

June 4, 2007

FILE

2007 JUN -4 PM 12: 21

PUCOVia Hand Delivery

Reneé J. Jenkins, Director
Office of Administration & Commission Secretary
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215


RE: The Champaign Telephone Company v. The Ohio Bell Telephone Company d/b/a AT&T Ohio and Level 3 Communications, LLC and ATL Communications, Inc.; PUCO Case No. 07-369-TP-CSS

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of a Memorandum in Opposition to ATL Communications Inc.'s Motion to Dismiss, to be filed in connection with the above-referenced matter on behalf of The Champaign Telephone Company.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,


Carolyn S. Flahive

Enclosure

cc: Jeffrey R. Jones, Chief, Telecommunications Section

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2007 JUN -4 PM 12: 21

The Champaign Telephone Company,)

Complainant,)

v.)

The Ohio Bell Telephone Company d/b/a)
AT&T Ohio,)

and)

Level 3 Communications, LLC,)

and)

ATL Communications, Inc.,)

Respondents.)

PUCO

Case No. 07 – 369 – TP – CSS

MEMORANDUM OF THE CHAMPAIGN TELEPHONE COMPANY
IN OPPOSITION TO
MOTION OF ATL COMMUNICATIONS, INC.
TO DISMISS THE COMPLAINT

Pursuant to Ohio Adm. Code 4901-1-12(B), The Champaign Telephone Company (“Champaign”) hereby submits its Memorandum in Opposition to the Motion to Dismiss (the “Motion”) filed by ATL Communications, Inc. (“ATL”) on May 7, 2007.¹

INTRODUCTION

On April 2, 2007, Champaign filed a Complaint against ATL, The Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”), and Level 3 Communications, LLC (“Level 3”). In its Complaint, Champaign alleged that, as the direct result of the toll-free number administration support provided by ATL in its capacity as a Responsible Organization (“Resp

¹ By Entry entered May 21, 2007, the Commission granted Champaign’s request for an extension of time in which to file its response to the Motion.

Org”), Champaign is owed access charges in the amount of \$287,910.73 for toll-free calls placed by Champaign customers. Because of ATL’s conduct in the State of Ohio, those calls were routed through the AT&T Ohio Dayton tandem switch, and terminated to a particular Level 3 customer. ATL’s Motion to Dismiss should be denied. The Commission should investigate ATL’s actions in Ohio and should determine that they were inconsistent with Ohio law.

BACKGROUND

As more fully described in Champaign’s Complaint, this dispute involves the routing of a certain toll-free number to a telephone number administered by Respondent Level 3, along with the intrastate access charges associated with those calls. At some time before November 2005, Respondent ATL, in its capacity as a Resp Org, and without notice to or express authority of any involved carrier, populated the SMS/800 database so that calls to 877-398-0770 (a toll-free ISP number) were routed to the telephone number 937-771-4004. Telephone number 937-771-4004 is assigned to and administered by Level 3.

Champaign’s Class 5 switch subtends the AT&T Ohio Dayton tandem switch, which means that all interexchange and intrastate “800” calls originated by a Champaign customer (and routed directly to another carrier’s network) are routed by Champaign to that tandem switch. Therefore, during the period from November 2005 to March 17, 2006,² whenever Champaign customers dialed 877-398-0770, the Champaign switch would query the SMS/800 database, which, in accordance with ATL’s unauthorized³ routing instructions, routed the call to CIC 0110 (the industry-wide CIC for tandem-routed traffic) and to the directory number 937-771-4004.

² Champaign began blocking calls to 877-398-0770 on March 17, 2006.

³ See Exhibit A, Affidavit of Mack Greene, of Level 3’s Motion to Dismiss, filed May 18, 2007.

The access charges due to Champaign for originating the traffic in question remain unpaid. But for ATL's improper and unauthorized call routing instructions, Champaign would not have the disputed, uncollected charges in the amount of \$287,910.73.

ARGUMENT

1. The Commission has the jurisdictional authority to determine whether the services performed by ATL relative to this matter were reasonable and lawful.

