

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Yvonne Irvine,)	
)	
Complainant,)	
)	
v.)	Case No. 14-1475-TP-CSS
)	
AT&T Ohio,)	
)	
Respondent.)	

AT&T OHIO'S MOTION TO DISMISS

AT&T Ohio¹, Respondent herein, pursuant to Ohio Admin. Code §4901-1-12, moves to dismiss the Complaint to the extent it seeks relief concerning broadband service or inside wire maintenance service because those are matters over which the Commission lacks subject matter jurisdiction. A memorandum in support of this motion is attached.

Respectfully submitted,

AT&T Ohio

By: /s/ Jon F. Kelly

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¹ The Ohio Bell Telephone Company is a public utility in Ohio and provides certain Commission-regulated services and other non-regulated services. The Complainant used the name "AT&T" in his complaint. The Ohio Bell Telephone Company uses the name AT&T Ohio, which is used in this pleading.

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

1. Introduction

The Complaint in the captioned case should be dismissed because it appears to seek relief concerning broadband service or inside wire maintenance service, or both, and those are matters over which the Commission lacks subject matter jurisdiction. The formal complaint references “Broad Band” but an informal complaint previously handled by the Commission’s Staff dealt only with the inside wire maintenance plan known as Linebacker (Case ID YIRV050114ZX).

2. Broadband Service Issues Are Beyond This Commission's Jurisdiction

To the extent the Complaint seeks to have the Commission exercise jurisdiction over broadband service, that is a matter as to which both this Commission and the Federal Communications Commission ("FCC") have held are subject to the FCC's exclusive jurisdiction. Digital Subscriber Line (“DSL”) service has been found to be an interstate information service. Similarly, internet service, by its very nature, is an interstate service. The precedents require that this Complaint be dismissed and that Complainant must, if he seeks to pursue relief, do so at the FCC.

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 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.”

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-](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-150A1.pdf)

[150A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-150A1.pdf)). 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 tarified 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 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). 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) and the DSL-related aspects of the complaint entitled *Chad Kister v. AT&T Ohio*. Case No. 11-3467-TP-CSS (Entry, February 29, 2012).

3. Inside Wire Maintenance Service Is Beyond This Commission's Jurisdiction

While certain aspects of inside wire maintenance service were subject to the Commission's jurisdiction for many years, that changed in 2010 with the passage of Am. Sub. S. B. 162. That Act limited the Commission's jurisdiction in several areas and precluded it in

others. R. C. § 4927.03 provides in pertinent part, that “(e)xcept 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.” Inside wire maintenance plans and the rates, terms, and conditions under which they are offered are not identified in Chapter 4927 as matters within the Commission’s jurisdiction. In fact, these plans do not qualify as “telecommunications service” under the applicable federal or state definitions. *See*, 47 USC § 153(43) and R. C. § 4927.01(A)(10). The Commission therefore has no authority over them and cannot entertain a complaint concerning them.

4. Conclusion

For all of the foregoing reasons, because the captioned complaint appears to relate to broadband service or inside wire maintenance service, or both, it should be dismissed as beyond the Commission's jurisdiction.

Respectfully submitted,

AT&T Ohio

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Certificate of Service

I hereby certify that a copy of the foregoing has been served this 15th day of
September, 2014 by first class mail, postage prepaid, on the party shown below.

/s/ Jon F. Kelly

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Commission of Ohio Docketing Information System on

9/15/2014 8:48:06 AM

in

Case No(s). 14-1475-TP-CSS

Summary: Motion to dismiss and memorandum in support electronically filed by Jon F Kelly
on behalf of AT&T Ohio