

belief that the Commission should rule on its motion to dismiss prior to conducting a full hearing.

The Commission agreed to reschedule the hearing by Order dated May 27, 1994, stating that it would rule on the defendant's motion to dismiss and either dismiss the complaint or schedule a new hearing. Kentucky Coin was granted until June 16, 1994 to submit a written response to the motion to dismiss and Coin Phone was granted until June 26, 1994, to reply thereto. Both parties responded to the Commission's Order and the case was then submitted for the Commission to rule on the defendant's motion to dismiss.

The Commission derives its jurisdiction over complaints as to utility rates or services from KRS 278.260. Subsection 1 of that statute states:

The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.

Essentially, Coin Phone argues that the plaintiff's complaint should be dismissed because the conduct complained of does not fit within the statutory definition of "rates" or "services." Clearly

the complaint does not address Coin Phone's rates. Kentucky Coin alleges that Coin Phone has engaged in unethical business practices in its efforts to compete for coin-operated, customer-owned telephone ("COCOT") customers. As stated above, the Commission possesses jurisdiction over "any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained. . . ."

Service is defined at KRS 278.010(11) as

"Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure and quantity of water, and in general the quality, quantity and pressure of any commodity or product used or to be used for or in connection with the business of any utility;

The Commission finds that any "unethical business" behavior of Coin Phone, if true, is not included in the definition of service, nor is it contemplated as behavior over which the Commission has jurisdiction as set out in KRS 278.260(1). While it is true that Kentucky Coin might be deemed a "customer" of Coin Phone in some circumstances, since any officer or employee of Kentucky Coin could utilize a Coin Phone COCOT, the complaint itself does not set out any customer-oriented service problems. Instead, the complaint alleges that Coin Phone has acted in an unethical manner in order to secure a competitive business advantage over Kentucky Coin. The Commission is not the proper forum for such a complaint.

IT IS THEREFORE ORDERED that this complaint be and hereby is dismissed with prejudice.

Done at Frankfort, Kentucky, this 10th day of August, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director