

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	)	
Mark Drake	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 10-411-TP-CSS
	)	
AT&T Ohio,	)	
	)	
Respondent.	)	

ENTRY

The attorney examiner finds:

- (1) On March 29, 2010, the complainant, Mark Drake, filed a complaint against the respondent, AT&T Ohio, (AT&T), alleging that he was overcharged by AT&T. According to the complaint, the amount charged on his monthly bill increased without any notification of any change, from \$28.00 to \$35.10. The complainant states that the efforts he made with the company and with the Commission's staff to resolve this billing dispute on an informal basis proved unsuccessful, prompting him to file the formal complaint in this case.
- (2) On April 19, 2010, the respondent filed both its answer to the complaint, as well as a motion to dismiss the complaint. AT&T attached to both pleadings a copy of an e-mail correspondence which purports to show that, between November 2009 and March 2010, the parties were involved in trying to work out an informal resolution to a dispute that relates, in whole or part, with the manner in which Mr. Drake has been billed by AT&T for digital subscriber line (DSL) service. AT&T asserts that this is the very same dispute which is now the subject matter of the formal complaint filed in this case.

Contending that DSL is the "the service to which the complaint relates", AT&T points out that DSL is an interstate information service that is subject to the exclusive jurisdiction of the Federal

Communications Commission (FCC). Billing issues related to DSL service, says AT&T, are likewise exclusively interstate in nature. Therefore, claims AT&T, based on the informal complaint which preceded it, the service and the billing issues that are the subject of the complaint are outside of the Commission's jurisdiction. Accordingly, AT&T seeks to have the Commission dismiss this matter for lack of subject matter jurisdiction.

- (3) The Federal Communications Commission has deemed retail DSL service to be an information service. Both DSL service and any charges or credits related to it are matters beyond the Commission's jurisdiction.<sup>1</sup>

Section 4905.26, Revised Code, requires that a complaint set forth reasonable grounds for complaint. Upon a finding of reasonable grounds, a complaint may proceed to hearing. The complaint, as it stands, does not provide a clear set of facts for the Commission to determine whether there are reasonable grounds or whether the Commission has jurisdiction.

- (4) To determine whether reasonable grounds exist and whether the Commission has jurisdiction, Mr. Drake must provide a clear concise statement of the facts underlying the complaint. The statement of facts should include a description of the service or services that are at issue. Given that DSL service and any charges or credits related to it are matters beyond the Commission's jurisdiction, in order for this case to proceed under the Commission's jurisdiction, Mr. Drake's statement of facts must explain how the subject matter of this case relates to something other than the manner in which AT&T provides and bills the complainant for DSL service. Mr. Drake must provide the statement of facts on or before February 8, 2011. If the complainant does not file such a statement of facts by that date, the attorney examiner will recommend to the Commission that the complaint be dismissed.

It is, therefore,

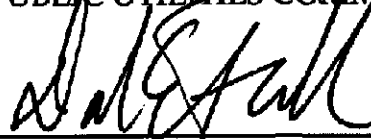
ORDERED, That the complainant file by no later than February 8, 2011, a clear and concise statement of the facts underlying the complaint, including the service or services at issue. It is, further,

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Daniel E. Fullin  
Attorney Examiner

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/dah

Entered in the Journal

JAN 24 2011



Renee J. Jenkins  
Secretary