

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

5 B's , Inc.)	
)	
Complainant,)	
)	
v.)	Case No. 13-0544-TP-CSS
)	
The Ohio Bell Telephone Company d/b/a AT&T Ohio,)	
)	
Respondent.)	

AT&T OHIO'S REPLY

In attempting to oppose AT&T Ohio's motion to dismiss, the Complainant has missed the essential point of that motion - - that the Commission has no jurisdiction over the service that the Complaint is about. As stated previously, the Complaint involves a contract for AT&T Managed Internet Service provided by AT&T Corp. And, again, Managed Internet Service, whether provided by AT&T Corp. or any other vendor, is ***not*** a telecommunications service that is subject to this Commission's jurisdiction.

Ignoring this fatal flaw in its Complaint, the Complainant relies on the general policy statements in R. C. § 4927.02, language in R. C. §§ 4927.06, 4927.17, and several other provisions of law to establish a jurisdictional basis for its Complaint. Memorandum Contra, pp. 3, 4-5. In each case, its reliance is misplaced. The policy statement in R. C. § 4927.02 cannot expand the Commission's authority beyond "telecommunications service." *See*, R. C. §

4927.03(D)¹. R. C. § 4927.06 specifically refers to the “offering or provision of any telecommunications service.” Similarly, R. C. §§ 4927.02, 4927.06, 4927.17, and 4927.21, and the Commission’s implementing rules, all cited by Complainant, must each be read in the context of jurisdictional telecommunications service.

Nowhere in its opposition does the Complaint address or refute the claim that AT&T Managed Internet Service is *not* a telecommunications service within the meaning of all of these provisions. Complainant stretches credulity when it claims that, as a “telecommunications provider,” AT&T Ohio (or any of its affiliates) is subject to the Commission’s jurisdiction for “behavior” that is unrelated to a jurisdictional telecommunications service. Memorandum Contra, p. 5. This would expand the Commission’s jurisdiction beyond what existed even before the current, limiting, statutes were enacted. Moreover, if this were true, all the traffic accidents in which AT&T vehicles are involved would be brought within the Commission’s jurisdiction. Because the service in question, AT&T Managed Internet Service, is *not* a telecommunications service (and, therefore, *not* a public utility service), the Commission has no authority to regulate it or to entertain and address this Complaint concerning it.

¹ “Except as specifically authorized in sections 4927.01 to 4927.21 of the Revised Code, the commission has no authority over the quality of service and the service rates, terms, and conditions of *telecommunications service* provided to end users by a telephone company.” (emphasis added)

AT&T Managed Internet Service is an interstate information service over which this Commission has no jurisdiction. It provides high speed dedicated internet access.² With its high speed dedicated internet access attribute, AT&T Managed Internet Service is a distant cousin of Digital Subscriber Line (“DSL”) service, which the Commission has addressed in the jurisdictional context several times before.

DSL is a service which both this Commission and the Federal Communications Commission (“FCC”) have held is subject to the FCC’s exclusive jurisdiction because DSL has been found to be an interstate information service. Since 2005, the FCC has consistently ruled that DSL is an interstate information service that is not subject to state commission jurisdiction. It has stated as follows:

First, we find that we have subject matter jurisdiction over providers of broadband Internet access services. These services are unquestionably “wire communication” as defined in section 3(52) because they transmit signals by wire or cable, or they are “radio communication” as defined in section 3(33) if they transmit signals by radio. The Act gives the Commission subject matter jurisdiction over “all interstate and foreign communications by wire or radio . . . and . . . all persons engaged within the United States in such communication” in section 2(a). Second, with regard to consumer protection obligations, we find that regulations would be “reasonably ancillary” to the

² AT&T’s product description follows:

Fast. Reliable. Affordable.

Reliable, dedicated, high-speed internet connections for your business.

AT&T Managed Internet Service provides high speed dedicated Internet access. This is a managed service with state-of-the-art hardware and software, smart routing capability, and continuous performance monitoring of your IP services. We maintain the communications link between your business and the AT&T network to provide you dedicated Internet access 24 hours a day, 7 days a week.

With MIS, you get the reliability, security, quality, and performance you need to conduct business over the Internet, so you can stop worrying about your Internet connection and focus your resources on business.

<http://www.att.com/smallbusiness/internet/internet.jsp?prodType=mis>

Commission's responsibility to implement sections 222 (customer privacy), 255 (disability access), and 258 (slamming and truth-in-billing), among other provisions, of the Act. Similarly, network reliability, emergency preparedness, national security, and law enforcement requirements would each be reasonably ancillary to the Commission's obligation to make available "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communication."³

At footnote 333 of the same order, the FCC stated:

Similarly, in its GTE DSL Order, the Commission found that GTE's asynchronous DSL (ADSL) service offering was interstate and appropriately tariffed with the Commission. GTE Telephone Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148, 13 FCC Rcd 22466, para. 1 (1998) (GTE DSL Order), recon., 17 FCC Rcd 27409 (1999) (GTE DSL Reconsideration Order).

Id., footnote 333.

This Commission has, consistently and on numerous occasions, adopted and followed the guidance provided by the FCC. In *Don Damyanic v. Verizon North Inc.*, PUCO Case No. 06-270-TP-CSS, the Commission concluded as follows:

Verizon's motion to dismiss should be granted. The Federal Communications Commission has deemed retail DSL service offered by Verizon Online to be an information service. Therefore, Mr. Damyanic's complaint should be pursued at the federal level. Thus, this matter should be dismissed and closed of record.

Entry, April 10, 2006, p 3.

In *Louis Green & Associates v. AT&T Ohio*, Case No. 07-108-TP-CSS, the Commission found that the FCC had asserted exclusive jurisdiction over DSL service. Entry, April 7, 2007. It reiterated that finding in its Entry adopted August 1, 2007, citing its earlier

³ In the *Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order and Notice of Proposed Rulemaking*, FCC 05-150, Released September 23, 2005, para. 110 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-150A1.pdf).

Entry for the proposition that it “determined that high speed Internet service is an interstate service subject to the exclusive jurisdiction of the Federal Communications Commission (FCC).”

Following these precedents, in *Barbara Gadstka v. AT&T Ohio*, Case No. 08-1128-TP-CSS, the Attorney Examiner concluded that “[t]he 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.” Entry, November 17, 2008, pp. 1-2 (footnote omitted). Most recently, the Commission followed these precedents and dismissed the complaint entitled *Mark Drake v. AT&T Ohio*, Case No. 10-411-TP-CSS (Entry, June 22, 2011).

The same logic, legal principles, and precedents apply to AT&T Managed Internet Service in this case. It is simply not a service that is subject to this Commission’s jurisdiction.

For all of the foregoing reasons, the Complaint should be dismissed.

Respectfully submitted,

AT&T Ohio

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13-544.reply

Certificate of Service

I hereby certify that a copy of the foregoing has been served this 11th day of April, 2013 by e-mail on the parties shown below.

/s/ Jon F. Kelly

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/11/2013 9:36:36 AM

in

Case No(s). 13-0544-TP-CSS

Summary: Reply electronically filed by Jon F Kelly on behalf of AT&T Ohio