

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of The)	
Champaign Telephone Company,)	
)	
Complainant,)	
)	
v.)	Case No. 07-369-TP-CSS
)	
AT&T Ohio, Level 3 Communications, LLC,)	
and ATL Communications, Inc.)	
)	
Respondents.)	

ENTRY

The Commission finds:

- (1) On April 2, 2007, The Champaign Telephone Company (Champaign or complainant) filed a complaint against AT&T Ohio; Level 3 Communications, LLC (Level 3); and ATL Communications, Inc. (collectively, respondents). Champaign alleges that AT&T Ohio and Level 3 have violated the parties' applicable access tariffs by failing to pay access charges, together with the applicable late payment penalty. As relief, Champaign seeks a Commission determination that respondents are liable to Champaign in the amount of \$287,910.73, together with a late payment penalty. Additionally, Champaign alleges that ATL improperly directed that calls to telephone number 877-398-0770 be routed to Level 3, which resulted in Champaign receiving no compensation for originating the calls in question. Finally, Champaign asserts that it is entitled to treble damages pursuant to Section 4905.61, Revised Code.
- (2) On May 7, 2007, answers to Champaign's complaint were individually filed by ATL, Level 3, and AT&T Ohio.
- (3) On May 7, 2007, AT&T Ohio filed a motion to dismiss Champaign's complaint. AT&T Ohio asserts that, based on the information received from the database query performed by Champaign, the complainant should have generated the records necessary to bill the appropriate access charges to Level 3 (AT&T Ohio Motion to

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
 Technician TM Date Processed 5/14/2008

Dismiss at 3). In regard to Champaign's allegation that AT&T Ohio historically paid the originating access charges for all of Champaign's traffic assigned to carrier identification code (CIC) 0110, AT&T Ohio responds that, even accepting the statement as true, the historic practice of payment does not establish a legal obligation for AT&T Ohio to pay for all such traffic (*Id.*). Additionally, AT&T Ohio asserts that there is no legal basis to hold it liable for Champaign's requested relief simply due to its performance of a tandem switching function (*Id.* at 4). Finally, AT&T Ohio points out that the Local Exchange Routing Guide (LERG) identified the "877" telephone number in question as being assigned to Level 3. Therefore, AT&T Ohio posits that Champaign knew or should have known that the calls originated by customers were terminated to a Level 3 local telephone number resulting in Level 3's obligation for the payment of originating access (AT&T Ohio Reply Memorandum at 3).

- (4) On June 4, 2007, Champaign filed a memorandum contra AT&T Ohio's motion to dismiss. Champaign responds that inasmuch as AT&T Ohio is the entity identified with CIC 0110, the respondent, as the tandem operator, is the equivalent of the Feature Group D operator and is, therefore, liable for access charges (Memorandum Contra at 3). Champaign explains that the common industry practice is for the carrier originating the call to be compensated by the carrier associated with the CIC (*Id.* at 4). Champaign also states that AT&T Ohio had previously paid Champaign in full for all originating access charges related to all Champaign traffic assigned CIC 0110 that transited through the AT&T Ohio Dayton tandem switch, including all intrastate "877" traffic originated by Champaign customers (*Id.*). Champaign opines that AT&T Ohio is willing to pay for originating access charges provided that they are at levels that AT&T Ohio finds acceptable (*Id.* at 5). Champaign avers that AT&T Ohio can not lawfully decide how much traffic to compensate Champaign for, especially when AT&T Ohio previously accepted all of the traffic for which it was billed (*Id.*).

In response to AT&T Ohio's contention that Champaign could have easily determined that the "877" traffic in dispute was being routed to Level 3, the complainant states that the terminating carrier is no longer discernible to the originating carrier due to the implementation of local number portability. Champaign believes that it would be inappropriate to expect the originating carrier to perform manual look ups of the local routing number for every call

designated with CIC 0110 in order to determine the carrier administering such ported numbers.

- (5) On May 18, 2007, Level 3 filed a motion to dismiss the complaint filed by Champaign. In support of its motion, Level 3 asserts that Champaign has not identified any state statute or regulation that the respondent has violated (Motion to Dismiss at 4). Level 3 disputes Champaign's contention that it should be liable for any charges and penalties pursuant to Champaign's access tariff. Specifically, Level 3 avers that Champaign's access tariff is not applicable inasmuch as Level 3 is not a customer that subscribes to the services offered. In support of its position, Level 3 states that it has no relationship with Champaign, either due to a negotiated interconnection agreement or subscription to a tariff (*Id.* at 5).

As further defense, Level 3 contends that ATL routed the calls in question without the proper notification or authorization from Level 3, as required by Section 2.3.1 of the Service Management System (SMS)/800 tariff. Level 3 submits that this notification is required in order for it to be able to identify that the calls are toll-free (*Id.* at 5, 6).

