

Decision No. R03-0089-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02F-650T

KIM BUCKLER, KIMBERLY A. BUCKLER,

COMPLAINANT,

V.

WORLDCOM,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DENYING MOTION TO
DISMISS AND MODIFYING
PROCEDURAL SCHEDULE**

Mailed Date: January 23, 2003

I. STATEMENT

1. On December 2, 2002,¹ Complainant Kim Buckler, Kimberly A. Buckler, filed a Complaint against Respondent WorldCom, Inc. (WorldCom or Respondent). The Complaint states that “WorldCom put charges on my consumer bill that were unauthorized. They have never delivered service for a signed contract.” The Complaint seeks unspecified relief from the Commission.

2. On December 13, 2002, the Commission issued its Order to Satisfy or Answer, addressed to WorldCom. In that Order the Commission set out the procedural schedule for this

¹ The Complaint is dated December 2, 2003. This is a clear mistake because, among other things, the Commission received the Complaint on December 9, 2002.

proceeding. On that same day, the Commission issued its Order Setting Hearing and Notice of Hearing. In that Order, the Commission set a hearing date of February 3, 2003, in this matter.

3. On January 2, 2003, Respondent filed a Notice of Automatic Stay or, in the Alternative, Motion to Dismiss, Answer and Counterclaim of WorldCom (WorldCom motion). In that motion, WorldCom states that, to the extent the Complaint seeks to enforce a claim that arose prior to July 21, 2002, the claim must be made and pursued in its Chapter 11 bankruptcy proceeding,² now pending in the United States Bankruptcy Court for the Southern District of New York. In the alternative, WorldCom moves to dismiss because the Complaint fails to state a claim upon which relief can be granted.

4. Complainant Buckley, who appears *pro se*, did not file a response to the WorldCom motion.

5. After due consideration, the WorldCom motion will be denied. To accommodate the hearing date, and in view of the Complainant's appearing *pro se*, the procedural schedule established on December 13, 2002, will be modified as set out below.

6. The bankruptcy proceeding does not affect the ability of this matter to go forward. Fairly read, the Complaint both questions the action of WorldCom in charging Complainant for services which were not authorized and states that WorldCom never delivered services under a written contract. The Complaint does not seek to collect monies allegedly owed to Complainant by WorldCom and does not seek to take property from WorldCom. Thus, it appears that Complainant need not assert her claim in the bankruptcy proceeding because she is not a creditor. *See, e.g.*, Exhibit A to WorldCom motion at 1. In addition, there is an exception to the automatic

² *In re WorldCom, Inc., et al.*, Chapter 11 Case No. 02-13533 (ALG) (bankruptcy proceeding).

stay provisions under the Bankruptcy Code, 11 U.S.C. §§ 101 through 1330, for enforcement actions. To the extent that the Complaint seeks to have the Commission enforce a statute, its regulations, or both, the automatic stay provisions do not apply. Finally, as WorldCom notes in its motion, the Complaint is bare bones.³ If it should develop that the relief sought *does* involve a claim against WorldCom for money or property,⁴ the issue can be addressed at that time when more information is available.

7. WorldCom next argues that the Complaint fails to state a claim upon which relief can be granted and, therefore, should be dismissed. In support, WorldCom asserts that the Complaint fails to allege material facts and fails to state the relief sought.

8. A motion to dismiss for failure to state a claim upon which relief can be granted is a vehicle “to test the formal sufficiency of the complaint.” *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo. 1996). In ruling on a motion to dismiss based on failure to state a claim, the following principles apply: Allegations in the complaint must be viewed in the light most favorable to the complainant; all assertions of material fact must be accepted as true; and the motion must be denied “unless it appears beyond doubt that the [complainant] cannot prove facts in support of the claim that would entitle [complainant] to relief.” *Id.*; *see also Schoen v. Morris*, 15 P.3d 1094, 1096 (Colo. 2000) (same). Judged by these standards, the WorldCom motion, to the extent it is based on failure to state a claim, must be denied.

9. The allegations of the Complaint, which must be taken as true for purposes of this motion, state a claim against WorldCom. In addition, as is clear from the fact that WorldCom

³ It is, however, sufficient to withstand the motion to dismiss. *See* discussion, *infra*.

⁴ Such a claim is not obvious at this time.

filed both an answer and a counterclaim in this proceeding, there is sufficient information from which to determine the nature and basis of the claim. This satisfies the Commission's notice pleading requirements. Further, if WorldCom needs additional information, procedures exist by which it may obtain the data from Complainant. Finally, there is no requirement that a complaint state with specificity the relief sought. The general prayer for relief stated in the Complaint is sufficient.

10. As noted above, there is a procedural schedule in this docket. That schedule will be modified as follows: (a) on or before January 28, 2003, Complainant shall file a list containing the name, address, and title of each of her witnesses and two copies of each exhibit she intends to present at the hearing; (b) if she does not wish to pursue the Complaint, on or before January 28, 2003, Complainant shall file a statement that she wishes to withdraw the Complaint; and (c) on or before January 31, 2003, WorldCom shall file its list containing the name, address, and title of each of its witnesses and two copies of each exhibit it intends to present at the hearing. If Complainant files a statement withdrawing the Complaint, WorldCom need not make its filing.

11. Absent a showing of good cause for the failure, a witness (except one offered in rebuttal) who is not identified according to these requirements will not be permitted to testify. Absent a showing of good cause for the failure, an exhibit (except one offered in rebuttal) which is not filed and served in accordance with these requirements will not be received into evidence.

12. Parties are reminded that, absent a showing of good cause for the failure, a failure to meet the filing requirements may result in dismissal of the complaint or in striking the answer and counterclaim.

13. Parties are reminded that any document filed with the Commission must be served on the other party in this case. If the party is represented by counsel, only counsel is served.

II. ORDER

A. It Is Ordered That:

1. The Notice of Automatic Stay or, in the Alternative, Motion to Dismiss, Answer and Counterclaim filed by WorldCom, Inc., is denied.

2. The procedural schedule established in the Order to Satisfy or Answer, dated December 13, 2002, is modified as set out above.

3. This Order shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge