

BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

KENNETH BLAIR &)
MARY ELIZABETH RAINER BLAIR)
PLAINTIFFS)

v.)

) COMPLAINT
)

BELLSOUTH TELECOMMUNICATIONS, INC., DAN,)
TALTON TELECOMMUNICATION CORP., ONCOR.)
DEFENDANTS)

case: 98-095

1) NOW COMES THE PLAINTIFFS, IN PROPRIA PERSONA, AND RELYING ON THE DECISION IN HAINES v. KERNER, 404 U.S 519 AND SHOW THEIR COMPLAINT AGAINST THE DEFENDANTS AS FOLLOWS:

PARTIES TO THE ACTION

2) THE PLAINTIFFS IN THIS ACTION ARE CITIZENS OF THE UNITED STATES AND RESIDENTS OF THE STATE OF KENTUCKY RESIDING IN CLARK COUNTY. THE PLAINTIFF'S NAMES AND ADDRESSES ARE AS FOLLOWS: KENNETH BLAIR 45 MACKAY ST. WINCHESTER, KY. 40391. MARY ELIZABETH RAINER BLAIR 45 MACKAY ST. WINCHESTER, KY. 40391. THE DEFENDANTS IN THIS COMPLAINT ARE: BELLSOUTH TELECOMMUNICATIONS INC. HEREINAFTER REFERRED TO AS BS, A GEORGIA BASED CORPORATION, PROCESS AGENT BEING GREIGHTON E. MERSHON SR. AT 601 WEST CHESTNUT RM. 407 LOUISVILLE, KY. 40203. DAN, A CALIFORNIA BASED CORPORATION, POB 1175 NORTH RIDGE CA. 91328; ONCOR, A TEXAS BASED CORPORATION, POB 50599 DALLAS, TX. 75250; TALTON, A ALABAMA BASED CORPORATION, POB 1019 SELMA, AL. 36702.

STATEMENT OF THE CASE

3) ON OR ABOUT DECEMBER OF 1995 PLAINTIFFS RECEIVED A PHONE BILL FROM BELLSOUTH TELECOMMUNICATIONS (BS). THE BILL CONTAINED MANY CHARGES FOR CALLS THAT WERE UNAUTHORIZED. PLAINTIFFS IMMEDIATELY CALLED BS AND ADVISED THEM OF THE UNAUTHORIZED USE OF THEIR TELEPHONE CREDIT CARD NUMBER. BS ADVISED THAT THEY WOULD INVESTIGATE THE SITUATION AND BILL THE NUMBERS THAT THE CALLS WERE MADE TO AND FROM. PLAINTIFFS ROUTINELY CALLED BS CONCERNING THE RESULTS OF THE INVESTIGATION AND BILLING. BS ADVISED PLAINTIFFS TO WAIT FOR VARIOUS TIME PERIODS. PLAINTIFFS OFFERED TO PAY THE UNDISPUTED PORTION OF THE BILL BUT BS

ADVISED THAT THE PAYMENT WOULD GO TOWARD THE ENTIRE BILL NOT JUST THE AUTHORIZED PORTION. THIS SITUATION CONTINUED FOR SEVERAL MONTHS.

4) BS CONTINUED TO REFUSE TO ACCEPT PAYMENT OF THE UNDISPUTED CALLS BUT DID ACCEPT A PAYMENT OF \$146.00 ON OR ABOUT 1/18/96 IN ORDER FOR PLAINTIFFS TO HAVE PHONE SERVICE CONTINUE WHILE BS CONTINUED TO INVESTIGATE. BS NEVER REPORTED ANY RESULTS OF THE INVESTIGATION OR THAT IT WAS EVER COMPLETED. PLAINTIFF'S PHONE SERVICE WAS DISCONNECTED ON OR ABOUT FEBRUARY 15, 1996. BS ADVISED PLAINTIFFS TO CONTACT EACH INDIVIDUAL LONG DISTANCE CARRIER ABOUT ADJUSTING THE UNAUTHORIZED PORTION OF THE BILL. PLAINTIFF, MARY BLAIR DID CALL THOSE CARRIERS THAT SHE COULD REACH BY PHONE AND FURTHER SENT SECTIONS OF THE PHONE BILL WITH SPECIFIC NUMBERS ENCIRCLED AND WITH A NOTE INDICATING THE UNAUTHORIZED CALLS. TWO COMPANIES, AT&T AND STE ADJUSTED (DEDUCTED) MORE THAN \$300.00. OTHER COMPANIES EITHER DID NOT RESPOND OR FAILED TO ADJUST ANY PART OF THE BILL AS PLAINTIFFS WERE TOLD THAT THEY WOULD.

