

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Commission finds:

- (1) On February 7, 2007, the complainant, Bill Stamaton, filed a formal complaint in this case against the respondent, First Communications, LLC (First Communications). The complaint alleges that, as a customer of First Communications for approximately ten years, the complainant had an 800 number that would ring to his home office. In December 2006, according to the complaint, the respondent, without the complainant's consent or authorization, released that 800 number and another company, MCI/Verizon, acquired it. Neither company, alleges the complaint, has been able to explain why this happened. The complaint seeks to have the Commission help the complainant recover his 800 number.
- (2) A prehearing settlement conference was scheduled and held in this case on May 16, 2007. However, the parties were unable to reach a resolution and settlement in this case at that time.
- (3) On June 1, 2007, the respondent filed a motion for leave to file a motion to dismiss this complaint. In support of its motion for leave, the respondent states that it was understood at the time of the May 16, 2007 settlement conference that the respondent would be allowed following the conference to formally respond to the complaint if no settlement was reached. The Commission acknowledges that this understanding existed at the time of the

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settlement conference and, under the circumstances, accepts the respondents' June 1, 2007 motion to dismiss as timely filed.

- (4) The respondent submits that this complaint case should be dismissed on grounds that the complaint's claims, among other things, fall outside of the Commission's jurisdiction, are unlawful, and seek relief beyond that which can be granted by the Commission (June 1, 2007, motion to dismiss). The respondent points out that the complaint contains no allegation of any violation by the respondent of the minimum telephone service standards (MTSS) set forth in Chapter 4901:1-5, Ohio Administrative Code (O.A.C.). As such, says the respondent, the case should be dismissed consistent with the Commission's holding in a recent case,¹ where, according to the respondent, the Commission determined that it would, in the absence of express allegations that the respondent in that case had violated the MTSS, dismiss the complaint. Moreover, says the respondent, the complainant's sole request for relief is beyond the Commission's jurisdiction to grant. The respondent asserts that:

[T]he 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....

In the instant proceeding, [the] 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 [the] respondent has no control over the 800 number, and the sole request for relief of [the] respondent is, therefore, an impossibility. Given that there are no other requests for relief ... [the complaint] should be dismissed.

¹ *In the Matter of Lois A. Green & Associates v. AT&T Ohio*, PUCO Case No. 07-108-TP-CSS (April 4, 2007).

- (5) On August 23, 2007, the respondent filed a motion for leave to supplement its June 1, 2007, motion to dismiss. In support of this motion, the respondent seeks the opportunity to present supplemental information "that will assist the Commission in understanding all of the factors relevant" to the respondent's earlier motion to dismiss. The respondent alleges that "additional facts have arisen since" it filed its June 1, 2007, motion to dismiss "which bear a direct impact on the proceedings." The Commission finds that sufficient cause has been shown for allowing the supplemental information submitted by the respondent on August 23, 2007, to be considered in conjunction with the respondent's June 1, 2007, motion to dismiss.

In its August 23, 2007, pleading, the respondent has submitted the following supplemental information:

- (a) On or about May 18, 2007, the respondent supplied, and the complainant accepted a new 800 number, which is currently being used by the complainant. The respondent submits that, given that the complainant has been supplied with a new functioning 800 number, the entirety of the allegations comprising the complaint have been addressed and resolved, and the case is moot and no longer ripe for consideration by the Commission.
- (b) The respondent understands that the complainant has initiated a complaint proceeding before the FCC involving the exact same claims and allegations as are contained in this complaint case before the Commission. The respondent submits that the complainant is estopped from pursuing the exact same damages in two separate forums, and that this proceeding should be dismissed in its entirety.
- (6) Upon review of the record as a whole, we find it appropriate, based on the arguments made by the respondent, to dismiss this case without prejudice, at this time. The complaint, as filed, as well as the sole request for relief, is based on claims that are currently pending litigation before the FCC. If, following that litigation there are issues that are not resolved by the FCC that are within the jurisdiction of state regulatory authorities, Mr. Stamaton may refile

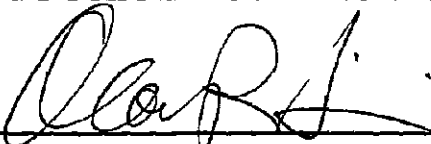
his complaint seeking our determination on such issues at that time. Accordingly, we conclude that good cause has been shown for dismissing this case, without prejudice, at this time.

It is, therefore,

ORDERED, That in accordance with the above findings, this case is hereby dismissed without prejudice. It is, further,

ORDERED, That a copy of this entry be served upon the complainant and the respondent, their counsel, if any, and all other interested persons of record.

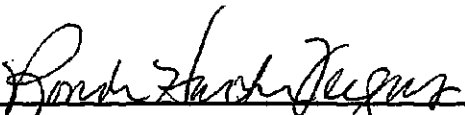
THE PUBLIC UTILITIES COMMISSION OF OHIO



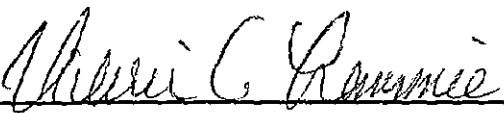
Alan R. Schriber, Chairman



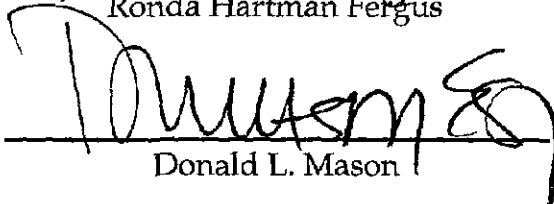
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

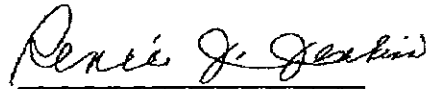


Donald L. Mason

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Renee J. Jenkins

Renee J. Jenkins
Secretary