

FILE

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BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO 2007 JUN -1 PM 3: 56

PUCO

In the Matter of the Complaint of)	
William Stamaton,)	
)	
Complainant,)	Case No. 07-135-TP-CSS
)	
v.)	
)	
First Communications, LLC,)	
)	
Respondent.)	

**MOTION FOR LEAVE TO FILE A MOTION
TO DISMISS *INSTANTER***

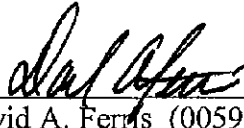
COMES NOW the Respondent, First Communications, LLC (the "Respondent"), by and through its attorneys, and respectfully moves for leave to file its Motion to Dismiss *Instanter*, a copy of which is attached and incorporated herein. In support of this Motion, the Respondent states that it participated in an informal settlement conference with the Complainant on May 16, 2007, and it was understood at that time that Respondent's Motion to Dismiss or other pleading would be forthcoming. Granting Respondent's Motion for Leave to File will not be the cause of undue prejudice or delay, as this is the first request of Respondent, and all parties anticipate such filing. The Complainant voiced no objection to this Motion at the time of the settlement conference.

WHEREFORE, Respondent respectfully requests that this Commission grant its Motion for Leave to File Motion to Dismiss *Instanter* and accept the same for filing.

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.

Date Processed 6/1/07

Respectfully submitted,



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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion for Leave to File a Motion to Dismiss *Instantly* has been served this 1st day of June, 2007, via ordinary, First Class U.S. Mail, postage prepaid, upon the following party:

William Stamatou
1601 Yorkshire Trace
Canton, OH 44709



David A. Ferris


**BEFORE
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William Stamatou,)	
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Complainant,)	Case No. 07-135-TP-CSS
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v.)	
)	
First Communications, LLC,)	
)	
Respondent.)	

MOTION TO DISMISS

COMES NOW the Respondent, First Communications, LLC (the "Respondent"), by and through its attorneys, and submits its Motion to Dismiss on the grounds that Complainant's claims are, among other things, outside this Commission's jurisdiction, unlawful, and fail to state any claim upon which relief can be granted by this Commission. Respondent submits the following Memorandum in Support of its Motion, attached and incorporated herein by reference.

Respectfully submitted,



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Attorneys for Respondent

MEMORANDUM IN SUPPORT

On or about February 7, 2007, the Complainant filed his Formal Complaint Form with the Public Utilities Commission of Ohio (the "Commission"), which alleges that Respondent released the 800 number to his home office without his consent. Complainant's sole claim for relief is that "[he] would like the Commission to help recover [his] 800 number." The charging document contains no further substantive allegations or requests for relief as to Respondent. Specifically, the charging document fails to allege, among other things, any violation by Respondent of the Minimum Telephone Service Standards.

The Commission has jurisdiction over local and toll telephone service, for purposes of determining applicability of and compliance with the Minimum Telephone Service Standards ("MTSS"), issued in Chapter 4901:1-5 of the Ohio Administrative Code. In the Matter of Louis A. Green & Associates v. AT&T Ohio, PUCO Case No. 07-108-TP-CSS (April 4, 2007). In that case, the Commission held that it would dismiss the complaint in the absence of express allegations that the respondent in that case had violated the MTSS. Id. In the case at hand, the charging document is devoid of any statement alleging that this Respondent has violated the MTSS, and the complaint in the instant proceeding must, therefore, be dismissed in its entirety.

Notwithstanding the foregoing, Complainant's sole request for relief is for the Commission to assist in recovering the 800 number at issue. Such relief is beyond this Commission's jurisdiction for many reasons, including without limitation the fact that the Federal Communications Commission ("FCC") maintains exclusive jurisdiction over numbering administration, as set forth in Section 251(e) of the Telecommunications Act of 1996. In turn, toll-free numbers are administered in a central database, the SMS/800 Database. Federal toll-free rules are set forth in 47 C.F.R. 52.101 et seq. of the Code of Federal Regulations and govern

various aspects of handling, assigning, and controlling toll free numbers. For instance, 47 C.F.R.

§52.107 prohibits the hoarding of toll free numbers and states, in pertinent part:

No person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee.

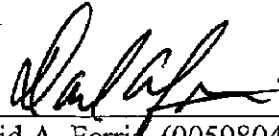
47 C.F.R. §52.107(a)(2). Given the federal rules, FCC's exclusive jurisdiction, and administration of all toll-free numbers by the SMS/800 Help Desk alone, no person or entity can maintain a proprietary interest in an 800 number or exercise any control over an 800 number, except to the extent described above.

In the instant proceeding, Complainant's sole request for relief, if granted, would require the Commission to exercise control, which it does not have, over the 800 number at issue. The Commission has no such control, as it is reserved exclusively for the FCC and SMS/800 Help Desk. Likewise, Respondent has no control over the 800 number, and the sole request for relief of Respondent is, therefore, an impossibility. Given that there are no other requests for relief comprising the charging document, Complainant's claims should be dismissed in their entirety.

Finally, the Complainant in this matter is a business, operating out of a home office, and the action is not, therefore, brought in *propria persona*. In actions where the complainant is a business, as opposed to an individual person, such complainant must be represented by an attorney-at-law licensed to practice before the Commission. *O.A.C. §4901-1-08(A)*. Complainant in this action is a business and is not represented by an attorney-at-law licensed to practice before the Commission.

Given the foregoing, the complaint in this matter should be dismissed.

Respectfully submitted,

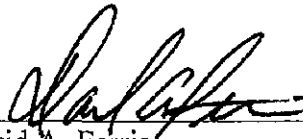


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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion to Dismiss and corresponding Memorandum in Support has been served this 1st day of June, 2007, via ordinary, First Class U.S. Mail, postage prepaid, upon the following party:

William Stamaton
1601 Yorkshire Trace
Canton, OH 44709



David A. Ferris