

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Eversole Builders, Inc.)	
)	
v.)	Case No. 18-1512-TP-CSS
)	
The Ohio Bell Telephone Company d/b/a AT&T Ohio)	

AT&T OHIO’S MOTION TO DISMISS

The Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”) respectfully moves to dismiss the Complaint filed by Eversole Builders, Inc. (“Complainant”) on October 4, 2018. The grounds for the Motion to Dismiss are set forth in the attached Memorandum in Support.

Dated: October 31, 2018

Respectfully Submitted,

AT&T Ohio

/s/ Mark R. Ortlieb
Mark R. Ortlieb (0094118)
AT&T Ohio
225 West Randolph, Floor 25D
Chicago, IL 60606
(312) 727-6705
mo2753@att.com

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Eversole Builders, Inc.)	
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v.)	Case No. 18-1512-TP-CSS
)	
The Ohio Bell Telephone Company d/b/a AT&T Ohio)	

MEMORANDUM IN SUPPORT OF AT&T OHIO’S MOTION TO DISMISS

I. FACTUAL BACKGROUND

This case involves Eversole Builders, Inc.’s (“Eversole”) request to be excused from paying a bill for engineering services that it ordered from AT&T Ohio. The engineering services were ordered in connection with a construction project at 2263 West Fair Avenue in Lancaster, Ohio.

According to the Complaint, Eversole was engaged in a construction project in Lancaster in 2014. On October 29, 2014, it signed an agreement with AT&T Ohio that directed AT&T Ohio to perform the engineering work necessary to develop a cost estimate for relocating two equipment pedestals on the subject property sixty (60) feet to the rear of the property. *Complaint* at 2; *Authorization to Prepare Quote* (attached to Complaint) at 1. Eversole paid the required \$500 deposit to get the work started and agreed to pay for the “actual engineering time required to develop the cost estimate.” *Authorization to Prepare Quote* at 2. AT&T Ohio developed the cost estimate, as requested, and billed Eversole an additional \$2,891.39 in engineering costs. See Exhibit 1. Eversole alleges that it should not have to pay anything over the \$500 it already paid because the amount charged to prepare the cost estimate was “excessive.”

Eversole is an “active” status Ohio corporation listed on the website of the Ohio Secretary of State.

II. EVERSOLE IS A CORPORATION THAT MUST BE REPRESENTED BY AN ATTORNEY IN THIS MATTER

The Commission's Rules of Practice and Procedure require a corporation such as Eversole to be represented by an attorney-at-law authorized to practice before the courts of Ohio. Ohio Admin. Code 4901-1-08(A). Eversole is not represented by an attorney-at-law and therefore cannot prosecute this case under the Commission's rules. AT&T Ohio requests that the Commission enter an order directing Eversole to obtain representation from an attorney authorized to practice before the Commission within 30 days. If Eversole does not obtain legal representation within that time period, the case should be dismissed.

AT&T Ohio acknowledges that subsection (D) of Rule 4901-1-08 does not require an attorney at a prehearing conference scheduled to discuss settlement. But, there are several other activities in this case that must be addressed by legal counsel – such as responding to motions and discovery – that do not fall within the very limited scope of subsection (D).

III. THERE ARE NO REASONABLE GROUNDS FOR THE COMPLAINT

Under R.C. 4927.21(B), a complaint that fails to set forth reasonable grounds must be dismissed. The mere act of filing a complaint does not automatically trigger a hearing before the Commission. Rather, “[r]easonable grounds for the complaint must exist before the Public Utilities Commission, either upon its own initiative or upon the complaint of another party, can order a hearing, pursuant to R.C. 4905.26 . . .” *Ohio Util. v. Pub. Util. Com’n* (1979), 58 Ohio St.2d, 153, paragraph 2 of the syllabus. The reasonable grounds standard, based in R.C. 4905.26, applies equally to a complaint against a telephone company filed under R.C. 4927.21(B) as it contains the same “reasonable grounds” standard.

In this case, Eversole alleges that AT&T Ohio's engineering charges of \$3,391.39 (\$500 + \$2,891.39) are excessive. Eversole does not deny that it ordered the engineering services from

AT&T Ohio, or that AT&T Ohio performed those services. Eversole's only claim is that the AT&T Ohio's engineering charges should have been lower because moving the two pedestals was a "small job." *Complaint* at 3. Yet Eversole concedes in the Complaint that there were two pedestals, that the pedestals served at least 50 cable pair, and that they were to be moved at least 60 feet to the rear of the property. Given the scope of this work, AT&T Ohio's charge of \$3,3391.39 is well within the realm of reason and the Complaint does not withstand the "reasonable grounds" test. There are no reasonable grounds for this Complaint to be heard before the Commission and it should be dismissed.