ATL argues that the Public Utilities Commission of Ohio lacks jurisdiction over it and, therefore, ATL is not a proper defendant in this or *any* proceeding before the Commission.⁴ ATL seeks dismissal of the Complaint with respect to ATL solely on the basis of its wholly unsubstantiated assertions as to the nature of its role as a Resp Org. The Commission should deny ATL's Motion and investigate whether the manner in which ATL routed the calls to 877-398-0770 was lawful.

Contrary to ATL's assertion, the Commission's jurisdiction is not as limited as the phrase "engaged in the business of transmitting telephonic messages to, from, through, or in this state" may suggest.⁵ The Commission has exercised and continues to exercise jurisdiction over entities that are not engaged in the physical delivery of telephonic messages, but that nonetheless deserve regulatory oversight for public policy reasons. The Commission's treatment of switchless rebillers is the prime example.⁶ In this case, the Commission should determine whether public policy has been violated through ATL's manipulation of the call routing systems within Ohio, resulting in injury to Champaign. ATL's Motion should therefore be denied.

⁴ Motion at 1.

⁵ See *id.* at 3.

⁶ See *In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code*, Case No. 99-563-TP-COI (Entry on Rehearing, November 21, 2002, at 9); see also *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI (Finding and Order, June 12, 1996, at 16-19).

2. ATL has facilitated the transmission of telephonic messages in Ohio and is, therefore, a proper defendant in this proceeding.

In its Motion, ATL has only obliquely described the services it has rendered relative to this dispute, and its descriptions are confusing at best and inconsistent at worst. In paragraph 4 of its Answer, also filed May 7, 2007, ATL “admits that it provides toll-free number administration support services as a . . . [Resp Org], but denies that it provides any services within the state of Ohio.” In the same paragraph, ATL minces more words when it “admits that it has provided toll-free number administration support services to carriers that operate in Ohio, but denies that ATL acts as an ‘agent for and on behalf of carriers.’” ATL further describes its services as putting “routing instructions into the SMS/800 database for its customer (an entity that subscribes to a toll free number) [and] setting the stage so that certain telecommunications services will be provided, directly or indirectly, to its customer.”⁷ Yet, ATL then claims that it “does not provide any telecommunications services to anyone, at any stage of the process, either inside or outside of Ohio.”⁸ ATL continues to hedge when it states that Champaign’s assertion that ATL has provided its services as a Resp Org in Ohio is false.⁹

Clearly, the Commission cannot rely on ATL’s pleadings thus far for an accurate description or full understanding of the nature of ATL’s business and its role in the provision of telecommunications service in Ohio. Despite semantic shading that is pervasive within its Motion, ATL has, without a doubt, facilitated the transmission of telephonic messages in Ohio. The Commission should deny ATL’s Motion and determine ATL’s involvement in the provision of telecommunications services to Ohio customers, along with its liability to Champaign for the unpaid intrastate access charges.

⁷ Motion at 4.

⁸ Id.

⁹ Id. at 5.

3. Champaign has adequately stated a cause of action against ATL.

Champaign has stated reasonable grounds for its complaint against ATL. ATL improperly directed that calls to 877-398-0770 be assigned CIC 0110 for routing to Level 3, which circumvented the payment of intrastate access charges to Champaign for origination of those calls. In order to fully understand the routing of the traffic in question and its impact on the access charge compensation structure, the Commission must deny ATL's Motion. A full investigation, which must include ATL, is essential to the resolution of Champaign's Complaint.

ATL characterizes Champaign's Complaint as demonstrating a lack of understanding of ATL's function as a Resp Org.¹⁰ On the contrary, Champaign fully understands the role of Resp Orgs in the provision of toll-free telecommunications. It is, in fact, Champaign's knowledge and experience with other Resp Orgs and carriers that causes it to hold ATL responsible for the circumvention of the payment of tariffed intrastate access charges.¹¹ ATL has unreasonably and unlawfully manipulated the administration of toll-free numbers in this instance to Champaign's demonstrable detriment and, as such, Champaign has stated reasonable grounds for its Complaint under Rev. Code §4905.26.

