

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRANDENBURG TELEPHONE COMPANY	)	
	)	CASE NO.
COMPLAINANT	)	2006-00341
	)	
V.	)	
	)	
GLOBAL CROSSING, INC.	)	
	)	
DEFENDANT	)	

O R D E R

This case is before the Commission on the complaint of Brandenburg Telephone Company (“Brandenburg Telephone”) against Global Crossing Telecommunications, Inc. (“Global Crossing”), in which Brandenburg Telephone alleges that Global Crossing is in arrears for payment of access services and dedicated trunking facilities that Brandenburg Telephone provided to Global Crossing. Brandenburg Telephone requests that the Commission order Global Crossing to pay the alleged past due amount of \$88,097.24 (plus an additional \$4,622.26 for other past due invoices) and all future invoices in a timely matter or suffer immediate termination of services.

Global Crossing, rather than filing an answer to the complaint, filed a motion to dismiss, arguing that, because it is a customer of Brandenburg Telephone, Brandenburg Telephone cannot file a complaint under KRS 278.260 because the statute does not allow for a complaint by a utility against its customers. As discussed

herein, the Commission denies Global Crossing's motion and orders the parties to appear at an informal conference.

### BACKGROUND

Global Crossing is an interexchange carrier, offering both interstate and intrastate long-distance service. Brandenburg Telephone is an incumbent local exchange carrier. Brandenburg Telephone provides access service and direct trunking facilities to Global Crossing. A portion of Brandenburg Telephone's customers are subscribed to long-distance service from Global Crossing.

Global Crossing argues that Brandenburg Telephone is simply requesting the Commission to become a collection agency for alleged delinquent accounts for services provided by Brandenburg Telephone to Global Crossing. Global Crossing asserts that KRS 278.260 only allows complaints against a utility as to rates or service, and, because Global Crossing is not providing Brandenburg Telephone with service, Brandenburg Telephone has no standing to bring the complaint.

Global Crossing also alleges that of the alleged delinquent charges, an undetermined amount is for interstate service over which the Commission has no jurisdiction. Global Crossing, additionally, cites a handful of Commission cases in which the Commission found that a utility could not bring a complaint against one of its customers. These cases are not persuasive because, in those cases, the defendants were not utilities.

Global Crossing also asserts that it has legitimate disputes regarding the charges for the access services provided to it. Global Crossing asserts that it has requested call detail records ("CDRs") so as to determine the accuracy of the billing. Global Crossing

alleges that it offered to pay the approximately \$500 for the CDR if Brandenburg Telephone would agree to refund the amount should Global Crossing demonstrate a billing error. Global Crossing alleges that, rather than agree to this, Brandenburg Telephone filed this complaint.

Brandenburg Telephone argues that KRS 278.040 imbues the Commission with exclusive jurisdiction over the rates and services of utilities. Moreover, Brandenburg Telephone argues that KRS 278.260 allows for a complaint against any utility if 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. . . .”

Brandenburg Telephone states that: (1) Global Crossing is a utility; (2) the refusal to pay for access services relates to its offering on long-distance services because Global Crossing must purchase access services in order to provide long-distance service; and (3) the refusal to pay for access services could result in the disconnection of Global Crossing’s long-distance service, which would be an “unreasonable, unsafe practice.” Therefore, Brandenburg Telephone argues, the Commission must have jurisdiction over the complaint.

Brandenburg Telephone correctly asserts that it has the right, pursuant to 807 KAR 5:006, Section 14, to disconnect Global Crossing for non-payment of access service charges. The ultimate effect would be that Global Crossing’s customers in Brandenburg Telephone’s service area would lose long-distance service. Brandenburg Telephone also asserts that Global Crossing’s refusal to pay for access services puts it

at a competitive advantage over other long-distance providers and is, thus, unjustly discriminatory.

### DISCUSSION

We see no reason why our jurisdiction could not or should not extend to a dispute between two utilities, relating to the interconnection of two utilities and, ultimately, having the potential to negatively impact the telephone service of numerous Kentucky residents. In fact, it would seem that the Commission is the logical forum to entertain such a disagreement. Brandenburg Telephone's maneuver is unorthodox, but as it stated, it could use the procedures available to it under 807 KAR 5:006, Section 14, to disconnect Global Crossing for nonpayment. Should the Commission grant Global Crossing's motion to dismiss, Brandenburg Telephone's recourse would be to initiate disconnection of service, and, as the accuracy of the bills has already been challenged and full payment appears unlikely, Global Crossing's only recourse to avoid disconnection would be to file a complaint with the Commission, essentially initiating the exact action before us, but with the parties on different sides of the "V," and setting the proceeding back to square one. Even in the absence of these considerations, we believe that granting a motion to dismiss at this juncture would be premature; the record is insufficient to determine the impact Global Crossing's nonpayment would have on its customers in the Commonwealth. However, in order to further develop the record and encourage possible settlement negotiations, we find that the parties shall appear at an informal conference.

Based on the foregoing, IT IS THEREFORE ORDERED that:

1. Global Crossing's motion to dismiss is denied.

2. The parties shall appear for an informal conference on July 18, 2007, beginning at 10:30 a.m., Eastern Daylight Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

3. The parties shall bring to the informal conference representatives who have the authority to commit to dates for a procedural schedule.

4. Settlement negotiations, if any, shall remain confidential unless otherwise agreed upon.

Done at Frankfort, Kentucky, this 10<sup>th</sup> day of July, 2007.

By the Commission

ATTEST:



Executive Director