The case of *Gallucci v. Ameritech Ohio* supports this request.¹ There, a contractor filed a Commission complaint against AT&T Ohio (then known as Ameritech Ohio), claiming that AT&T Ohio should have moved its facilities to a new pole at no charge so that the contractor could build a new home on the lot. The Commission found that AT&T Ohio was entitled to be compensated for the work it performed in developing the cost estimate to perform the relocation work:

The Commission finds Ameritech's policy to require the customer to agree to pay the design engineer fee to develop a detailed estimate for a project to be performed at the customer's request to be just and reasonable. We find the design engineer fee (\$300-\$700) to be similar to the diagnostic fee for automotive services or the base charge for plumbing or electrical services. The customer who requests such services is required to compensate the company for the time the service provider must spend to provide the customer with the additional information necessary to evaluate completing the requested project.

Gallucci at 6. The same is true in this situation. At Eversole's request, AT&T Ohio devoted engineering resources to evaluate and cost-out the work required to re-locate its network facilities. The total bill for that work is \$3,391.39 – not an unreasonable amount for the work required. Eversole has paid \$500 of that amount and does not want to pay more, but it has failed

¹ *In the Matter of the Complaint of James Gallucci and Cheryl-Hill Gallucci v. Ameritech Ohio*, Case No. 01-3122-TP-CSS, Opinion and Order, November 7, 2002. A copy of this Order is attached as Exhibit 2.

to articulate any basis for its assertion that the AT&T Ohio charges are “excessive.” The Complaint provides no concrete or substantial information or allegations that would support a finding that AT&T Ohio’s charges are excessive, and as such does not present reasonable grounds for the relief requested. Therefore, it should be dismissed.

For all the reasons set forth above, AT&T Ohio respectfully requests that the Complaint be dismissed.

Dated: October 31, 2018

Respectfully Submitted,

AT&T Ohio

/s/ Mark R. Ortlieb

Mark R. Ortlieb (0094118)

AT&T Ohio

225 West Randolph, Floor 25D

Chicago, IL 60606

(312) 727-6705

mo2753@att.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this 31st day of October 2018 by U.S. Mail and/or electronic mail on the parties shown below.

/s/ Mark R. Ortlieb

Mark R. Ortlieb

Steve Eversole
Eversole Builders, Inc.
2495 Election House Road
Lancaster, OH 43130
Steve@EversoleBuilders.com



EVERSOLE BUILDERS
2495 ELECTION HOUSE RD.
LANCASTER OH 43130

Page 1 of 2
Account Number 636 15Z-1106 205 6
Billing Date Jul 30, 2015
Web Site att.com

EXHIBIT 1

Bill-At-A-Glance

Previous Bill	.00
Payment	.00
Adjustments	.00
Balance	.00
Current Charges	2,891.39
Total Amount Due	\$2,891.39
Amount Due in Full By	Aug 25, 2015
FINAL BILL	

Billing Summary

Online: att.com / myatt	Page
Plans and Services	1
Payment Arrangements:	
1 888 827-3237	
Total Current Charges	2,891.39

Plans and Services

Additions and Changes to Service

This section of your bill reflects charges and credits resulting from account activity.

Item No.	Description	Quantity	Monthly Rate	Amount Billed
Activity on Jul 27, 2015				
1.	CONTACT: STEVE EVERSOLE 740-654-2855 BILLING THROUGH JUN 2015 PROJECT: A001NL8	1		.00
2.	12/12/14 JS-\$500 ENGINEERING FEE RECEIVED CHECK#46317 6/19/15 JS-CANCELLED WITH ENGINEERING CHARGES ONLY. QUOTE SENT, CUSTOMER NEVER RESPONDED.	1		3,391.39
3.	CR#177609 PROJECT#A001NL8	1		.00
4.	PREPAYMENT	1		500.00CR
Total Additions and Changes to Service				2,891.39

Taxes

5.	Federal	.00
6.	State and Local	.00
Total Taxes		.00

Total Plans and Services 2,891.39

News You Can Use

RATE NOTICE

The monthly rate will increase for the following Directory Listing products on 8/1/2015: Non-Published from \$4.75 to \$5.50. For more information, please visit us online at att.com or call the toll-free number on listed your bill.