5) DURING THE COURSE OF COMMUNICATIONS BY PLAINTIFF, MARY BLAIR, ASKED IF SHE COULD HAVE A PHONE IN HER NAME AT 45 MACKAY ST. PLAINTIFF WAS TOLD THAT SHE COULD NOT HAVE PHONE SERVICE AT THAT ADDRESS EVEN THOUGH SHE NEVER HAD A PHONE IN HER NAME. PLAINTIFF WAS FURTHER ADVISED THAT UNTIL THE PHONE BILL FOR 45 MACKAY ST. WAS PAID IN FULL NO ONE COULD HAVE A PHONE AT THAT ADDRESS.

6) ON OR ABOUT APRIL 10, JUNE 10, AND SEPTEMBER 10, 1997 PLAINTIFFS RECEIVED LETTERS FROM ALF ADAMS OF ADAMS & WHITEAKER, ATTORNEYS AT LAW, REPRESENTING BS AS DEBT COLLECTORS. THEN ON OR ABOUT DECEMBER 23, 1997 ADAMS & WHITEAKER CALLED THE RESIDENCE OF ELIZA ROGERS, PLAINTIFF KENNETH BLAIR'S MOTHER WHO LIVES IN LEXINGTON.

7) THE PLAINTIFFS MADE REQUESTS FOR BS TO SEND COPIES OF THE DISPUTED PHONE BILL. PLAINTIFFS WERE ADVISED THAT THEY WOULD RECEIVE THEM BUT DID NOT. ON AUGUST 7, 1997 PLAINTIFFS FILED A COMPLAINT AGAINST BS WITH THE PUBLIC SERVICE COMMISSION AND THEN RECEIVED A COPY OF THE BILL FROM THE PSC. PLAINTIFFS RECEIVED A REPLY ON AUGUST 22, 1997. BS CONTINUED TO DEMAND FULL PAYMENT OF \$649.04 BUT WOULD ACCEPT THREE (3) PAYMENTS OF \$216.34 AND ONE (1) PAYMENT OF \$216.35. PLAINTIFFS SENT A LETTER TO THE PSC DISAGREEING WITH THE FINDINGS.

8) THE PLAINTIFFS, FINALLY BEING ALLOWED TO REVIEW THE PHONE BILLS, FOUND THAT THEY WERE BEING CHARGED EXTRA FOR CALLS THAT WERE, BY CONTRACT PAID FOR AT THE SET RATE OF \$20.00 PER MONTH. PLAINTIFFS WERE INFORMED THAT THIS SERVICE WAS ONLY IN EFFECT FOR THE \$20.00 A MONTH FROM THEIR HOME PHONE, (606) 745-1024 TO LEXINGTON AND OTHER SPECIFIC AREAS. BUT WHEN THE CALLING CARD

NUMBER WAS USED THE FIXED RATE ALSO APPLIED FROM ANY OF THE SPECIFIC AREAS, INCLUDING LEXINGTON TO PLAINTIFF'S HOME PHONE. PLAINTIFFS WERE FURTHER ADVISED THAT ANY "OPERATOR ASSISTED CALLS" (COLLECT CALLS) FROM THESE AREAS WOULD BE BILLED AT A LONG DISTANCE RATE AND NOT INCLUDED IN THE PRE SET AMOUNT. PLAINTIFFS COMPLAINED TO THE PSC. MCI CARRIED THE CALLS AND BILLED AS CASUAL TRAFFIC AND MAINTAIN THAT PLAINTIFFS OWE MCI THE ENTIRE AMOUNT. PLAINTIFFS ADVISED THE PSC THAT THEY DISAGREED WITH THEIR FINDINGS

9) AFTER COMMUNICATIONS WITH THE PSC IT BECAME OBVIOUS THAT BS HAD NOT CONDUCTED AN INVESTIGATION IN 1995 AND 1996 AT ALL. PLAINTIFFS THEN TOOK STEPS TO CONTACT CORPORATIONS LISTED ON THE BILL VIA A LETTER TO THE KENTUCKY SECRETARY OF STATE FOR CORPORATION INFORMATION. THAT OFFICE SUPPLIED PLAINTIFFS WITH INFORMATION ON THE CORPORATIONS LISTED ON THEIR PHONE BILLS IN QUESTION. THREE (3) OF THE CORPORATIONS (NOW DEFENDANTS) WERE NOT REGISTERED WITH THE SECRETARY OF STATE, DID NOT HAVE A BUSINESS OFFICE IN THE STATE NOR HAVE A PROCESS AGENT WITHIN THE STATE OF KENTUCKY.

