

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Remax	)	
Capital Centre, Inc.,	)	
	)	
Complainant,	)	
v.	)	Case No. 10-676-TP-CSS
	)	
XO Communications, L.L.C.,	)	
	)	
Respondent.	)	

ENTRY

The attorney examiner finds:

- (1) On May 20, 2010, Pat Kearns Davis on behalf of Remax Capital Centre, Inc. (Remax) filed a complaint against XO Communications, L.L.C. (XO). In the complaint, Remax alleges that XO has overcharged Remax for services since April 2006. Moreover, notwithstanding discussions with XO, the matter remains unresolved. For relief, Remax demands credits for the overcharges plus time spent for discussions and data gathering. Remax notes in its complaint that it will pay undisputed charges while the complaint is pending. Furthermore, Remax requests an order prohibiting XO from terminating service while the complaint is pending.
- (2) Remax's motion to prohibit XO from terminating service to Remax while the complaint is pending is reasonable and should be granted. Remax shall, however, in good faith, remit to XO payments for all undisputed charges.
- (3) On June 3, 2010, XO filed a motion to dismiss the complaint. XO moves to dismiss the complaint for the reason that Remax is a domestic for-profit Ohio corporation and is not represented by an attorney. Relying on Ohio precedent, XO states that, as a corporation, Remax must be represented in legal proceedings such as this by an attorney. After reviewing Ohio Supreme Court records, XO alleges that Pat Kearns Davis is not an attorney licensed to practice in the State of Ohio. XO, therefore, urges the Commission to issue an order directing Remax to

retain counsel. In the alternative, if Remax fails to retain counsel, XO moves to dismiss the complaint.

- (4) On June 16, 2010, Rex H. Elliott, Charles H. Cooper, Jr., Bradley A. Strickling, and Adam P. Richards of the law firm Cooper & Elliot, LLC filed a notice of their appearance as counsel for the complainant.
- (5) With the appearance of counsel for the complainant, the attorney examiner finds that XO's motion to dismiss is moot.
- (6) On June 8, 2010, XO filed an answer to the complaint. In its answer, XO denies that it has overcharged Remax since April 2006. XO states that in April 2006 Remax entered into a renewal contract with XO. XO admits that errors resulted when it entered new billing codes for Remax's billing system account. XO also admits that it corrected the errors after Remax brought them to the attention of XO. Since the date that Remax notified XO about the billing errors, XO contends that it has reviewed pricing and terms with Remax on several occasions. In response, XO alleges that it issued numerous credits to Remax to correct billing errors and to create customer good will.
- (7) In its answer, XO claims that Remax owes money on its account. XO alleges that Remax's last payment to XO for services rendered was in November 2008. Moreover, XO claims that Remax has made no payment whatsoever since December 2008. Notwithstanding Remax's delinquent account, XO alleges that it issued credits to Remax during the months of July, September, and December 2009 in an effort to resolve Remax's claims. XO states that it issued a total of \$12,081.23 in bill adjustments on Remax's account. Of that amount, XO claims that \$11,032.27 is solely for good will. Furthermore, XO calculates that Remax owes XO \$23,342.66 for services, which represents the total amount of \$34,374.93 for services at the contract rate minus total credits.
- (8) In its answer, XO responds to Remax's request for an order barring XO from terminating service while Remax's complaint is pending. For its part, as a condition for the interim relief that Remax seeks, XO requests an order from the Commission compelling Remax to identify within 14 days every disputed

charge, together with the amount and reason for the dispute. XO demands that any remaining undisputed amounts be remitted to XO.

- (9) At this time, the attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Rule 4901-1-26, Ohio Administrative Code (O.A.C.), any statements made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits either party from initiating settlement negotiations prior to the scheduled settlement conference.

Accordingly, a settlement conference shall be scheduled for August 10, 2010, at 10:00 a.m., in Room 1246, in the offices of the Commission, 12th Floor, 180 East Broad Street, Columbus, Ohio 43215. If a settlement is not reached at the conference, the attorney examiner will conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.

Pursuant to Rule 4901-1-26(F), O.A.C., the representatives of the public utility shall investigate the issues raised in the complaint prior to the settlement conference and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties attending the settlement conference should bring with them all documents relevant to this matter.

As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.* (1996), 5 Ohio St.2d 189.

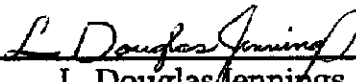
It is, therefore,

ORDERED, That a prehearing settlement conference be held on August 10, 2010, at 10:00 a.m., in Room 1246, in the offices of the Commission, 12th Floor, 180 East Broad Street, Columbus, Ohio 43215 in accordance with Finding (9). It is, further,

ORDERED, That XO maintain service to Remax while the complaint is pending and that Remax remit to XO payments for all undisputed charges. 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

  
By: L. Douglas Jennings  
Attorney Examiner

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Entered in the Journal

**JUL 13 2010**



Renee J. Jenkins  
Secretary