

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Covista	)	
Communications, Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 12-2574-TP-CSS
	)	
Victory Telecom, Inc. and Xtension Services,	)	
Inc.	)	
	)	
Respondent.	)	

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**XTENSION SERVICES, INC.'S MOTION TO STRIKE  
COVISTA COMMUNICATIONS, INC.'S MEMORANDUM IN OPPOSITION  
TO XTENSION SERVICES, INC.'S MOTION TO DISMISS COMPLAINT**

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Respondent Xtension Services, Inc. ("Xtension") hereby moves to strike Covista Communications, Inc.'s Memorandum in Opposition to Xtension Services, Inc.'s Motion to Dismiss Complaint ("Memo in Opposition") filed on January 30, 2013. The basis for this Motion, simply put, is that the Memo in Opposition was filed out of time.

Respectfully submitted on behalf of,  
XTENSION SERVICES, INC.



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	)	
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**MEMORANDUM IN SUPPORT**

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On November 9, 2012, Xtension filed a Motion to Dismiss (“Motion”) Covista’s complaint because the Commission lacks jurisdiction, and because Covista failed to set forth reasonable grounds in its Complaint. Ohio Administrative Code (“OAC”) Rule 4901-1-12(B)(1) specifically states:

Any party may file a memorandum Opposition within fifteen days after the service of a motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires.

Covista’s Memo in Opposition should be stricken because it was not timely filed pursuant to OAC Rule 4901-1-12(B)(1); and because Covista failed to show good cause as to why it should be permitted to file a late response to Xtension’s Motion. First, Covista’s Memo in Opposition was filed eighty (80) calendar days (almost three months after it was due) which is late. According to the OAC Rule 4901-1-12(B)(2) the Memo in Opposition was due on or before November 26, 2012. The Commission’s procedural rules apply to all parties and all

pleadings filed in this proceeding. Second, Covista offered no explanation as to why it could not comply with the Commission's rules that required the Memo in Opposition to be filed fifteen (15) days from the date the Motion was filed. Thus, there is no good cause shown for why the Commission should accept and consider Covista's Memo in Opposition.

The Commission has granted motions to strike where the memorandum contra was not timely filed. See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case No. 11-346-EL-SSO; Case No. 11-348-EL-SSO; Case No. 11-349-EL-AAM; Case No. 11-350-EL-AAM (Opinion and Order dated August 8, 2012) at p. 27.

**WHEREFORE**, Covista's Memo in Opposition must be stricken because it was untimely filed, and because Covista failed to show good cause why the Commission should accept and consider its Memo in Opposition. Furthermore, Xtension reiterates its request that Covista's Complaint be dismissed for the reasons set forth in Motion to Dismiss filed November 7, 2012.

Respectfully submitted on behalf of,  
XTENSION SERVICES, INC.



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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the forgoing Motion to Strike has been served upon the following parties listed below by electronic mail and/or regular U.S. mail, postage prepaid, this 31<sup>st</sup> day of January 2013.



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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/31/2013 4:37:22 PM**

**in**

**Case No(s). 12-2574-TP-CSS**

Summary: Motion to Strike Covista Communications, Inc.'s Memorandum In Opposition To Xtension Services, Inc.'S Motion To Dismiss Complaint electronically filed by Teresa OrahooD on behalf of Xtension Services, Inc.