

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Jeff and Maria Bledsoe d/b/a) Formal Complaint FC-1301
Christian Car Care, Omaha,)
)
Complainant,)
) ORDER
vs.)
)
McLeodUSA,)
)
Defendant.) Entered: December 10, 2002

BY THE COMMISSION:

By complaint filed September 5, 2002, Jeff and Maria Bledsoe d/b/a Christian Car Care, Omaha, Complainant, alleges unsatisfactory business practices against McLeodUSA (McLeod), Defendant. McLeod timely filed an answer to the complaint on September 23, 2002. A hearing on this matter was held October 10, 2002, in the Commission Library, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

E V I D E N C E

Mr. Jeff Bledsoe testified in support of the Complaint. Mr. Bledsoe testified that on September 22, 2000, he met with a McLeod representative and decided to obtain local phone service for his business, Christian Car Care, from McLeod. (Tr. 3:4-8.) Subsequently, on January 23, 2002, he moved Christian Car Care to another location in the Omaha area. (Tr. 12:4-6.) He testified that McLeod phone service was not working normally at the new location until February 21, 2002. (Tr. 11:15-16.) Upon cross-examination, Mr. Bledsoe testified that he could make outgoing calls from his business phone on February 11, 2002. (Tr. 37:22-24.)

Mr. Bledsoe further testified that he decided to terminate service with McLeod, and that on April 5, 2002, transfer of service to another phone company, Qwest, was completed. (Tr. 11:24-25.) Mr. Bledsoe testified that he would like McLeod to drop a charge of \$1,598 plus interest for termination of his contract with them. (Tr. 7:30-8:8.)

Mr. Bledsoe testified that when he entered into the contract with McLeod, which is Exhibit 5, he was shown two of the three pages of the total contract. (Tr. 28:14-18.) The first page is entitled "Customer Agreement and Checklist," which includes checkmarks in certain boxes on a checklist, and is

signed by Mr. Bledsoe. (Exhibit 5, Tr. 28:21-29:7.) The second page is entitled "Service Agreement Addendum." (Exhibit 5.) The third page is entitled "Master Services Agreement," and includes language regarding method of termination and application of termination charges. (Exhibit 5.)

Item number 12 on the first page, the Customer Agreement and Checklist, states: "Customer has received and read General Terms and Conditions with the Checklist," and Mr. Bledsoe checked the "Yes" box for item number 12. (Exhibit 5, Tr. 31:8-16.) He testified that he believed the terms and conditions were included within the two pages that were provided to him, and that he had no way of knowing that a third page existed. (Tr. 31:20-32:9.)

Mrs. Maria Bledsoe also testified in support of the complaint. Mrs. Bledsoe testified that she does all of the billing for Christian Car Care, and that the amount of the termination charges in dispute is \$1,587.65, plus interest that accrues daily. (Tr. 18:3-7.) She testified that she was primarily responsible for contacts with McLeod on behalf of Christian Car Care. (Tr. 18:21-23.) Mrs. Bledsoe stated that she called McLeod on January 16, 2002, to request transfer of phone service to the new location, and was told that service at the new location would be implemented by January 22, 2002. (Tr. 18:25-19:11.) As of January 23, 2002, the phone service move was not completed, because a trainee had incorrectly processed the request. (Tr. 19:11-17.) Mrs. Bledsoe testified that on February 8, 2002, McLeod called and said the lines were working, and that it would cease forwarding calls to the business cell phone. (Tr. 20:24-21:1.) Mrs. Bledsoe indicated that there was no dial tone on the phone on February 8, 2002. (Tr. 21:4.) Therefore, because call forwarding for the cell phone had been cancelled, Christian Car Care had no way to receive incoming calls. (Tr. 21:4-9.)

Mrs. Bledsoe further testified that service was correctly implemented February 21, 2002, but that McLeod claims that service was hooked up on February 11, 2002. (Tr. 21:10-16.) McLeod offered her a free month of service as a result of the complications. (Tr. 21:25-22:3.) She testified that McLeod representatives told her that they could hold Christian Car Care's telephone number, and not release it to another carrier. (Tr. 22:22-23:20.) She further testified that she experienced lengthy hold times when she called McLeod, and that people from McLeod often would not return her calls. (Tr. 20:10-20; 22:4-17.)

Upon cross-examination, Mrs. Bledsoe testified that she called McLeod on February 15, 2002 and notified them that she wanted to terminate service. (Tr. 46:3-16; Exhibit 7.) She indicated that she believed the first and second pages of the agreement included the general terms and conditions. (Tr. 48:13-24.) She further testified that contract provisions relating to termination of service are not on the first two pages of the agreement, but are on the third page. (Tr. 48:25-49:4.)

