

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENNETH BLAIR AND MARY ELIZABETH	)	
BLAIR	)	CASE NO.
	)	98-095
COMPLAINANTS	)	
	)	
v.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS,	)	
INC.; OAN; TALTON TELECOMMUNICATION	)	
CORP.; AND ONCOR	)	
	)	
DEFENDANTS	)	

O R D E R

On January 27, 1998, Kenneth Blair and Mary Elizabeth Blair ("Complainants") filed a formal complaint with the Public Service Commission ("Commission") against BellSouth Telecommunications ("BellSouth"), OAN Services, Inc. ("OAN"), Talton Telecommunications, Corp. ("Talton"), and ONCOR Communications, Inc. ("ONCOR"). The Commission, by Order of February 25, 1998, directed the Defendants to either satisfy the matters in the complaint or file a written answer within 10 days from the date of service of the Order. On March 6, 1998, the Commission received a notice of amended complaint and amended complaint from the Complainants along with a copy of a Receipt and Agreement between Complainants and BellSouth wherein BellSouth agreed that having

received \$290.00 representing the charges for past due local service, an installation charge and a deposit, it would provide premium area calling service to the Complainants at their residence and the Complainants would continue to pursue their complaint with this Commission with regard to the alleged unauthorized long distance calls.

The Commission has jurisdiction only over a portion of Complainants' complaint. "The law in Kentucky is well settled. Subject-matter jurisdiction of an administrative agency is limited solely to that granted by Legislature." Auxier v. Com., Bd. of Embalmers and Funeral Directors, Ky. App., 553 S.W.2d 286, 288 (1977). In Count Two of the complaint, the Complainants allege that BellSouth breached its contract to provide service to them at a flat rate. The Commission has jurisdiction over the provision of services by BellSouth as it is statutorily empowered with "exclusive jurisdiction over the regulation of rates and service of utilities." KRS 278.040(2). Count One of the Complainants' complaint, however, merely alleges that Talton and ONCOR are in violation of Chapter 271B of the Kentucky Revised Statutes for unlawfully transacting business within the State of Kentucky and that BellSouth, by transacting business with these corporations, is jointly and severally liable for all liabilities created. The Commission has not been authorized by the legislature to enforce the provisions of KRS 271B and, therefore, finds that the Complainants' complaint against Talton and ONCOR should be dismissed for lack of jurisdiction.

By its Order dated June 22, 1998, this Commission dismissed the Complainants' action against OAN as it found OAN did not meet the statutory definition of a utility as defined in KRS Chapter 278. The Commission also ordered BellSouth to furnish

information regarding services provided to Complainants. BellSouth timely responded to this request on July 2, 1998.

The Complainants allege in their complaint that BellSouth disconnected their phone service for nonpayment though they allegedly informed BellSouth that the charges contained on their bills were from unauthorized use of their charge card. They also allege that the calls charged by MCI on their bill should have been charged at the flat rate of \$20.00 per month under an agreement with BellSouth.

The Complainants allege that during December 1995 they received a phone bill from BellSouth which contained unauthorized calls on their credit card and that they immediately so informed BellSouth. The Commission requested the Complainants' billing information from BellSouth in order to review and properly rule on the issue of unauthorized calls. However, on May 20, 1998, the Commission received a copy of a letter from Mr. Blair to the attorney for ONCOR which stated that "unauthorized calls are not an issue before the Public Service Commission in the above mentioned case." Therefore, the Commission finds no decision is required on the matter of unauthorized calls.

The Complainants allege in Count Two of their complaint that they agreed to pay BellSouth \$20.00 per month for unlimited calls to and from Lexington and other specific areas and that BellSouth violated this agreement and allowed MCI to charge for the contracted calls.

Pursuant to KRS 278.160 all utilities under the jurisdiction of the Commission must file with the Commission schedules showing all rates and conditions of service established

by the utility. BellSouth has complied with this statutory directive by properly filing its tariff with this Commission. KRS 278.160(2) also directs that a utility shall not charge or receive a greater or less compensation for service rendered than that prescribed in its filed schedules and that no person shall receive any service from a utility for a greater or less compensation than that prescribed. In addition, KRS 278.170 provides that "no utility shall, as to rates or service, give any unreasonable preference or advantage to any person."

Both the complaint by the Complainants and the documents provided by BellSouth establish that Complainants requested, and were provided, service by BellSouth. The service included Area Calling Service - Premium. It is noted that Area Calling Service - Premium consists of two components, a basic service of \$9 including touchtone and an usage package of \$20. Pursuant to the tariff filed with the Commission by BellSouth, Area Calling Service is defined as "an optional offering that provides local calling from the subscribers' home wire center to all exchanges within the Full Local Calling Area" (BellSouth's Tariff, Section A. 3 Basic Local Exchange Service) (Emphasis added). The Complainants' residence is located in Winchester, Kentucky. The "Full Local Calling Area" for the residents of Winchester includes the additional exchanges of Irvine, Lexington, Mt. Sterling, North Middleton, Paris, Richmond, Stanton, and Waco. (BellSouth's Tariff, Section A3.6.1). To receive this service for the flat fee the customer must place the call from his home wire center, i.e., the customer location presubscribing to the service. The Commission finds that the charges billed by MCI were for calls charged by

Complainants to their BellSouth charge card and, therefore, were not covered by the flat fee per month charge. In addition, providing the flat rate service to Complainants on calls made other than from their presubscribed access line would be a violation of BellSouth's tariff, KRS 278.160(2) and KRS 278.170. Therefore, BellSouth is prohibited from providing the service Complainants describe.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that the Complaint should be dismissed as to ONCOR and Talton as the Commission lacks jurisdiction over the subject matter of the complaint against them. The Commission further finds that the complaint against BellSouth should be dismissed as there has been no violation of KRS Chapter 278 or the regulations duly authorized thereunder and the Commission is unable to grant the relief prayed for by the Complainants.

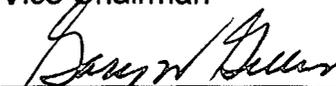
IT IS THEREFORE ORDERED that the Complainants' complaint filed with this Commission on January 27, 1998 and amended complaint filed on March 6, 1998 are hereby dismissed with prejudice.

Done at Frankfort, Kentucky, this 23rd day of October, 1998.

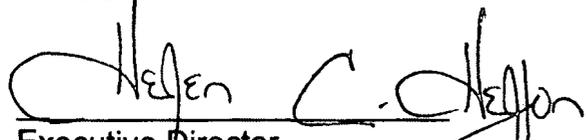
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Vice Chairman

  
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ATTEST:

  
Executive Director