

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THOMAS DEAN STAUFFER)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2007-00399
)	
BRANDENBURG TELEPHONE COMPANY)	
)	
DEFENDANT)	

O R D E R

On March 25, 2008, Commission Staff issued an Order that included a data request to Brandenburg Telephone Company (“Brandenburg”). Included in that Order was a provision stating, “any request for a hearing must be made by April 30, 2008.”¹ Brandenburg filed its response to the Commission’s data request on April 9, 2008 and filed a request for a formal hearing on April 15, 2008. Complainant filed a hearing request on April 30, 2008.

The Commission, when it issued its March 25, 2008 Order, was aware that Brandenburg had filed an action in Meade District Court against Ilissa Stauffer, Complainant’s wife, and David Stauffer, Complainant’s son, for the disputed balance that had appeared on Complainant’s bill. Subsequent to the filing of Brandenburg’s response to the Commission’s March 25, 2008 Order and subsequent to Brandenburg’s

¹ March 25, 2008 Order at 9.

request for a hearing, the Meade District Court issued an Order granting Brandenburg judgment for the delinquent account plus court costs and interest.

The Commission opined that the ruling of the Meade District Court may have rendered the complaint moot because the central issue of the complaint, the liability of the delinquent account, had been determined by Meade District Court. By Order dated April 25, 2008, the Commission directed Brandenburg to provide further explanation of its need for a hearing. On May 6, 2008, Brandenburg filed motions to withdraw its request for a formal hearing and to dismiss the complaint as moot.

As discussed below, we find that the complaint is moot. Accordingly, we deny Complainant's request for a hearing and grant Brandenburg's motions to withdraw its hearing request and to dismiss the complaint.

BACKGROUND

The primary issue of this complaint involves two accounts: 270-496-4992 ("Delinquent Account") and 270-496-4836 ("Existing Account"). Complainant's parents were the original account holders for the Delinquent Account until July 22, 2005, when Mrs. Stauffer signed as a responsible party to the account. After Complainant's parents died, David Stauffer, on February 23, 2006, signed as a co-responsible party for the Delinquent Account.

Mrs. Stauffer has been the original responsible party for the Existing Account since December 12, 1991 and added Complainant as a co-responsible party on November 12, 1996. On May 30, 2007, David Stauffer requested that the Delinquent Account be disconnected. At the time of disconnection, the Delinquent Account had a

balance of approximately \$166.30, which eventually increased to \$228.37. To the Commission's knowledge, this balance has not been paid.

The past-due balance then appeared on the June 1, 2007 billing statement for the Existing Account. The bill contained a charge of \$166.30 described as "Previous Balance Pay Immediately." The bill also contained toll and local charges of \$87.99. Complainant's typical monthly bill was approximately \$31.00. The bill informed Complainant that he must pay a total of \$254.19 prior to June 25, 2007. Complainant paid \$30.95 on June 28, 2007. Complainant's July 1, 2007 billing statement contained a balance of \$256.78, including local charges of \$30.95. Complainant paid \$31.00 on July 24, 2007. Complainant's August 1, 2007 bill contained a balance of \$256.70 including local charges of \$30.87.

On August 29, 2007, Ilissa Stauffer went to Brandenburg's office to pay the August 1, 2007 bill. During her visit, she signed an agreement to pay the current bill for the Existing Account as well as to make payments on the past-due balance for the Delinquent Account. The agreement stated, "I, Ilissa Stauffer, agree to pay my 7/31/07 bill of \$259.24 in the following manner: \$30.00 today [sic] 8/29/07, \$30.00 on 8/31/07, then \$60.00 per month until [sic] bill paid in full."² The agreement also stated, "I understand that for the next 3 billing cycles my bills must be paid in full by the regular scheduled due date."³ The agreement concluded, "I understand if these arrangements are not kept my service will be terminated immediately without further notice."⁴ The

² Response to November 21, 2007 Order, Exhibit 3.

³ Id.

