

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, LLC,)	
)	
Respondent.)	

ENTRY ON REHEARING

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 alleged that in December 2006, the respondent, without the complainant's consent or authorization, released an 800 number that the complainant, as a customer of First Communications, had been using for approximately ten years. The complaint alleged that the number, once released, was then acquired by another company, MCI/Verizon, but that neither company could explain how this had happened. The only relief sought in the complaint was to have the Commission help the complainant recover his 800 number.
- (2) On June 1, 2007, the respondent filed a motion for leave to file a motion to dismiss this complaint. On August 23, 2007, the respondent filed a motion for leave to supplement its June 1, 2007, motion to dismiss. The Commission granted the respondent both of these motions for leave by entry issued on September 5, 2007.
- (3) In its June 1, 2007, motion to dismiss the respondent argued, among other things, that the Federal Communications Commission (FCC) has exclusive jurisdiction over numbering administration, and over the handling, assigning, and controlling of toll-free numbers. As a result, argued the respondent, the complaint should be dismissed because neither

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the Commission, nor for that matter the respondent, exercises control over the 800 number at issue and thus neither has the ability to provide the relief sought by the complaint.

In its August 23, 2007, supplemental filing, the respondent made two additional arguments, based on additional facts that the respondent submitted for Commission consideration for the first time in that pleading and that, it alleged, had come to the respondent's attention only after its motion to dismiss had already been filed. First, according to the respondent, on or about May 18, 2007, the respondent supplied, and the complainant accepted and has since been using a new 800 number. The respondent argued that, given that the complainant has been supplied with a new functioning 800 number, all of the allegations of the complaint have now been addressed and resolved, the case has become moot, and is no longer ripe for Commission consideration. Second, in its August 23, 2007, pleading, the respondent reported its understanding that the complainant has initiated a complaint proceeding before the FCC involving the exact same claims and allegations as were contained in the instant case. The respondent argued that the complainant is estopped from pursuing the exact same damages in two separate forums and, as a result, this case should be dismissed.

- (4) On September 5, 2007, the Commission issued an entry that dismissed this case without prejudice. The Commission explained its decision in Finding (6) of the entry which stated:

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. Stamatou 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.

- (5) Section 4903.10, Revised Code, among other things, provides that any party who has entered an appearance in person or by counsel in a proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Moreover, by leave of the Commission, any affected person, firm, or corporation, may make such a rehearing application. In either event, such rehearing application shall be filed within 30 days after the entry of the order upon the journal of the Commission. The statute further provides that an application for rehearing shall set forth specifically the ground or grounds on which the applicant considers the order addressed by the application for rehearing to be unreasonable or unlawful.
- (6) On September 27, 2007, the complainant timely filed an application for rehearing of the Commission's September 5, 2007, dismissal entry. The application for rehearing is only three sentences long. It sets out only: (a) that the complainant is formally requesting a rehearing of the instant case; (b) that a response that the complainant has received from the Federal Trade Commission (FTC) is enclosed with the rehearing application; and (c) that the FTC's response indicates that "the FTC does not resolve individual complaints." Attached to the rehearing application is, indeed, such an FTC response, dated June 15, 2007. In substance, the FTC's response purports to thank Mr. Stamatou for his recent correspondence with the FTC, to indicate that the information that Mr. Stamatou has provided to the FTC will be recorded in the FTC's complaint retention system, and to inform Mr. Stamatou that the FTC "does not resolve individual complaints."
- (7) Upon review of Mr. Stamatou's application for rehearing, it appears that he may not have had a complaint pending before the FCC, as was represented to us by the respondent. Rather, his complaint may have been pending before the FTC, which has since declined to hear the complaint. Nevertheless, the fact remains that the FCC has exclusive jurisdiction over toll-free numbering administration and exclusive authority to grant the relief sought by the complainant. The complainant should pursue his 800-number complaint before the FCC. If, after the complainant has pursued his 800-number complaint with the FCC, there are other issues that are not resolved by the FCC that are within the jurisdiction of state regulatory authorities, Mr. Stamatou may file a new complaint seeking our

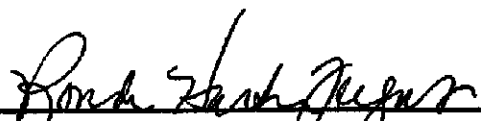
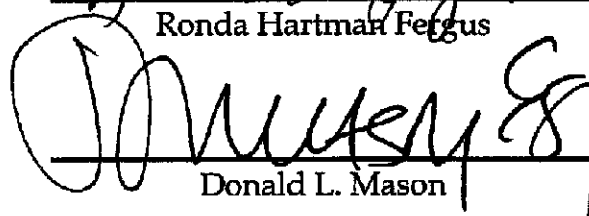
determination on such other issues at that time. As things presently stand, however, we conclude that good cause has been shown for dismissing this case, without prejudice, at this time.

It is, therefore,

ORDERED, That, in accordance with the above findings, the complainant's September 27, 2007, application for rehearing in this case is denied. It is, further,

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

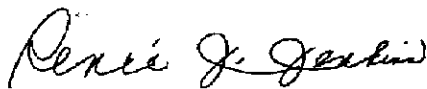
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman
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Ronda Hartman Fergus
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DEF/vrm

Entered in the Journal

OCT 24 2007



Renee J. Jenkins
Secretary