ATL states that, as a Resp Org, it "assists a user of a toll free number in ensuring that the user obtains the services that it needs from carriers – such as Champaign and AT&T in this case – in order to have calls dialed to the user's toll free number routed as directed by the user."¹² However, ATL has not assisted the user of the toll-free number in obtaining the services from either Champaign or AT&T Ohio. Rather, the user is a customer of Level 3. Champaign is

¹⁰ Id. at 3.

¹¹ It is ATL that demonstrates a lack of understanding of the obligations of carriers and public utilities in Ohio. ATL mistakenly asserts that because it *purchases* services from a tariff – the SMS/800 tariff – and does not *supply* services pursuant to a tariff, it is not a public utility. Motion at 4. Champaign has not claimed that ATL is a public utility, but, regardless, the status of an entity as a public utility under Ohio law does not rest on whether it purchases or supplies service from a tariff.

¹² Motion at 6, n.3.

merely the local exchange service provider for the callers dialing the toll-free number in question and the party to whom originating access charges for those calls are owed. Further, the calls to the user's toll-free number have not been "routed as directed by the user."¹³ (Emphasis added.) The calls were directed by ATL and ATL should be held responsible for the resulting loss of revenue to Champaign.

4. ATL is responsible for the consequences of its improper routing of the toll-free number, including the significant loss of revenue to Champaign.

ATL mischaracterizes this action as a tort action and cavalierly dismisses Champaign's claims that it has been damaged.¹⁴ ATL's attempt to minimize the impact on a small rural local exchange carrier with unpaid intrastate access charges in the amount of \$287,910.73 again demonstrates ATL's lack of understanding of the impact of its decision to route the toll-free number in question to CIC 0110, without notification to any of the involved parties.¹⁵ ATL minimizes Champaign's claim as a "gripe" because Champaign "did not receive the tariffed access charges it thought it would receive."¹⁶ Champaign has been injured to the extent that it has been unable to collect \$287,910.73 in lawful, tariffed intrastate access charges that were assessed pursuant to this Commission's jurisdiction, and under Ohio law can collect its damages as a consequence thereof. Thus, Champaign has every right to seek a determination from this Commission that the Respondents are liable to Champaign for those unpaid intrastate access charges, together with a late payment penalty. Champaign is lawfully owed compensation for the services it performed in routing the traffic, which was assigned CIC 0110 by ATL, to the

¹³ Id.

¹⁴ Id. at 7, n.6.

¹⁵ Section 2.3.1 of the 800 Service Management System (SMS/800) Functions Tariff F.C.C. No. 1 establishes the obligation of a Resp Org to "notify and obtain the acceptance of any LEC or IC to which traffic for a specific 800 number will be routed." See paragraph 2 of Level 3's Counterclaim filed May 7, 2007, in which Level 3 states that it did not authorize the calls at issue; see also Exhibit A, Affidavit of Mack Greene, of Level 3's Motion to Dismiss, filed May 18, 2007.

¹⁶ Motion at 7, n.6.

AT&T Ohio Dayton tandem switch so that the end user customer's calls could be connected. It is highly unlikely that ATL rendered its services free of charge – Champaign has no obligation to do so either.

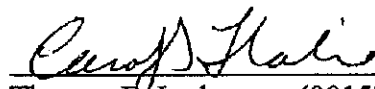
CONCLUSION

The Commission must not accept ATL's unsubstantiated jurisdictional arguments as fact. ATL has admitted "managing call routing instructions on behalf of its customer (the user of the toll free service) [and] establish[ing] the physical path that calls are supposed to travel."¹⁷ ATL cannot now absolve itself from all responsibility for the negative impact those call routing instructions have on public utilities in Ohio.

The Champaign Telephone Company urges the Commission to find that Champaign has stated reasonable grounds for its Complaint against the Respondents, including ATL Communications, Inc., and to deny ATL's Motion to Dismiss.

Respectfully submitted,

THE CHAMPAIGN TELEPHONE COMPANY



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¹⁷ Id. at 8.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum was served by first-class United States mail, postage prepaid, and electronic delivery, to the persons listed below, on this 4th day of June 2007.



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