⁴ Id.

agreement was signed by Ilissa Stauffer and a Brandenburg representative. Mrs. Stauffer submitted a check for \$30.00 on August 29, 2007; however, on September 5, 2007, Complainant stopped payment on the check because Brandenburg allegedly had “been applying our payments to the wrong account and now they want to charge more fees.”⁵ It appears from the record that this is the only bill for local service that Complainant has not paid.

On September 11, 2007, Complainant filed a formal complaint against Brandenburg. Complainant alleges that Brandenburg wrongfully transferred a past-due balance from the Delinquent Account to the Existing Account. Complainant alleged that Brandenburg “defied an informal ruling from the Commission and demanded, extorted and stole payments made by the Complainant and his wife . . . clearly marked and intended to pay their own bill.”⁶ Complainant alleged that he has been refused phone service until he pays the Delinquent Account. Complainant requested that: (1) he be allowed to establish phone service in his own name without paying an additional deposit; (2) all payments applied to the Delinquent Account be applied to the Existing Account; (3) all promissory notes signed by Complainant’s wife be made null and void; (4) Brandenburg refund any charges for late payments or returned checks; and (5) the Commission award Complainant \$3,000 in punitive damages for harm done to Complainant’s wife and family.⁷

⁵ Complaint at 2.

⁶ Id. at 1.

⁷ By Order dated November 21, 2007, citing lack of jurisdiction to award punitive damages, the Commission dismissed the portion of the complaint that requested damages.

Complainant alleged that his wife suffers from Social and Authority Anxiety. Complainant asserted that Mrs. Stauffer went to Brandenburg's offices on August 29, 2007 to pay their bill for the Existing Account, but Brandenburg refused to take her payment, informing her that she and Complainant owed over \$90.00 on their bill. Mrs. Stauffer allegedly was placed in a room with a Brandenburg employee named Toby who allegedly "forced, coerced or otherwise intimidated her into signing some sort of Promissory [sic] note for the balance."⁸ Mrs. Stauffer subsequently checked into the Adult Crisis Stabilization Unit,⁹ allegedly under suicide watch due to her encounter at Brandenburg's office.¹⁰ Complainant requested that the Commission "treat this as an assault or at the very least a criminal act!"¹¹

Brandenburg, in its answer to the complaint, initially claimed that it was entitled to disconnect Complainant's service because he was not current on his bill for the Existing Account.¹² Brandenburg claimed that, due to the formal complaint, it delayed disconnecting Complainant's service until it could be addressed later.¹³ Brandenburg admitted that Mrs. Stauffer was in its offices on August 29, 2007 and stated that she exhibited no signs of intimidation or emotional distress.¹⁴ Additionally, Brandenburg

⁸ Id. at 2.

⁹ Id. at Exhibit L.

¹⁰ Id. at 2.

¹¹ Id.

¹² Answer at 3.

¹³ Id.

¹⁴ Id. at 2.

asserted that the Commission “has no jurisdiction to rule upon the enforceability of promissory notes or otherwise render them null and void.”¹⁵

On October 5, 2007, Brandenburg filed a motion¹⁶ requesting that the Commission “require Thomas Dean Stauffer . . . to pay his outstanding undisputed charges and keep his customer account with Brandenburg current.”¹⁷ As grounds for its motion, Brandenburg stated that, although Complainant was the responsible party for the Delinquent Account, the Existing Account was past due because Complainant had stopped payment on a check for \$30.87 on September 5, 2007 that was intended to pay the undisputed charges for Complainant’s August 2007 bill. Brandenburg requested that the Commission issue an order: (1) recognizing Brandenburg’s right to terminate service to Complainant if he did not keep the Existing Account current; (2) requiring Complainant to pay the outstanding charges; and (3) authorizing Brandenburg to disconnect Complainant’s service if the Existing Account was not made and kept current.¹⁸

Complainant, in his response¹⁹ to Brandenburg’s motion, asserted that the \$30.87 balance on the Existing Account was actually in dispute.²⁰ Complainant

¹⁵ Id. at 4.