Ms. Christina Johnson testified on behalf of McLeod. Ms. Johnson is a Manager at McLeod, responsible for complaints and escalations. Ms. Johnson testified that when a McLeod customer moves, McLeod validates the address and determines whether the customer will be able to retain the current phone number. (Tr. 62:9-20.) McLeod gave Christian Car Care a "20 day business time frame" for their move to take place, because McLeod must send an order to Qwest to move the services. (Tr. 62:22-63:7.)

Ms. Johnson testified that on January 20, 2002, Qwest confirmed the order from McLeod, but indicated that facilities at the new business location were still in use and had not been disconnected by the prior occupant. (Tr. 64:9-65:6.) Shortly thereafter, Qwest indicated to McLeod that the move would occur on February 5, 2002, but then on February 5, 2002, Qwest requested another order, according to Ms. Johnson. (Tr. 65:10-66:3.) McLeod sent a second order to Qwest, and on February 8, 2002, Qwest told McLeod that the move was complete. (Tr. 67:16-68:2.)

Ms. Johnson testified that a technician went to Christian Car Care's new location on February 11, 2002, and verified that service was working, and that service may have been working as early as February 8, 2002. (Tr. 68:6-12.) Ms. Johnson further testified that on February 15, 2002, Christian Car Care informed McLeod that it would be canceling the contract and switching to a different carrier. (Tr. 69:2-7.) She testified that a McLeod representative offered one month of free service, and then two months of free service, in an attempt to keep the customer, and indicated that termination fees would apply if service was cancelled. (Tr. 69:8-22.)

Ms. Johnson further testified that on March 26, 2002, Qwest notified McLeod that it would be taking over service for Complainant as of April 4, 2002. (Tr. 70:9-24.)

F I N D I N G S A N D C O N C L U S I O N S

McLeod's case relies upon application of the provisions of the Master Services Agreement, which is the third page of the contract, and which Mr. Bledsoe contends he was not given. Paragraph 5 of the Master Services Agreement is labeled "Termination" and sets forth the manner in which a customer may terminate service. Paragraph 5 provides in part:

If McLeodUSA terminates this agreement for cause or Customer terminates this Agreement WITHOUT cause, Customer shall pay early termination charges. If after activation of Service, Customer requests termination of Service or if McLeodUSA terminates this Agreement for cause, Customer will pay an early termination charge of 30% of the last three months average billing multiplied by the number of months remaining on this agreement, plus actual expenses incurred by McLeodUSA to initiate service, any installation charges waived from the initial upgrade, and discounts or credits through the termination of this Agreement. (Exhibits 3, 5 and 9.)

McLeod attempts to derive its ability to assess termination charges from this language. Because Mr. Bledsoe was not given the Master Services Agreement, however, Christian Car Care cannot be bound by it. The fact that he indicated on the Customer Agreement and Checklist that he "read General Terms and Conditions" does not bind him to the provisions of the Master Services Agreement. It appears that Mr. Bledsoe assumed that all of the general terms and conditions were included on the Customer Agreement and Checklist or on the Service Agreement Addendum. This assumption is reasonable, as the phrase "General Terms and Conditions with the Checklist" would not lead a reasonable person to believe that he must ask for a copy of a "Master Service Agreement" to review. Furthermore, the Service Agreement Addendum provides rates and the length of the contract, which could be presumed to be general terms and conditions. Mr. Bledsoe simply had no way of knowing that an additional page, styled "Master Service Agreement" existed, and that it was incorporated by reference to "General Terms and Conditions." Had the Checklist item stated: "has read the Master Service Agreement," perhaps that would have suggested to the reader to inquire about a Master Service Agreement. Here, however, given the simple descriptor of "General Terms and Conditions with the Checklist", the reader cannot be expected to

know that an additional page of terms and conditions exists, and that he must specifically request it.

The Commission finds that Complainant should not be bound by any provisions of the Master Services Agreement, and that it should not be liable for any termination charges or applicable interest resulting from termination of its contract with McLeod. McLeod should remove the charges from Complainant's account.

The Commission further urges McLeod to more fully train its account representatives in executing contracts with new customers. It is imperative that such representatives supply new customers with all applicable documents to ensure that the parties are in agreement as to the terms and conditions that apply.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Complainant shall not be liable for any termination charges or applicable interest resulting from its contract with McLeodUSA, and that McLeodUSA shall immediately remove such charges from Complainant's account.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of December, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director