Decision 07-01-005 January 11, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Westley Crawford Muhammad, Complainant, vs. MCI, Inc., Defendant.	Case 06-08-006 (Filed August 3, 2006)

DECISION DISMISSING COMPLAINT FOR LACK OF JURISDICTION

Wesley Crawford Muhammad (complainant) alleges that MCI, Inc. (defendant):

- treated "people from the lower economic caste system with developmental disabilities in Bakersfield and throughout the County of Kern and within the state of California and the disadvantaged unfairly, without due consideration of their financial plight and have subjected those people to caste discrimination;"

- "has on many different occasions violated the California Code [sic] and regulations. As well as demonstrated the racial and religious biases towards any consumer who happens to have the last name Muhammad or any Arabic surname;"

- "requests that consumers use payment centers that defendant has chosen for the consumers who utilize their service … but those same payment centers have no direct line of

communication with defendant to show that payments have been rendered;"

- "has on many occasions violated the California Code of Regulations [sic] by not cutting on service to consumers in a timely manner, some time services stay off for 5 days after the bill has been paid;"

- "has been overcharging the complainant for a period of two or more years by triple billing surcharges and taxes for the same services on three different lines coming into the same single family residence;"

- "has been treating people with development disabilities such as complainant's son (Rasul Crawford) and throughout the state of California unfairly in retrospect to their telephone services which is causing a public health priority for the State of California by not turning on service in a timely manner within their single family residence. The complainant has a son with health priority needs and the defendant has been made aware of his health priority needs at least three times;" and

- "charged the complainant for 6 months to a year for internet services and equipment that the complainant never did use or receive. Defendant's equipment cost $99.00 per month and the monthly service fee was $49.99 which brought the total to $148.99, per month, MCI Telephone Company should refund the overbilled amount of $893.94."

Complainant requests an order:

1. ordering defendant to set up a payment plan in all of its payment centers throughout the state of California, where the payments from consumers are posted to their account the same day;
2. ordering defendant to refund the amount that complainant was overcharged for those months that complainant did not receive the equipment or services;

3. ordering defendant to change its policies in reference to multiple telephone lines coming into single family dwellings to prevent complainant from being taxed three times with three surcharges;

4. ordering defendant to restore telephone lines coming into single family dwellings within five hours of the bill being paid; and

5. ordering defendant to modify its policies in reference to turning on and off service for persons with developmental disabilities or life threatening illnesses.

Defendant moves to dismiss the complaint on the ground that the Commission does not have jurisdiction to grant the relief requested. Defendant states that the internet service complained of is a digital subscriber line (DSL) internet access service offered by MCImetro Access Transmission Services, LLC. While complainant has named "MCI" as the defendant, the entity providing services to complainant at the relevant times involved here was MCImetro Access Transmission Services, LLC. Defendant asserts that MCImetro's internet service is a nonregulated, interstate, interLATA information service and as such is not subject to the jurisdiction of the Commission. In its Broadband Framework Report and Order (FCC 05-150, released August 5, 2005), the Federal Communications Commission (FCC) determined that facilities-based wireline broadband internet access service is an information service as defined by the Telecommunications Act of 1996. Defendant asserts that state commissions do not have jurisdiction over information services, including DSL, other than to inform complainant of the Commission's lack of jurisdiction.

Defendant asserts that the claims alleging religious, racial, income, and disability discrimination sound in tort and the Commission has no jurisdiction to award tort damages. (Decision 79124, *PT&T Co.*, 72 CPUC 505, 509 (1971).)

Moreover, like the complainant in *Sigma Systems v. Pacific Bell*, Decision 99-11-003, complainant here has not alleged any fact upon which the Commission has jurisdiction to act.

Complainant challenges the reasonableness of billing surcharges and taxes for each line that enters a residence, where the residence has three separate telephone lines, claiming that the reasonable practice is to charge all taxes and surcharges on one telephone line. Defendant asserts that this Commission does not have jurisdiction over this claim because Cal. Pub. Util. Code § 1702 prohibits the Commission from entertaining a complaint as to the reasonableness of rates and charges, unless the complaint is brought by not less than 25 actual or prospective consumers or purchasers. The complaint does not meet Section 1702 criteria and must be dismissed on jurisdictional grounds.

Discussion

We will dismiss the complaint. Complainant's allegations do not state facts sufficient to state a cause of action (Pub. Util. Code § 1702). The religious, racial, income and disability-related discrimination claims sound in tort and the Commission does not entertain claims that sound in tort. (*Day v. Verizon*, D.06-06-061; *PT&T* (1971) 72 CPUC 505, 509.)

The Commission does not have jurisdiction to entertain the claims related to the reasonableness of charging triple surcharges, taxes, and the use of Western Union, because the complaint is not brought by not less than 25 actual or prospective consumers or purchasers as required by Cal. Pub. Util. Code § 1702. Finally, we will dismiss the DSL claim on the basis that this Commission does not have jurisdiction over information services. (*Day v. Verizon*, *supra*; *See*, *Jones v. PT&T Co.* (1963) 61 CPUC 674.)

Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Geoffrey F. Brown is the assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

O R D E R

IT IS ORDERED that:

1. The complaint is dismissed for lack of jurisdiction.
2. No hearing is necessary in this proceeding.
3. Case 06-08-006 is closed.

This order is effective today.

Dated January 11, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners