

FILE

4

RECEIVED-DOCKETING DIV
2007 FEB 20 PM 2:42
PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Steven Carp,)	
)	
)	Case No. 07-91-TP-CSS
Complainant,)	
)	
v.)	
)	
AT&T Ohio)	
)	
Respondent.)	

AT&T OHIO'S MOTION TO DISMISS

AT&T Ohio, Respondent herein, pursuant to Ohio Admin. Code §4901-1-12, moves to dismiss the Complaint seeking relief for alleged Yellow Pages billing issues because that is a matter over which the Commission lacks subject matter jurisdiction. A memorandum in support is attached.

By: Mary Ryan Fenlon
 Mary Ryan Fenlon (Trial Attorney)
 Jon F. Kelly
 AT&T
 150 East Gay Street, Rm. 4A
 Columbus, Ohio 43215
 (614) 223-3302
mfl842@att.com

Its Attorneys

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
 Technician AW Date Processed 2-20-07

MEMORANDUM IN SUPPORT

By this Complaint, Complainant seeks to have the Commission exercise jurisdiction over an historically unregulated activity of telephone companies, the sale and publication of Yellow Pages advertising. AT&T Ohio asserts that the Commission lacks jurisdiction over the issue of Yellow Pages advertising.

The Commission derives its authority to regulate public utilities from the Ohio General Assembly. It is axiomatic that if the General Assembly has not conferred jurisdiction, the Commission is without authority to act. See, Penn Central Trans. Co. v. Pub. Util. Comm. (1973), 35 Ohio St. 2d 97, and cases cited therein. The question presented is, what is the nature of the jurisdiction conferred by the General Assembly with regard to telephone companies? The answer to this question is provided by R.C. §4905.231, which provides that:

The public utilities commission may make such investigations, as it deems necessary to ascertain and prescribe reasonable standards of telephone service.

As observed by the Ohio Supreme Court in Richard A. Berjian, D.O., Inc. v. Ohio Bell Tel. Co. (1978), 54 Ohio St. 2d 147 at 155 with regard to this statute:

In Ohio, the General Assembly has assigned the Public Utilities Commission the responsibility of determining the type of service to be furnished by the telephone companies...

Thus, the question becomes, is Yellow Pages advertising telephone service? The Berjian court answered this question from both an historical and legal perspective:

In the overwhelming majority of jurisdictions confronting the issue of whether the classified advertising service is a service within the scope of the duties owed by the telephone company to the public, courts have found such services to be a matter of private concern only...

Id. at 154.

For Ohio, the Court concluded that there is no requirement for telephone companies to provide Yellow Pages service and thus it is a matter of private endeavor only. Id. at 155. Thus it is firmly established in Ohio, as elsewhere, Yellow Pages is not a public utility service which telephone companies are obligated to provide. It follows that if the telephone company is not obligated to provide the service, it is not included within the concept of "telephone service" subject to this Commission's oversight and therefore cannot be legally inadequate as contemplated by the Ohio Revised Code.

The General Assembly has defined this Commission's authority. AT&T Ohio has no statutory duty to offer Yellow Pages advertising to customers. The absence of this duty is the defining characteristic of an unregulated activity. Moreover, the Ohio Supreme Court has clearly spoken, saying that the Yellow Pages is a matter of private endeavor and as such is beyond the explicit subject matter jurisdiction of the Commission. For these reasons, the Commission should dismiss and strike those portions of the Complaint relating to Yellow Pages advertising.

Respectfully submitted,

AT&T OHIO

By: 

Mary Ryan Fenlon (Trial Attorney)

Jon F. Kelly

AT&T

150 East Gay Street, Rm. 4A

Columbus, Ohio 43215

(614) 223-3302

mfl842@att.com

Its Attorneys