COUNT ONE

10) UNLAWFUL BUSINESS TRANSACTIONS IN THE STATE OF KENTUCKY. DEFENDANTS BS, DAN, TALTON AND ONCOR KNEW, HAD THE RESPONSIBILITY OF KNOWING THAT PURSUANT TO THE KENTUCKY CONSTITUTION SECTION 190 " CORPORATIONS MUST ACCEPT CONSTITUTION" AND SECTION 194 " CORPORATIONS TO HAVE PLACE OF BUSINESS AND PROCESS AGENT IN STATE" AND KRS 271B.2-030 (1)&(2); KRS 271B.15-010.; KRS 271B.15-050.; KRS 271B.15-020. FURTHER DEFENDANT, BS KNEW, HAD THE RESPONSIBILITY OF KNOWING THAT PURSUANT TO KRS 271B.2-040., "LIABILITY FOR PREINCORPORATION TRANSACTIONS." CONDUCTING BUSINESS WITH AND ON BEHALF OF THE ABOVE MENTIONED CORPORATIONS IS UNLAWFUL AND "SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL LIABILITIES CREATED WHILE SO ACTING."

COUNT TWO

11) BREACH OF CONTRACT
WHERE PLAINTIFFS DID CONTACT DEFENDANT, BS IN THE ORDINARY COURSE OF BUSINESS BY THE APPROPRIATE METHOD (TELEPHONE), PROVIDED BY THE DEFENDANT AND DID AGREE TO PAY THE SET AMOUNT OF \$20.00 PER MONTH FOR UNLIMITED CALLS TO AND FROM LEXINGTON AND OTHER SPECIFIC AREAS PURSUANT TO THE ABOVE STATED AGREEMENT. THEN DEFENDANT BS, WITHOUT NOTICE TO THE PLAINTIFFS VIOLATED THAT CONTRACT BY ALLOWING ANOTHER CARRIER (MCI) CHARGE FOR THE CONTRACTED CALLS.

PRAYER FOR RELIEF:

12) WHERE PLAINTIFFS ENJOYED THE 24 HR. A DAY SECURITY OF 911 EMERGENCY SERVICES, FREEDOM TO CALL AND BE CALLED BY RELATIVES, FRIENDS, IN EVER DAY LIVING AND IN THE EVENT OF EMERGENCIES AND

DEATHS, CONDUCT BUSINESS, MAKE APPOINTMENTS & AND CANCEL APPOINTMENTS AND RECEIVE CANCELLATIONS OF APPOINTMENTS. PLAINTIFFS DID MAINTAIN A GOOD CREDIT RATING WHEREBY THEY COULD ACQUIRE FUNDS TO MAINTAIN THEIR PROPERTIES. WHERE ALL THESE THINGS HAVING BEEN DONE IN THE PURSUIT OF HAPPINESS AND THE SAFETY OF THE PLAINTIFFS (KY. CONSTITUTION SEC.1 (1st, 3rd & 5th) WHO, UNTIL THEIR PHONE SERVICE WAS INTERRUPTED IN FEB. OF 1996 HAD THE SAME PHONE NUMBER SINCE 1977. ALL OF THIS COLLECTIVE, UNLAWFUL ACTIVITY OF THE DEFENDANTS HAS CAUSED GREAT HARDSHIP, PAIN AND SUFFERING, DAMAGE TO PROPERTY AND EMBARRASSMENT TO THE PLAINTIFFS. THE PLAINTIFFS THEREFORE ~~AND~~ THAT THEIR PHONE SERVICE BE RESTORED LEAVING ALLEGED PAST DUE AMOUNTS FOR PHONE BILLS IN DISPUTE SUSPENDED UNTIL SUCH A TIME THAT ALL REMEDIES ARE EXHAUSTED AND A LEGALLY BINDING DETERMINATION IS MADE AS TO THE LEGITIMATE AMOUNTS DUE, IF ANY.

13) THAT ALL CHARGES TO THE PLAINTIFFS AS THE RESULT OF UNLAWFUL BUSINESS ACTIVITIES BY THE DEFENDANTS BE NULL AND VOID.

14) THAT EACH OF THE DEFENDANTS FOUND GUILTY ON ANY CHARGE PAY TO EACH OF THE PLAINTIFFS AT THE RATE OF \$0.92 PER MINUTE (THE PAY PHONE RATE CHARGED PLAINTIFFS DURING THE TIME THAT PHONE SERVICE WAS TERMINATED) FOR EACH FULL (24 HOUR) DAY BEGINNING FEB. 17, 1996 AND ENDING ON THE DATE PHONE SERVICE IS RESTORED AS COMPENSATORY DAMAGES AND THREE TIMES THAT AMOUNT FOR PUNITIVE DAMAGES AND ANY OTHER DAMAGES, FINES AND/OR PENALTIES AS SEEN FIT AND PROPER BY THE PSC.

RESPECTFULLY SUBMITTED,

Kenneth Blair
Mary Elizabeth Rainer Blair

KENNETH BLAIR
MARY ELIZABETH RAINER BLAIR
45 MACKAY ST.
WINCHESTER KY. 40391

STATEMENT OF VERIFICATION

I HAVE READ THE ABOVE COMPLAINT AND IS IS CORRECT TO THE BEST OF MY KNOWLEDGE.

