

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.)

ATL COMMUNICATIONS, INC.'S
REPLY TO
CHAMPAIGN TELEPHONE COMPANY'S MEMORANDUM IN OPPOSITION
TO ATL'S MOTION TO STAY DISCOVERY
AND
MEMORANDUM CONTRA MOTION TO COMPEL DISCOVERY

On July 13, 2007, ATL Communications, Inc. ("ATL") filed a Motion to Stay Discovery pending the Public Utilities Commission of Ohio's ("PUCO" or "Commission") ruling on ATL's motion to dismiss. On July 27, 2007, Champaign Telephone Company ("Champaign") filed its Memorandum in Opposition to ATL's Motion to Stay Discovery and a Motion to Compel Discovery. ATL hereby submits this Reply and Memorandum Contra and further moves the Commission to grant ATL's request to stay discovery and deny Champaign's motion to compel for the reasons set forth in the Reply below.

I. Reply

Champaign raises three principle arguments in its Memorandum Contra against ATL's Motion to Suspend Discovery. The first is that ATL's motion was not the proper mechanism to

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obtain the relief sought, and that ATL should have instead sought a protective order pursuant to Ohio Admin. Code 4901-1-24 ("Rule 24"): a purely technical argument. Second, Champaign argues that the Commission has historically rejected efforts of respondents to defer discovery until the Commission has ruled on motions to dismiss. Third, Champaign argues that ATL has not stated "other grounds" as a basis for its motion. The fatal flaw of each of Champaign's arguments is found in the language of Rule 24. Rule 24(A) provides as follows:

Upon motion of any party or person from whom discovery is sought, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:

- (1) Discovery not be had.
- (2) Discovery may be had only on specified terms and conditions.
- (3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
- (4) Certain matters not be inquired into.
- (5) The scope of discovery be limited to certain matters.
- (6) Discovery be conducted with no one present except persons designated by the commission, the legal director, the deputy legal director, or the attorney examiner.
- (7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.
- (8) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

The unambiguous purpose of this rule is to circumscribe the discovery process in an instance where discovery would be proper in the first instance, that is to say where discovery is sought from a proper party. Discovery is not appropriately directed at a person that is not a proper party

to the case. Rule 24 simply does not apply to ATL. ATL is not a party to this proceeding and discovery is not proper in any event, and this is the point at the heart of its Motion. ATL is simply seeking an acknowledgement from the Commission that it does not have jurisdiction over ATL, and that ATL should not have to undergo the unnecessary burden and expense of responding to discovery when discovery under any circumstances is improper.

Champaign has not pled any basis as to how and why the Commission has jurisdiction to hear a complaint against ATL. It has cited to no provision of Title 49 in support of its complaint against ATL, and in fact affirmatively acknowledges that the Commission does not have authority under Ohio Revised Code ("R.C.") 4905.04, 4905.05, 4905.06, 4905.26, 4905.48 or any provision of 4927 or 4931, because it admits that it is not alleging that ATL is a public utility. Memorandum of the Champaign Telephone Company in Opposition to Motion of ATL Communications, Inc. to Dismiss the Complaint, p. 5, fn 11. Furthermore, Champaign cannot cite to a single case where the Commission has considered a complaint against a non-public utility. There is simply nothing more that ATL can add to underscore the fatal impropriety of Champaign's complaint and to note that a failure and inability to plead jurisdiction is a greater infirmity than a technical failure to bring the proper form of a motion. The obvious failure of Champaign to assert a basis for the Commission's jurisdiction over ATL forms the basis of ATL's motion for attorneys' fees.

ATL takes issue with a further allegation contained within Champaign's Memorandum in Opposition that imply that ATL has not made reasonable efforts to resolve its differences with Champaign. Nothing could be further from the truth. ATL has been more than cooperative with Champaign in an effort to assist it in its effort to collect the access charges that form the basis of its complaint. In fact, ATL voluntarily provided responses to the discovery propounded by

AT&T in this case, which covered much of the same ground as the discovery now at issue. A copy of ATL's response is attached hereto. For the same reasons contained in all of ATL's filings in this case, it did not need to respond to AT&T's discovery, but, in an effort to assist the other parties to this case to clearly see the extent of ATL's business operations and to otherwise assist with an expeditious exit of ATL from this proceeding, ATL has been cooperative.

II. Memorandum Contra Motion to Compel

For all the reasons stated above, as well as in all of ATL's prior filings demonstrating the Commission's lack of jurisdiction over ATL, Champaign's Motion to Compel is also without merit. Champaign is not entitled to discovery against ATL, and therefore its Motion to Compel is equally without merit. There is nothing more ATL can add – it is not a proper party to this case.

III. Conclusion

WHEREFORE, ATL again respectfully requests that ATL be dismissed as a Respondent to the underlying complaint of Champaign Telephone Company and that in the meantime ATL's Motion to Stay Discovery should be granted, and Champaign Telephone Company's Motion to Compel be denied.


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 Reply and Memorandum Contra has been served upon the following parties listed below by regular U.S. mail, postage prepaid, this 3d day of August 2007.



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