

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Carolyn and Michael Pocse,)	
Complainants,)	
)	
v.)	Case No. 09-567-TP-CSS
)	
FairPoint Communications)	
Respondent.)	

**MOTION TO DISMISS
OF FAIRPOINT COMMUNICATIONS**

Orwell Telephone Company d/b/a FairPoint Communications¹ (“FairPoint”), through its counsel, respectfully moves the Commission pursuant to O.A.C. 4901-9-01 to dismiss the Complaint of Carolyn and Michael Pocse (“Complainants”) with prejudice on the grounds that the Complaint: (1) alleges no violation of R.C. § 4905.26 and therefore fails to set forth reasonable grounds for complaint and (2) pertains to charges outside the jurisdiction of the Commission.

These matters are more fully described in the accompanying “Memorandum of FairPoint Communications in Support of Motion to Dismiss.”

¹ FairPoint Communications is the registered trade name of The Orwell Telephone Company. See *In the Matter of the Application of The Columbus Grove Telephone Company, The Orwell Telephone Company, and The Germantown Independent Telephone Company Relative to the Use of the Trade Name FairPoint Communications*, PUCO Case No. 07-140-TP-ACN (Finding and Order, March 7, 2007).

Respectfully submitted,

ORWELL TELEPHONE COMPANY d/b/a
FAIRPOINT COMMUNICATIONS

By: /s/ Carolyn S. Flahive
Thomas E. Lodge
Carolyn S. Flahive
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215-6101
(614) 469-3200
(614) 469-3361 FAX
Tom.Lodge@thompsonhine.com
Carolyn.Flahive@thompsonhine.com

Its Attorneys

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**MEMORANDUM OF FAIRPOINT COMMUNICATIONS
IN SUPPORT OF MOTION TO DISMISS**

Orwell Telephone Company d/b/a FairPoint Communications (“FairPoint”) through its counsel, respectfully submits this Memorandum in support of its Motion to Dismiss the Complaint pursuant to O.A.C. 4901-9-01.

I. THE COMPLAINT ALLEGES NO VIOLATION OF R.C. § 4905.26

The Complaint fails to state grounds for a complaint against FairPoint pursuant to R.C. § 4905.26 because Complainants have failed to allege a violation of any rules, regulations or laws that would constitute a violation of R.C. § 4905.26. The Complaint appears to pertain to rates for Internet service, which, as addressed further below, is outside the Commission’s jurisdiction and, therefore, fails to state reasonable grounds for complaint as to regulated service. Further, Complaint lacks any request for relief. Accordingly, the Commission should dismiss the Complaint.

II. THE COMMISSION LACKS SUBJECT MATTER JURISDICTION

The Complainants make allegations with respect to the rates for Internet services, which are clearly outside the subject matter jurisdiction of the Commission. The Complaint describes the Complainants’ local calling area with respect to dial up service. FairPoint has confirmed that the Complainants’ address qualifies for DSL service.

Nonetheless, the claims made relative to Internet service are outside the Commission's jurisdiction. The Commission has previously dismissed such consumer complaints.¹ The Complaint to the extent it pertains to matters outside the Commission's jurisdiction should be dismissed.

WHEREFORE, for the reasons explained above, FairPoint requests that the Complaint be dismissed with prejudice pursuant to O.A.C. 4901-9-01.

Respectfully submitted,

ORWELL TELEPHONE COMPANY d/b/a
FAIRPOINT COMMUNICATIONS

By: /s/ Carolyn S. Flahive
Thomas E. Lodge
Carolyn S. Flahive
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215-6101
(614) 469-3200
(614) 469-3361 FAX
Tom.Lodge@thompsonhine.com
Carolyn.Flahive@thompsonhine.com

Its Attorneys

¹ See, e.g., *In the Matter of the Complaint of Don Damyanic v. Verizon North Inc.*, Case No. 06-270-TP-CSS (Entry, April 10, 2006).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Motion to Dismiss and Memorandum in Support* was served by first class mail, postage prepaid, upon the party listed below on this 27th day of July 2009:

Carolyn and Michael Pocse
6731 SR 46
Rome, OH 440885

/s/ Carolyn S. Flahive
Carolyn S. Flahive

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Summary: Motion Motion to Dismiss electronically filed by Carolyn S Flahive on behalf of The
Orwell Telephone Company