

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOHN ELLENBOGEN)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2000-148
)	
CINCINNATI BELL TELEPHONE COMPANY)	
)	
DEFENDANT)	

O R D E R

On March 28, 2000, John Ellenbogen (“Complainant”) filed a formal complaint with the Commission against Cincinnati Bell Telephone Company (“CBT”) alleging that CBT discriminated as to rates and services regarding the Local Calling Area, CBT improperly charged him for three-way calling, CBT provided inadequate service to customers calling CBT with problems and questions, CBT billed erroneously for services provided, CBT took excessive time to respond to Complainant’s complaints and CBT inappropriately charged him late fees. CBT filed its answer on April 25, 2000. In its answer CBT denied all of Complainant’s charges.

CBT claims that it does not discriminate, and has not discriminated, in its Local Calling Area plans and that it operates and charges for services in accordance with its tariff. CBT also claims that it only bills customers for three-way calling when the service is actually used by the customer. CBT offered to refund Complainant the cost of the three-way calling if Complainant, in fact, had not used the service.

CBT argues that it has complied with all Commission regulations in regard to customer service. Moreover, CBT claims that it responded to Complainant in a reasonable time.

CBT also claims that it properly charged Complainant a late payment fee of 1.5 percent on the unpaid balance of Complainant's bill. CBT offers to remove the late fees if Complainant will pay the unpaid balance of the bills in dispute. CBT also claims to provide billing in the format contained in its tariff but states it will offer an additional itemized bill to Complainant should he so desire.

Complainant has not offered any evidence to indicate that CBT is treating him differently than a similarly situated CBT customer. CBT is providing service to Complainant and the Local Calling Area in accordance with its tariff duly filed with and approved by the Commission. Complainant has also given no legal authority to support his position that CBT has not responded adequately or timely to his complaints. Complainant has also introduced no evidence that CBT's billing format violates any regulations or CBT's tariff.

Complainant is, however, correct in his assertion that CBT incorrectly charged him late fees. 807 KAR 5:006, Section 11, provides that when a bill is disputed, the bill is to be treated as current if the customer pays the undisputed portion of the bill. This means, essentially, that if a customer disputes a bill, the utility may not charge any late penalties or fees associated with the nonpayment of disputed portions of the bill. Here, Complainant paid the portion of the bill he did not dispute and withheld payment on the part with which he disagreed. Accordingly, any assessment of late fees by CBT is improper and should be removed from all billing statements.

Complainant also requests that the Commission direct CBT to compensate him for the time he spent dealing with CBT. Pursuant to KRS 278.040, the Commission only has jurisdiction of the "rates" and "services" of utilities as defined by KRS 278.010. Complainant's request for compensatory damages falls under neither category and the granting of the requested damages is outside the Commission's jurisdiction.

The Commission concludes that there is no dispute as to any material fact and that a hearing is therefore unnecessary.

Having reviewed the evidence on record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. CBT shall remove from its bills to Complainant the late fees improperly charged during the billing dispute herein.
2. CBT may bill Complainant the disputed amount of the bill minus late fees.
3. The complaint is dismissed with prejudice and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 22nd day of August, 2000.

By the Commission

ATTEST:


Executive Director