

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CONNIE C. MARSHALL)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2009-00094
MICHAEL WILNER, BARBARA HUBER AND)	
INSIGHT PHONE OF KENTUCKY, LLC)	
)	
DEFENDANTS)	

O R D E R

On February 27, 2009, Connie C. Marshall filed with the Commission a complaint against Insight Phone of Kentucky, LLC¹ ("Insight") and two individual persons, Michael Wilner and Barbara Huber.² Insight provides both local exchange services and interexchange services in Kentucky. In her complaint, Ms. Marshall alleges that the named defendants illegally and fraudulently charged her for telephone, cable, and Internet services that they did not provide, knowingly allowed Ms. Marshall to be

¹ The complainant named "Insight Communications" as a defendant. However, the Commission's records reveal that the only registered utility with the name "Insight" is Insight Phone of Kentucky, LLC. The Commission acknowledges that Insight Phone of Kentucky, LLC is directly related to a larger business entity known as Insight Communications; however, for the purposes of this complaint, the Commission only recognizes the company providing jurisdictional telephone services.

² Mr. Wilner currently serves as the Chief Executive Officer for Insight. In Exhibit B to her complaint, Ms. Marshall named Barbara Huber as an employee for Insight but did not provide details as to Ms. Huber's position with the company.

attacked numerous times on her telephone, knowingly committed "defamation libel and slander by stating that [she] was attempting to vex, harass and annoy Insight and their employees,"³ and illegally disconnected her service on January 30, 2009, when her bill had been paid and was not due to be paid again until February 13, 2009. In seeking relief from the Commission for the acts complained of, Ms. Marshall states the following:

[R]equesting that her service be restored with credit and that she receive financial restitution in the amount of two million dollars (2,000,000.00) together with her cost herein expended and interest upon judgment at the legal rate; and any and all other proper relief to which Ms. Marshall would appear to be entitled⁴

Administrative Regulation 807 KAR 5:001, Section 12(4), requires the Commission to review each formal complaint upon its filing to determine whether the complaint established a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a *prima facie* case, it may be dismissed.

The Commission's review of the complaint indicates that Ms. Marshall has failed to plead any jurisdiction over any of the named defendants except Insight. The Commission's jurisdiction extends to all utilities in this state and is limited to the "regulation of rates and services of utilities."⁵ The General Assembly has authorized the

³ Complaint at 3.

⁴ Complaint at 4.

⁵ KRS 278.040(2).

Commission to hear “complaints as to rates or service of any utility.”⁶ The complaint fails to state any basis upon which the Commission would have jurisdiction over the named defendants, with the exception of Insight.⁷ The Commission finds that those defendants, individually, would not be able to satisfy any orders for relief issued by the Commission. The corporate entity Insight Telephone of Kentucky, LLC is registered with the Commission for the provision of utility service and not Mr. Wilner or Ms. Huber. Those individuals are employees of the larger entity responsible for the provision of service. Any orders for relief regarding the provision of service to Ms. Marshall would need to be fulfilled directly by the jurisdictional utility, not by Mr. Wilner or Ms. Huber. For these reasons, the Commission shall dismiss Mr. Wilner and Ms. Huber as parties from this complaint.

Additionally, Ms. Marshall’s allegations involve conduct, in part, that is outside the scope of the Commission’s jurisdiction. The Commission has the statutory duty to “regulate utilities and enforce the provisions” of KRS Chapter 278.⁸ Moreover, the Commission may “investigate the methods and practices of utilities to require them to conform to the laws of this state and to all reasonable rules, regulations and orders of the [C]ommission not contrary to law.”⁹ Ms. Marshall’s complaints of defamation and misconduct by being “attacked numerous times on her telephone”¹⁰ concern alleged

⁶ KRS 278.260(1).

⁷ See generally KRS 278.010.

⁸ KRS 278.040(1).

⁹ KRS 278.040(3).

¹⁰ See Complaint at 3.

acts that are beyond the jurisdiction of this Commission to address or resolve. Those allegations do not fall within the regulatory scope of KRS Chapter 278. For these reasons, the Commission finds that those particular allegations are not proper matters for an administrative complaint and are hereby dismissed.

Ms. Marshall also seeks relief that is not within the Commission's authority to grant. Ms. Marshall requests "financial restitution in the amount of two million dollars (2,000,000.00) together with her cost herein expended and interest upon judgment at the legal rate"¹¹ for the alleged misconduct of the defendants. Kentucky courts have refused to extend the Commission's jurisdiction to include damage claims arising out of the negligent provision of utility service. In Carr v. Cincinnati Bell Co., 651 S.W.2d 126 (Ky. App. 1983), a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. Holding that the Commission had exclusive jurisdiction over the matter, Kenton Circuit Court dismissed the action. The customer appealed to the Kentucky Court of Appeals. Reversing the circuit court's decision on this issue, that Court stated:

[A]ppellant seeks damages for breach of contract. Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement. Kentucky Constitution Sec. 14.¹²

¹¹ Id. at 4.

¹² Id. at 128.

Pursuant to Carr, the Commission has no authority to adjudicate claims wherein the complainant seeks a compensatory award far above and beyond the direct costs for retail service. For these reasons, those relief requests are dismissed.

However, the Commission's review of the complaint indicates sufficient allegations to establish a *prima facie* case involving wrongful charges for telecommunications services that were not provided and wrongful discontinuance of telecommunications services. Ms. Marshall alleges that Insight illegally disconnected her service after she had paid her last bill and prior to the next bill becoming due. The Commission finds that these allegations involve matters that are within the scope of the Commission's jurisdiction and are proper matters for a complaint. The Commission further finds that Insight should either satisfy the matters complained of in these remaining allegations or answer the allegations.

IT IS THEREFORE ORDERED that:

1. Michael Wilner and Barbara Huber are dismissed as defendants from this proceeding.
2. As provided within this Order, Insight shall either submit an answer to the complaint or submit written notice that it has satisfied the allegations and prayers for relief in the complaint that have been found relevant and within the scope of the Commission's jurisdiction. The answer or notice of satisfaction shall be filed within 10 days of the date of service of this Order.
3. As provided within this Order, the portions of the complaint containing the allegations and prayers for relief found not relevant or not within the scope of the Commission's jurisdiction are hereby dismissed.

4. Any party filing documents of any kind with the Commission during the course of this proceeding shall serve a copy of such documents upon all other parties of record at the time of filing with the Commission.

By the Commission

ENTERED
MAR 26 2009 *M*
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2009-00094

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