

## BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Drew	)	
Hansel,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 07-89-TP-CSS
	)	
Windstream Western Reserve, Inc.,	)	
	)	
Respondent.	)	

FINDING AND ORDER

The Commission finds:

- (1) On January 29, 2007, Drew Hansel (Mr. Hansel or complainant) filed a complaint against Windstream Western Reserve, Inc. (Windstream). He alleges that after moving to a new address in November 2006 he had contacted Windstream to obtain the least expensive calling plan. Mr. Hansel contends that a Windstream representative assured him that he would be provided with the least expensive calling plan. He claims that only through persistence did he discover from the company that he could have a less costly service plan. Furthermore, Mr. Hansel asserted that Windstream refused to provide written information about his local calling plans. After becoming a customer, Mr. Hansel learned that his calling plan included a fee for repairing inside wire. He contends that he did not need or ask for the service.
- (2) To address the complainant's concerns, Windstream requested additional time to file an answer to the complaint. The attorney examiner agreed to extend the answer date to February 23, 2007. Windstream documented the request and the agreement in a letter filed and dated February 20, 2007.
- (3) Windstream filed an answer to the complaint on February 23, 2007. In its answer, Windstream acknowledged that Mr. Hansel had questions about calling plan options. In an effort to address his concerns, Windstream states that it contacted Mr.

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Hansel and advised him that he could change his calling plans and remove inside wire maintenance charges.

- (4) On May 18, 2007, the attorney examiner issued an entry finding that the complainant had presented reasonable grounds for complaint. The entry also scheduled a prehearing conference for June 7, 2007. The complainant refused to appear at the prehearing conference.
- (5) By entry issued August 8, 2007, the attorney examiner scheduled a hearing for October 4, 2007.
- (6) On September 25, 2007, Windstream filed a motion to compel and requested an expedited ruling. Windstream explained that the complainant had refused to respond to interrogatories. On September 28, 2007, the attorney examiner granted Windstream's motion to compel, ordering the complainant to answer the interrogatories forthwith. The complainant did not respond to the interrogatories.
- (7) On October 4, 2007, the hearing proceeded as scheduled. The complainant did not appear. At the scheduled hearing, Windstream, with the consent of the attorney examiner, proffered evidence for the record.
- (8) The complaint should be dismissed for lack of prosecution. In a complaint case, such as this, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1986). The complainant refused to appear at the prehearing conference, he refused to respond to interrogatories, and he refused to appear at the hearing. He has been given notice of the proceedings and rejected each opportunity to be heard. Consequently, complainant has failed to carry his burden of proof and the complaint should be dismissed.
- (9) Notwithstanding that Mr. Hansel failed to prosecute this case, we find that the company acted responsibly and reasonably to address Mr. Hansel's concerns. We have thoroughly reviewed the evidence proffered by the company. We note that the company not only provided Mr. Hansel with its calling plans but did so in writing.

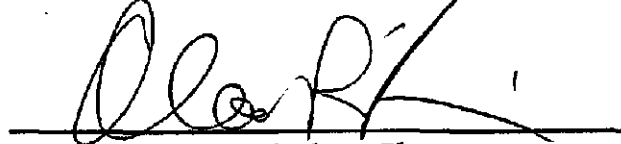
- (10) In addition to a willingness to make adjustments to his calling plan, the company made other adjustments to Mr. Hansel's account. Exhibit 5, in the record, shows Mr. Hansel's request to add broadband service to his account for a monthly charge of \$39.95 without a one-year commitment (Tr. 27-28). Shortly after Mr. Hansel received his first bill, Mr. Hansel agreed to a one-year commitment. In response, Windstream not only issued a credit but related the credit back to the date of installation. Similarly, when Mr. Hansel protested the appearance of an inside-wire maintenance charge on his bill, the company issued a credit that related back to the initial date of service (Tr. 39-40, Exhibit 1G).
- (11) There is no evidence that Windstream acted unlawfully, unreasonably, or otherwise inconsistently with Chapter 4905, Revised Code. Even taking as true that there were errors and inconsistency in the information provided by Windstream, we find that Windstream, by issuing credits back to the date of service, was reasonable and adequately responsive to Mr. Hansel's requests. Upon review of the merits of this case, we conclude that the complaint should be dismissed with prejudice.

It is, therefore,

ORDERED, That the complaint in this matter is dismissed with prejudice. It is, further,

ORDERED, That a copy of this Finding and Order be served upon the complainant, Windstream and its counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



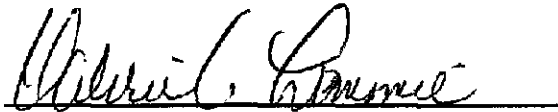
Alan R. Schriber, Chairman



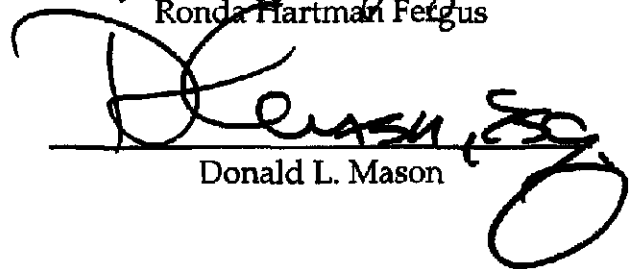
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JAN - 9 2008



Renee J. Jenkins  
Secretary