¹⁶ Brandenburg’s Motion to Require Complainant to Pay Outstanding Undisputed Charges and to Keep Customer Account Current.

¹⁷ Id. at 1.

¹⁸ Id. at 2-3.

¹⁹ Thomas Dean Stauffer’s Answer to the Motion to Require Complainant to Pay Outstanding “Undisputed” Charges and to Keep Customer Account Current.

²⁰ Id. at 1.

disputed, inter alia, the charging of late fees and the lack of credits for previous over-payments.²¹ Complainant also disputed Brandenburg's assertion that he was a responsible party for the Delinquent Account. Complainant alleged that Brandenburg refused to discuss the Delinquent Account because his name did not appear on the Delinquent Account.²² Brandenburg subsequently sent a letter to Complainant, dated November 8, 2008, informing him that he still owed a balance of \$30.87 on the Existing Account and that his service would be terminated if he did not pay that amount.

The Commission entered an Order on November 21, 2008 in which it: (1) dismissed the portion of the complaint that requested damages for lack of jurisdiction; (2) denied Brandenburg's Motion to Require Complainant to Pay Outstanding Undisputed Charges and to Keep Customer Account Current; and (3) ordered Brandenburg to respond to the Commission's data request.²³

On March 20, 2008, Complainant filed a motion with the Commission to add both Ilissa Stauffer and David Stauffer as parties to his complaint before the Commission. By Order dated March 28, 2008, the Commission denied Complainant's motion, finding that the request did not comply with 807 KAR 5:001, Section 3(8), the procedure for requesting intervention, because neither Ilissa Stauffer nor David Stauffer made the motion, and Complainant did not represent that he was authorized to act on their behalf.

On March 28, 2008, Brandenburg submitted to the Commission a Notice of Filing. The filing included Brandenburg's action against Ilissa and David Stauffer filed in

²¹ Id.

²² Id.

²³ The parties made numerous filings with the Commission from November 21, 2007 until March 20, 2008. These filings are not relevant to our conclusion here.

Meade District Court. The complaint was for \$339.37 (\$228.37 from the Delinquent Account plus \$111.00 in court costs). The filing also contained several other documents pertaining to the small claims action. Subsequently, Brandenburg filed with the Commission a videotape of the hearing.

On April 9, 2008, Brandenburg filed its response to the Commission's March 25, 2008 data request. In its response, Brandenburg asserted that it has not sought to hold Complainant responsible for his son's or his wife's liability on the Delinquent Account.²⁴

In response to our second data request, Brandenburg stated that it would not take any action as to the Existing Account as a result of David or Ilissa Stauffer's default on the Delinquent Account.²⁵ Brandenburg also raised several arguments regarding the Commission's jurisdiction over payment plans and Brandenburg's collection practices.²⁶

On April 10, 2008, Brandenburg filed with the Commission a copy of the April 4, 2008 Order from the Meade District Court. The Order granted judgment for Brandenburg, finding that both David and Ilissa Stauffer were responsible for the Delinquent Account.

DISCUSSION

Complainant's primary argument is that he should not be a responsible party for the Delinquent Account. Although Brandenburg at one point claimed that Complainant

²⁴ Brandenburg's Response to the Commission's March 25, 2008 Order at 5. ("Response to March 25, 2008 Order").

²⁵ Id. at 7.

²⁶ Id. at 4-7.

was a responsible party for the account,²⁷ it has since retracted its claim and has stated that it would take no action against him regarding the Delinquent Account.²⁸ At no point in the proceeding before the Commission did any party dispute the validity of the past-due balance of the Delinquent Account, and the Meade District Court ruling has given Brandenburg an enforceable judgment against David and Ilissa Stauffer for the balance of the Delinquent Account. Brandenburg correctly notes that, regarding the Delinquent Account, “there remains no actual controversy that would be affected by any Commission decision regarding the complaint.”²⁹ Based on the Meade District Court’s judgment and Brandenburg’s statements that it will not hold Complainant responsible for the Delinquent Account, we find that this complaint is moot and should be dismissed.

