Moreover, any such attempted regulation would deprive Brandenburg Telephone of its constitutionally- and statutorily-protected rights to seek redress in court for claims seeking money damages.⁶ Brandenburg Telephone has not taken (and will not take) any action against the Existing Account as a result of Ms. Stauffer's and her son's default on the Delinquent Account.

4. What is the minimum amount of time that a balance must remain unpaid before Brandenburg initiates an action in a court of law for the recovery of the unpaid balance?

Responsible Witness: Allison T. Willoughby

⁶ See *Remote Services, Inc. v. F.D.R. Corp.*, Ky., 764 S.W. 2d 80, 82-83 (1998) ("Section 2 of our Kentucky Constitution is that part of our constitution which guarantees due process of law to our citizens and extends equal protection of the law to all its citizens, corporate or otherwise."); see also *Carr v. Cincinnati Bell, Inc.*, Ky., 651 S.W.2d 126, 128 (1983) ("Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement. *Kentucky Constitution* § 14."); see also *Bee's Old Reliable Shows, Inc. v. Kentucky Power Company*, Ky., 334 S.W.2d 765, 767 (1960) ("Although the Public Service Commission has jurisdiction over questions concerning rates and services generally, nevertheless, when a question arises which is peculiar to the individual complainant, the courts will assume jurisdiction and hear the matter."); see also Brandenburg Telephone's Notice of Filing (March 27, 2008) at Tab 4 ("Plaintiff's Response to Defendants' Motion to Dismiss").

Brandenburg Telephone further notes that this case is factually distinguishable from *Wilhite v. Louisville Gas and Electric Co.*, 2001 Ky. PUC LEXIS 513, Case No. 2000-00369 (Order of February 8, 2001). In that case, the Commission determined that Louisville Gas and Electric Company could not hold one spouse liable for another spouse's debts in the absence of some tariff provision identifying the spouses as agents for one another. *Id.* at *6. In the present case, Brandenburg Telephone has not attempted to hold Complainant liable for Ms. Stauffer's and her son's liability. Moreover, Brandenburg Telephone has not (and will not) take any action against Complainant as a result of Ms. Stauffer's or her son's failure to satisfy their indebtedness on the Delinquent Account. Therefore, the *Wilhite* case is inapplicable to this matter, except insofar as it stands for the proposition that a utility "is entitled to collect for any unpaid balances... accrued while [the subject of the utility's collection actions] had service in [his or] her name." *Id.* at *2.

RESPONSE: Brandenburg Telephone's decisions regarding whether to institute legal action to recover damages for breach of contract are made on an individualized basis in light of a variety of considerations germane to each individual situation. Brandenburg Telephone has not set a temporal threshold below which it will blindly permit individuals to avoid legal responsibility for nonpayment of charges due and owing to the company. (Please *see also* Brandenburg Telephone's response to Request No. 3, above.)

5. What methods, besides filing actions in courts of law, does Brandenburg utilize to collect past-due accounts? Discuss the responses in detail with cites to the supporting authority including, but not limited to, tariff pages, statutes, and administrative regulations.

Responsible Witness: Allison T. Willoughby

RESPONSE: Brandenburg Telephone notes that this question is difficult to answer in the absence of a specific factual context. From a general perspective, the company attempts to protect itself from nonpaying customers by maintaining its billing records to identify customers with delinquent accounts, sending collection letters, denying new service, instituting disconnection procedures, and/or pursuing money damages in court. In all cases, Brandenburg Telephone's actions are in accordance with KRS 278.160, 807 KAR 5:006, and the company's "General Rules and Regulations: Payment for Service and Facilities," P.S.C. Ky. No. 2, Part I, First Revision Sheet 36, Issued July 9, 1976, Effective September 1, 1976. Given the lack of a factual context for this request, it is possible that there could be other legal authority for these or perhaps other actions. Nevertheless, these activities represent the

company's principal strategies for ensuring that its paying customers are not forced to subsidize its delinquent customers.

6. Is it Brandenburg's understanding that it can disconnect service at one address for an unpaid debt incurred at another address? If yes, explain in detail how this action does not conflict with 807 KAR 5:006, Section 14(f).

Responsible Witness: Allison T. Willoughby

RESPONSE: No.

7. How frequently does Brandenburg file actions in court to collect unpaid debts of residential customers? What is the status of the customer's account after a ruling from the court?

Responsible Witness: Allison T. Willoughby

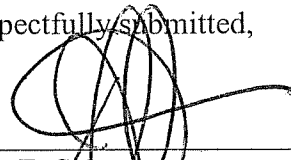
RESPONSE: Brandenburg Telephone pursues legal action to: (i) remedy damage sustained by the company; and (ii) deter future wrongful conduct against the company. Upon satisfaction of a judgment against an indebted customer, Brandenburg Telephone will update its records to reflect satisfaction of that indebtedness. (Please *see also* Brandenburg Telephone's response to Request No. 3, above.)

8. Commission Staff has learned that Brandenburg has filed an action in small claims court in Meade County seeking to recover from both Ms. Stauffer and her son the unpaid debt that is the subject of this case. In the event Brandenburg is successful in one or both of its actions for collection, would the unpaid debt be removed from Complainant's bill? Explain your answer.

Responsible Witness: Allison T. Willoughby

RESPONSE: Brandenburg Telephone notes that "Complainant's bill" is one and the same as Ilissa Stauffer's bill, as she is the original obligor on the Existing Account. Subject to this clarification, please see Brandenburg Telephone's response to data request number 7, above.

Respectfully submitted,

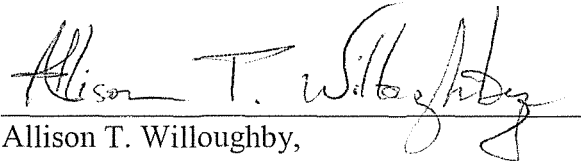


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*Counsel to Brandenburg Telephone
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CERTIFICATION

I hereby certify that I have supervised the preparation of Brandenburg Telephone Company's factual responses to the data requests set forth in the March 25, 2008 order of the Public Service Commission of the Commonwealth of Kentucky, and that the factual responses contained herein are true and accurate to the best of my knowledge, information, and belief formed after reasonable inquiry.



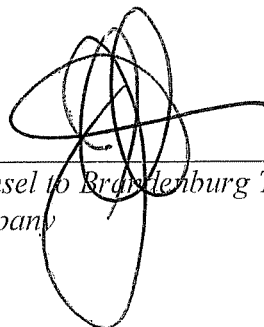
Allison T. Willoughby,
Assistant General Manager,
Brandenburg Telephone Company

Date: 4-9-08

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following via first-class United States mail this 9th day of April, 2008.

Thomas Dean Stauffer
420 Blevins Road
Payneville, KY 40157



*Counsel to Brandenburg Telephone
Company*