Additionally, Level 3 disputes the contention that it has received any compensation from the toll-free service at issue in this proceeding (Reply Memorandum at 2). Further, in response to Champaign's allegation that Level 3 previously reimbursed Champaign for originating and terminating access services, Level 3 states that, to the extent that any obligation existed, it was for legitimate access services provided by Champaign in support of WilTel Communications LLC's (WilTel) interexchange services (*Id.* at 3). Level 3 notes that WilTel is a certified telecommunications provider that only subsequently affiliated with Level 3 (*Id.* at 3).

- (6) On June 4, 2007, Champaign filed a memorandum contra Level 3's motion to dismiss. Champaign asserts that Level 3 was the beneficiary of the calls originated by customers of Champaign due to the fact that it has received compensation for handling the traffic originated by Champaign. Therefore, Champaign believes that Level 3 should be liable for the applicable originating intrastate access charges (Memorandum Contra at 3). In response to Level 3's assertion that Champaign's access tariff is not applicable to it, Champaign states that from December 2005 to March 2007 it had invoiced Level 3 for either originating or terminating intrastate

access charges pursuant to its tariff and that Level 3 had paid those invoices in full. As to Level 3's argument that ATL assigned CIC 0110 without Level 3's authorization, Champaign contends that such issue is between Level 3 and ATL and does not impact Level 3's obligations to Champaign for the unpaid intrastate access charges (*Id.* at 4).

- (7) On May 7, 2007, ATL filed a motion to dismiss the complaint filed by Champaign. ATL asserts a number of grounds for the requested dismissal.

First, ATL states that the Commission lacks jurisdiction over ATL inasmuch as ATL is not a public utility pursuant to Section 4905.03(A)(2), Revised Code (Motion to Dismiss at 3). In support of its position, ATL references the Ohio Supreme Court's holding that an entity is a telephone company only when it is engaged in the business of "transmitting telephonic messages to, from, through or in the state" (ATL Reply Memorandum at 2 citing *Radio Relay v. Public Utilities Commission of Ohio* [1976], 45 Ohio St.2d 121). In response to Champaign's reliance on the Commission's treatment of switchless rebillers for the purpose of supporting its position in this case, ATL submits that there is no analogy between switchless rebillers and Responsible Organizations (Resp.Orgs.) (*Id.* at 3). In distinguishing itself from the Commission's consideration and treatment of local switchless rebillers in Case No. 95-845-TP-COI (95-845), *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Finding and Order, June 12, 1996, at 16, ATL avers that it does not satisfy any of the specified criteria inasmuch as (a) it has no relationship with an end user, (b) it does not hold itself out as entity responsible for establishing service, (c) it does not address consumer concerns, and (d) it does not receive customer fees for its services (*Id.* at 4).

In analyzing the complaint itself, ATL submits that there is no allegation that it is a public utility or that it is engaged in the business of transmitting telephonic messages in the state of Ohio (Motion to Dismiss at 3). Rather, ATL avers that, as a Resp.Org it makes use of the SMS/800 database, pursuant to the terms of an Federal Communications Commission (FCC) tariff, for the purpose of inputting and updating call routing instructions for the telephone numbers that ATL administers on behalf of its own customers (*Id.*). While ATL acknowledges that the routing

instructions that it puts into the database will affect how calls to the customer's toll-free number will be provided, it contends that the telecommunications services are actually provided by other carriers when an end user calls the toll-free telephone number (*Id.*). Therefore, ATL asserts that the question of whether calls to a toll-free telephone number are subject to access charges is a matter to be resolved between the carriers that actually handle the call (*Id.* at 8). Additionally, ATL avers that the relevant dispute pertains to an interpretation of an FCC tariff and, therefore, should be addressed before the FCC, and not this Commission (Reply Memorandum at 8).

Next, ATL contends that, by failing to allege that it has violated any statute, law, rule, regulation or tariff provision, the complaint fails to set forth a cause of action against it and does not establish reasonable grounds (*Id.* at 2). Specifically, ATL asserts that "there is nothing illegal or inappropriate about a toll-free number being routed to a Level 3 [plain old telephone number] POTS (or any other number)" (Motion to Dismiss at 7). Additionally, ATL states that Champaign has not alleged that ATL's actions were in any way contrary to the terms of the tariff under which it makes use of the SMS database. ATL notes that, even if such an allegation was raised, the Commission would lack jurisdiction because the relevant tariff is interstate in nature (*Id.* at 6).

ATL asserts that there are no reasonable grounds for the complaint against it. In support of its position, ATL opines that Champaign's access tariff does not contemplate imposing charges on entities such as itself inasmuch as it is not a customer as contemplated by Champaign's tariff. Specifically, ATL notes that Champaign has adopted the interstate access service tariffs filed by the National Exchange Carrier Association (NECA). Consistent with the terms of the NECA tariff, ATL submits that it does not satisfy the tariff's definition of a "customer," which is defined as "any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which subscribes to the services offered under this tariff, including both interexchange carriers and end users." Therefore, ATL posits that it cannot be held subject to the terms of Champaign's tariff (*Id.* at 8-11).