Complainant has raised other issues regarding his account and Brandenburg’s treatment of his wife. The issue regarding any ill treatment of Mrs. Stauffer by Brandenburg is not before the Commission, as Mrs. Stauffer is not a party to the case, and nothing has been filed with the Commission to indicate that Complainant is authorized to proceed or litigate on her behalf.

In regard to Complainant’s past-due balance of approximately \$30.00 for his unpaid August 2007 bill, that bill is due and owing. While much confusion surrounded the billings in this case, and it is understandable why Complainant did not pay this bill, it is clear that the bill for August 2007 must now be paid in order for Complainant to remain current on the Existing Account. However, we find that, due to the confusion

²⁷ Brandenburg’s Motion to Require Complainant to Pay Outstanding Undisputed Charges and to Keep Customer Account Current at 1.

²⁸ Response to March 25, 2008 Order at 6.

²⁹ Brandenburg’s Motion to Withdraw Its Request for a Formal Hearing at 2.

surrounding this case, it is reasonable that all late fees and returned check charges be waived if Complainant pays the past-due balance for his August 2007 bill within a reasonable amount of time from the date of this Order.

We also find that Mrs. Stauffer's name may be removed as a responsible party for the Existing Account. Due to the nature of this proceeding and the history surrounding the complaint, the Commission concludes that a distinct separation between the parties on the Delinquent Account and on the instant complaint must be afforded. Although Brandenburg retains the authority to deny service when there is evidence that an individual received prior service and attempted to fraudulently avoid collection of the delinquent account, Brandenburg does not have the authority to encumber a separate account holder, in good standing, with the balance of a delinquent account. The fact that Mrs. Stauffer, as an individual, has pledged responsibility for the Delinquent Account is insufficient to jeopardize the service of another, otherwise unaffected, account for which she may also be a co-responsible party. Permitting a utility to establish responsibility for delinquent accounts in such an indirect manner is inappropriate and invites abuse. Moreover, such conduct raises the potential of conflict with 807 KAR 5:066, Section 14(1)(f), which allows termination of service for nonpayment only at the point of delivery for that service.

Brandenburg has argued in this proceeding and in the small claims proceeding before the Meade District Court regarding Commission jurisdiction over Mrs. Stauffer's payment agreement and Commission jurisdiction over Brandenburg's ability to collect on balances when a payment plan is not honored. As discussed, supra, the complaint

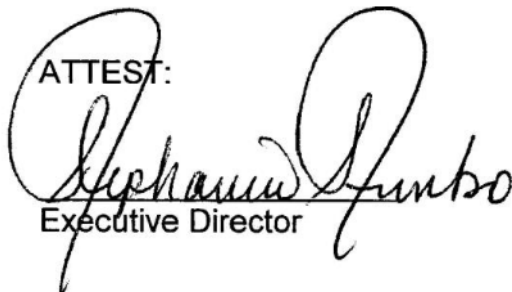
is being dismissed because it is moot, and, while we disagree with many of Brandenburg's characterizations of the Commission's jurisdiction, we do not need to address the jurisdictional issues advanced by Brandenburg. Our silence on these issues, however, should not be construed as either approval or denial of the arguments or binding on this or any other proceeding before the Commission.

IT IS THEREFORE ORDERED that:

1. This complaint is dismissed as moot.
2. Within 60 days of the date of this Order, Complainant shall pay the balance for his August 2007 bill.
3. Brandenburg shall assess no late fees or returned check fees on the August 2007 bill.
4. Mrs. Stauffer's name shall be removed as a responsible party on the Existing Account, and no further attempts shall be made by Brandenburg to collect for the Delinquent Account on the Existing Account.
5. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 24th day of June, 2008.

By the Commission

ATTEST:

Executive Director