BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Chad Kister, )

)

Complainant, )

)

v. ) Case No. 11-3467-TP-CSS

)

AT&T Ohio, )

)

Respondent. )

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AT&T OHIO'S MEMORANDUM CONTRA COMPLAINANT'S

MOTION TO COMPEL

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AT&T Ohio[[1]](#footnote-1), Respondent herein, pursuant to Ohio Admin. Code §4901-1-12, opposes the Complainant's Motion to Compel filed on September 14, 2011. The Complainant's Motion to Compel is procedurally deficient and is substantively without merit. It should therefore be denied.

Complainant seeks to have AT&T Ohio provide "a list of incoming calls for Chad Kister for the past 5 years" and to provide that list at no charge. The Complainant also asserts that he requested such a log from AT&T and that AT&T has failed to provide that log.

Complainant has failed to meet the specific procedural requirements underlying a motion to compel, set forth in Section 4901:1-23(C) of the Commission's rules. Pertinent to this motion, that rule provides as follows:

No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

(1) A memorandum in support, setting forth:

(a) The specific basis of the motion, and citations of any authorities relied upon.

(b) A brief explanation of how the information sought is relevant to the pending proceeding.

(c) Responses to any objections raised by the party or person from whom discovery is sought.

(2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto.

(3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.

O.A.C. § 4901:1-23(C). Complainant has not met even the most basic requirements of this rule.

Even if he had met the requirements of the rule, Complainant's motion should be denied on the merits. In his rambling discovery request made on June 17, 2011 the Complainant sought, among many other things, "incoming call logs" related to several different telephone numbers over a 31-year period (January 1, 1980 through June 17, 2011). AT&T Ohio properly objected to this request on a number of grounds.

AT&T Ohio has no legal obligation to provide any customer with a historical or an on-going log of incoming calls, free of charge. There is a process by which a time-limited log of incoming calls can be obtained. In most cases, this requires a subpoena or other valid legal process. This process is managed by a centralized Subpoena Control Center within AT&T. Charges apply to fulfilling such requests. The Complainant was directed by AT&T Ohio's counsel to contact the Subpoena Control Center, but whether he did or the results of that contact, if any, are not known to AT&T Ohio's counsel at this time.[[2]](#footnote-2).

Complainant appears to believe that his activities as an author and film maker should be generating many more calls to his number than he is receiving. There is no basis for this belief, and the belief has not been substantiated in anything offered by Complainant to date. Complainant is essentially asking AT&T Ohio to prove that he should be receiving more calls than he is receiving. But it is the Complainant who bears the burden of proof in this complaint case. He must prove that calls made to his number are not being received, and that the fault for this lies with AT&T Ohio.[[3]](#footnote-3) AT&T Ohio cannot be expected, from a legal or practical standpoint, to prove the negative that Complainant wants it to prove.

For all of the foregoing reasons, the Motion to Compel should be denied.

Respectfully submitted,

AT&T Ohio

By: \_\_\_\_\_\_\_\_\_\_/s/ Jon F. Kelly\_\_\_\_\_\_\_\_\_\_\_\_\_

Jon F. Kelly

AT&T Services, Inc.

150 E. Gay St., Room 4-A

Columbus, Ohio 43215

(614) 223-7928

Its Attorney

11-3467.memo contra motion to compel

1. The Ohio Bell Telephone Company is a public utility in Ohio and provides certain Commission-regulated services and other non-regulated services. The Complainant used the name "AT&T" in his complaint. The Ohio Bell Telephone Company uses the name AT&T Ohio, which is used in this pleading. [↑](#footnote-ref-1)
2. AT&T Ohio offers a service that comprises "detail billing" that provides a monthly log of outgoing, but not incoming, calls. [↑](#footnote-ref-2)
3. It should be noted that the Complainant is no longer an end user of telephone service provided by AT&T Ohio or of digital subscriber line ("DSL") service provided by AT&T Ohio's affiliate. Therefore, the Complainant should contact his current provider(s) with any service or billing issues. [↑](#footnote-ref-3)