

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Ella Mae Bowman,)	
)	
Complainant,)	
)	
v.)	Case No. 11-4785-TP-CSS
)	
Cavalier Telephone Company,)	
)	
Respondent.)	

ENTRY

The Commission finds:

- (1) On August 16, 2011, the complainant, Ella Mae Bowman, filed a complaint against the respondent, Cavalier Telephone Company (Cavalier). The complainant alleges that she receives only one service from Cavalier, namely digital subscriber line (DSL) Internet service. She further alleges that she receives residential local exchange service at her home, not from Cavalier, but rather from another carrier whom she names in the complaint. She indicates that, for 40 years, the local exchange service telephone number serving her home, along with her address and her name, has remained unpublished in the white pages telephone book and, further, that she has paid for such unlisted telephone service. Next, she claims that her name, address, and DSL telephone number¹ were listed in the white pages directory that was issued for the period covering April 2009 through April 2012. The complainant further alleges that, in a letter which she has attached to the complaint, Cavalier indicated both that it "will issue you a three (3) month courtesy credit for the directory listing error," and that the total amount of such credit would equate to \$150.00. In the complaint, Ms. Bowman requests from Cavalier a credit for each of the 36

¹ In her complaint, Ms. Bowman refers to the number listed as a "dummy line computer number," but Cavalier, in its answer, admits that the listed number is the DSL telephone number associated with Ms. Bowman's customer account with Cavalier. Cavalier also admits both that Ms. Bowman's DSL account with Cavalier is password protected, and that Ms. Bowman has "opted-out from allowing Cavalier or its affiliates to use proprietary account information to market additional services to her."

months that her name and address has appeared or will appear in the telephone book. In addition, the complaint sets forth a request that the Commission conduct a full investigation of this matter.

- (2) On September 2, 2011, the respondent filed its answer to the complaint. In its answer, Cavalier admits both that Ms. Bowman has DSL service with Cavalier, and also that Ms. Bowman's name, address, and DSL telephone number were published in the white pages directory. Further, it admits that it offered Ms. Bowman a three-month courtesy credit. Cavalier asserts that it has breached no legal duty or contractual obligation owed to the complainant, but rather has acted, at all pertinent times, in accordance with its tariff, all applicable statutes, and all rules, regulations, and orders of the Commission.
- (3) On September 6, 2011, the respondent filed a motion to dismiss the complaint. Cavalier asserts, among other things, both that the complaint should be dismissed because the Commission lacks subject matter jurisdiction over the complaint, and also that the complainant lacks standing to bring this complaint because her complaint presents no justiciable controversy. The complaint, says the respondent, fails to state reasonable grounds upon which to establish that Cavalier has in any way provided unreasonable, unjust, unlawful, or insufficient service.
- (4) The Federal Communications Commission (FCC) 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.²
- (5) The inferred claim underlying this complaint case is that the respondent has breached the complainant's privacy, given that her name, address, and a number solely associated with

² 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). A complaint about DSL would need to be filed at the FCC. To the extent that Ms. Bowman wishes to pursue a complaint regarding DSL service, assistance on this topic is available at the FCC web page found at <http://esupport.fcc.gov/complaints.htm?sid=d1e571&id=d1e617> or by calling toll-free 1-888-CALL-FCC (1-888-225-5322).

Cavalier's provision of DSL service to the complainant, has been published in a white pages telephone book. On an even more basic level, however, it is clear that any and all legal obligations that the respondent has with regard to the complainant, including any obligations it has with regard to her privacy, arise and result from the service provider/customer relationship that exists between the two parties to this case.


- (6) The complaint alleges, and the respondent admits, that DSL service is the only service the complainant receives from the respondent. Thus, all obligations, legal or contractual, that exist between the parties to this case ultimately derive from the respondent's provision to the complainant of an information service over which this Commission has no jurisdiction, namely DSL service. For this reason, the Commission concludes, upon review of the record as a whole, that this case should be dismissed for failure of the complaint to state reasonable grounds for complaint on a subject matter over which the Commission has jurisdiction.


It is, therefore,

ORDERED, That in accordance with the above findings, the complaint is dismissed and this case closed of record. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

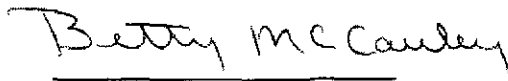

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DEF/dah

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Betty McCauley
Secretary