THE FOREGOING INSTRUMENT WAS SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME BY KENNETH BLAIR AND MARY R BLAIR THIS 26TH DAY OF JANUARY 1998.

MY COMMISSION EXPIRES: Nov. 7, 1998

Donna R. Blair

NOTARY PUBLIC

AUTHORITIES CITED

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1) KY. CONST. SEC. 190. CORPORATIONS MUST ACCEPT CONSTITUTION. NO CORPORATION IN EXISTENCE AT THE TIME OF THE ADOPTION OF THIS CONSTITUTION SHALL HAVE THE BENEFIT OF FUTURE LEGISLATION WITHOUT FIRST FILING IN THE OFFICE OF THE SECRETARY OF STATE AN ACCEPTANCE OF THE PROVISIONS OF THIS CONSTITUTION.

2) KY. CONST. SEC. 194. CORPORATIONS TO HAVE PLACE OF BUSINESS AND PROCESS AGENT IN STATE. ALL CORPORATIONS FORMED UNDER THE LAWS OF THIS STATE, OR CARRYING ON BUSINESS IN THIS STATE, SHALL, AT ALL TIMES, HAVE ONE OR MORE KNOWN PLACES OF BUSINESSES IN THIS STATE, AND AN AUTHORIZED AGENT OR AGENTS THERE, UPON WHOM PROCESS MAY BE EXECUTED, AND THE GENERAL ASSEMBLY SHALL ENACT LAWS TO CARRY INTO EFFECT THE PROVISIONS OF THIS SECTION.

3) KRS 271B.2-030. INCORPORATION- (1) UNLESS A DELAYED EFFECTIVE DATE IS SPECIFIED, THE CORPORATE EXISTENCE SHALL BEGIN WHEN THE ARTICLES OF INCORPORATION ARE FILED BY THE SECRETARY OF STATE. (2) THE SECRETARY OF STATE'S FILING OF THE ARTICLES OF INCORPORATION SHALL BE CONCLUSIVE PROOF THAT THE INCORPORATORS SATISFIED ALL CONDITIONS PRECEDENT TO INCORPORATION, EXCEPT IN PROCEEDINGS BY THE STATE TO CANCEL OR REVOKE THE INCORPORATION OR INVOLUNTARILY DISSOLVE THE CORPORATION.

4) KRS 271B.2-040. LIABILITY FOR PREINCORPORATION TRANSACTIONS.- ALL PERSONS PURPORTING TO ACT AS OR ON BEHALF OF A CORPORATION, KNOWING THERE WAS NO CORPORATION UNDER THIS CHAPTER, SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL LIABILITIES CREATED WHILE SO ACTING.

5) KRS 271B.15-010. AUTHORITY TO TRANSACT BUSINESS REQUIRED. (1) A FOREIGN CORPORATION SHALL NOT TRANSACT BUSINESS IN THIS STATE UNTIL IT OBTAINS A CERTIFICATE OF AUTHORITY FROM THE SECRETARY OF STATE.

6) KRS 271B.15-050. EFFECT OF CERTIFICATE OF AUTHORITY.- (1) A CERTIFICATE OF AUTHORITY SHALL AUTHORIZE THE FOREIGN CORPORATION TO WHICH IT IS ISSUED TO TRANSACT BUSINESS IN THIS STATE SUBJECT, HOWEVER, TO THE RIGHT OF THE STATE TO REVOKE THE CERTIFICATE AS PROVIDED IN THIS CHAPTER.

7) KRS 271B.15-020. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY.- (1) A FOREIGN CORPORATION TRANSACTING BUSINESS IN THIS STATE WITHOUT A CERTIFICATE OF AUTHORITY SHALL NOT MAINTAIN A PROCEEDING IN ANY COURT IN THIS STATE UNTIL IT

OBTAINS A CERTIFICATE OF AUTHORITY.

8) KY. CONST. SEC.1., RIGHTS OF LIFE, LIBERTY, WORSHIP, PURSUIT OF SAFETY AND HAPPINESS, FREE SPEECH, ACQUIRING AND PROTECTING PROPERTY, PEACEABLE ASSEMBLY, REDRESS OF GRIEVANCES, BEARING ARMS: (FIRST: THE RIGHT OF ENJOYING AND DEFENDING THEIR LIVES AND LIBERTIES. (THIRD: THE RIGHT OF SEEKING AND PURSUING THEIR SAFETY AND HAPPINESS. (FIFTH: THE RIGHT OF ACQUIRING AND PROTECTING PROPERTY.

9(" A CONTRACT IS A PROMICE OR A SET OF PROMICES FOR BREACH OF WHICH THE LAW GIVES LEGAL REMEDY." 275 SW2d 392 (KY. 1963)