ATL contends that Champaign has failed to bring a critical party into this proceeding. Specifically, ATL identifies the absence of

Level 3's retail customer that actually utilized the services that form the basis of the complaint (ATL Reply Memorandum at 5).

- (8) Based on its arguments summarized above and its contention that the company has expended a substantial amount of time, effort, and resources defending Champaign's "frivolous" claims, on June 11, 2007, ATL requested that the Commission order Champaign to pay ATL its costs incurred in this proceeding.
- (9) On June 4, 2007, Champaign filed a memorandum in opposition to ATL's motion to dismiss. In response to ATL's motion to dismiss, Champaign states that, for public policy reasons, the Commission has exercised, and continues to exercise, its jurisdiction over entities that are not engaged in the physical delivery of telephonic messages (Memorandum Contra at 3 citing Case No. 99-563-TP-COI, Entry on Rehearing, November 21, 2002, at 9; 95-845, Finding and Order, June 12, 1996, at 16-19). Specific to this proceeding, Champaign believes that it is appropriate for the Commission to determine ATL's involvement in the provision of telecommunications services to Ohio customers and to determine whether public policy has been violated through ATL's manipulation of the call routing system in Ohio (*Id.* at 3, 4). In support of its position, Champaign asserts that ATL has unreasonably and unlawfully manipulated the administration of toll-free numbers and the routing of such calls (*Id.* at 5, 6). Further, Champaign asserts that it has been harmed to the extent that it has been unable to collect \$287,910.73 in tariffed intrastate access and late-payment charges that were assessed pursuant to the Commission's jurisdiction (*Id.* at 6, 7).
- (10) On June 26, 2007, Champaign filed a memorandum contra ATL's motion for attorney fees. Specifically, Champaign responds that the Commission has no authority to award attorney fees (Champaign Memorandum Contra at 2). In support of its position, Champaign calls attention to the fact that the Commission has previously determined that Section 4903.24, Revised Code, cannot be used to reimburse an intervenor for its expenses (*Id.* citing *In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI [99-938], Entry, July 12, 2001, at 4). Champaign contrasts the current case from the Commission's treatment of the American Association of Retired

Persons (AARP) in 99-938 and points out that the unique circumstances identified in that case are not present in this proceeding (*Id.* at 3). Additionally, Champaign disputes ATL's characterization of the current complaint and asserts that it is properly before the Commission for the purpose of determining (a) ATL's involvement and (b) whether ATL is responsible to Champaign for its conduct (*Id.* at 4).

- (11) On May 3, 2007, Level 3 filed a cross-claim against ATL alleging that ATL routed the calls at issue without notification to and authorization from Level 3, as required by federal tariff.
- (12) On May 3, 2007, Level 3 filed a counter-claim against Champaign alleging that Level 3 did not authorize the calls and that it incurred costs to transport and terminate the calls originated on Champaign's network.
- (13) On May 29, 2007, ATL filed its answer to Level 3's cross-claim.
- (14) On June 4, 2007, Champaign filed its answer to Level 3's counter-claim.
- (15) On April 30, 2008, Champaign filed a motion to dismiss its complaint, without prejudice, against AT&T Ohio, Level 3, and ATL.
- (16) On May 1, 2008, Level 3 filed a motion to dismiss its counter-claim and cross-claim conditioned upon the granting of Champaign's motion to dismiss its complaint in this matter.
- (17) Champaign's April 30, 2008, and Level 3's May 1, 2008, motions to dismiss are reasonable and should be granted without prejudice. In light of this ruling, all other pending motions are now moot.

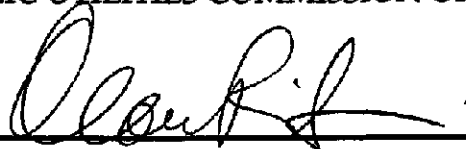
It is, therefore,

ORDERED, That Champaign's April 30, 2008, and Level 3's May 1, 2008, motions to dismiss are reasonable and should be granted without prejudice. It is, further,

ORDERED, That all other motions are now moot. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



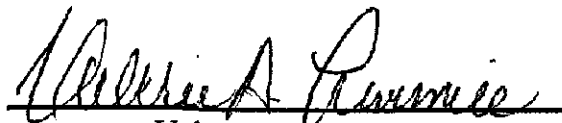
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

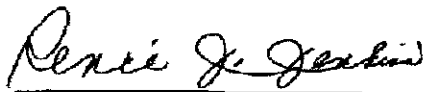


Cheryl L. Roberto

JSA:geb

Entered in the Journal

MAY 14 2008



Renee J. Jenkins
Secretary