

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

Champaign Telephone Company,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	Case No. 07-369-TP-CSS
Ohio Bell Telephone Company dba AT&T Ohio,	)	
Level 3 Communications, LLC and	)	
ATL Communications, Inc.,	)	
	)	
Respondents.	)	

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ATL COMMUNICATIONS, INC.'S  
MOTION TO STAY DISCOVERY

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Now comes ATL Communications, Inc. ("ATL") by and through the undersigned counsel, and hereby respectfully requests that the Public Utilities Commission of Ohio ("Commission" or "PUCO") stay discovery pending the resolution of ATL's motions to dismiss that have been filed in this case. At this stage in the litigation, responding to Champaign Telephone Company's ("Champaign") discovery requests will have no effect on the ultimate determination of the issues properly before the Commission. While ATL's motions to dismiss, which will be dispositive of ATL's involvement in this case, remain pending, discovery should be suspended until it has been determined that ATL is a proper party. Such a ruling is necessary in order to save ATL the burden and expense of responding to improper and unnecessary discovery. A memorandum in support is attached hereto.

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## MEMORANDUM IN SUPPORT

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ATL has filed motions to dismiss both the Complaint of Champaign as it related to ATL, as well as the Cross-Claim of Level 3. On July 2, 2007, Champaign served its First Set of Interrogatories and Requests for Production on ATL. ATL respectfully requests that the Commission stay discovery such that ATL does not incur the unnecessary and unreasonable burden and expense of responding to Champaign's discovery requests at this point in the litigation. At this point, no prehearing conference has been held and no further procedural schedule has been set. Accordingly, a stay at this point pending the Commission's ruling on ATL's motions to dismiss will not unduly delay these proceedings or prejudice any party hereto.

The conduct and process of discovery is left to the sound discretion of the trial court. See State ex rel. Daggett v. Gessaman (1973), 34 Ohio St.2d 55, 57. Thus, a trial court can properly use its discretion to control the discovery process, including the timing of discovery, and possesses authority to stay discovery when the court so decides. Stegawski v. Cleveland Anesthesia Group, Inc. (1987), 37 Ohio App.3d 78, 85, paragraph three of the syllabus.

While ATL's Motion to Dismiss is pending, it should not be compelled to incur the unnecessary and substantial cost of responding to Champaign's pending discovery requests. As ATL has clearly established in its motions, the Commission lacks jurisdiction over both ATL and the services provided by ATL. Because ATL's pending motions to dismiss—which will be dispositive of ATL's involvement in this entire case—require only a ruling by the Commission based upon the pleadings before it, Champaign's discovery is not relevant to that ruling.

It is clear that discovery in this case is not necessary to resolve ATL's pending motion to dismiss Champaign's' Complaint. Therefore, a motion to dismiss necessitates a consideration only of the facts alleged and does not require that they be proved. As such, discovery as an investigative tool for determining the truth of the claims asserted is not necessary to consider ATL's motion to dismiss. See Conrad v. Wooster Community Hosp. (Oct. 24, 1990), Wayne App. No. 2553, 1990 Ohio App. LEXIS 4677, at \*9 (affirming trial court order staying discovery because "discovery would be of no consequence until disposition of the [defendant's] motion to dismiss"). On the other hand, costly discovery is simply not justified unless Defendant's Motion to Dismiss is denied.

Suspending or staying discovery does not effect an injustice on any party because it does not advance the Commission's inquiry at this point in the litigation, and it would save the parties from the potentially unnecessary burden and expense of preparing discovery requests and responses.

**WHEREFORE**, ATL respectfully requests that the Commission granted its Motion to Stay Discovery pending the resolution of the motions to dismiss.

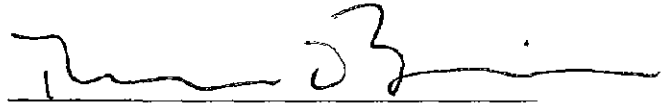
Respectfully submitted on behalf of,  
ATL COMMUNICATIONS, INC.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the forgoing Motion for Stay has been served upon the following parties listed below by regular U.S. mail, postage prepaid, and via electronic service this 13th day of July 2007.



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