RATE INCREASE

The Federal Universal Service Fee (support telecommunication needs of low-income households, consumers living in high-cost areas, schools, libraries and rural hospitals), and the Federal Subscriber Line Charge increased on 7/1/2015. Your current bill reflects the change. For more information, please contact an AT&T Service Representative at the phone number listed on the front of your bill.

News You Can Use Summary

- RATE NOTICE
 - RATE INCREASE
 - COLLECTION POLICY
- See "News You Can Use" for additional information

Local Services provided by AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, or AT&T Texas based upon the service address location.

GO GREEN - Enroll in paperless billing.

Return bottom portion with your check in the enclosed envelope.

Total Amount **DUE**
BY Aug 25, 2015 **\$2,891.39**



Billing Date Jul 30, 2015

Account Number **636 15Z-1106 205 6**
Please include your account number on your check

EVERSOLE BUILDERS
2495 ELECTION HOUSE RD.
LANCASTER OH 43130

Make check payable to:
AT&T
PO BOX 5001
CAROL STREAM IL 60197-5001

9750 63615Z11062056 3000000000000 177110000000000000000289139



EVERSOLE BUILDERS
2495 ELECTION HOUSE RD.
LANCASTER OH 43130

Page 2 of 2
Account Number 636 15Z-1106 205 6
Billing Date Jul 30, 2015

EXHIBIT 1

News You Can Use

COLLECTION POLICY

Effective 9/22/2009, if your final balance remains unpaid after the DUE BY date, it may become necessary to send your account for further collection activity. You may be held responsible for fees associated with the collection efforts, including outside collection agency fees and attorney's fees, as permitted by law. If you have any questions, please contact us at the toll-free number on your bill. AT&T appreciates your business and we look forward to doing business with you in the future.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
James Gallucci and Cheryl Hill-Gallucci,)	
)	
Complainants,)	
)	Case No. 01-3122-TP-CSS
v.)	
)	
Ameritech Ohio,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the complaint filed by James and Cheryl Gallucci, the evidence of record in this matter, and having determined that this case should proceed to Opinion and Order, hereby issues it Opinion and Order.

APPEARANCES:

James P. Gallucci, 8070 Mitchell-Dewitt Road, Plain City, Ohio 43064, on his own behalf.

Jon F. Kelly, 150 East Gay Street, Columbus, Ohio 43215, on behalf of Ameritech Ohio.

OPINION:I. History of the Proceedings:

On December 3, 2001, James Gallucci and Cheryl Hill-Gallucci (complainants) filed a complaint with the Commission against Ameritech Ohio (Ameritech, respondent). The complaint asserts that in May or June 2001, the Galluccis contacted Ameritech about moving the telephone equipment and facilities from one pole to a new pole on the complainants' property. In the complaint, the Galluccis contend that Ameritech personnel stated there would be no charge to relocate the facilities to a new pole. Further, the complaint alleges that Ameritech subsequently made a visit to the site and, thereafter, informed the complainants that the charge to move the facilities to a new pole would be \$22,000.00. The complainants claim Ameritech provided them with inadequate service and Ameritech's business practices are unjust and unreasonable.

Ameritech filed its answer on December 21, 2002. Ameritech admits that the complainants contacted Ameritech concerning the movement of telephone facilities from one pole to another pole on the complainants' property. However, Ameritech denies, among other things, that any Ameritech representative told the complainants that the relocation of the facilities would be free of charge. Ameritech also denies the remaining

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allegations set forth in the complaint. Ameritech avers that its tariff requires a customer to pay the charges associated with such services.

By entry issued January 8, 2002, this matter was scheduled for a settlement conference on January 30, 2002. The conference was held as scheduled but the parties were unable to resolve the dispute informally. The parties did, however, agree that Ameritech would move their facilities to the new pole to allow construction of a home to commence on the property and let the Commission determine who is responsible for the cost of the project. By entry issued February 25, 2002, this matter was scheduled for hearing on March 26, 2002, at the offices of the Commission.

II. Hearing:

At the hearing, Mr. Gallucci presented testimony on his own behalf. Mr. Gallucci testified that he has built homes since 1988 and has completed approximately 30 homes. Mr. Gallucci stated that he and his wife purchased the property at 2222 Wickliffe in Upper Arlington, Ohio in March or April 2001 and considered construction on the property prior to the purchase. Mr. Gallucci is also the general contractor of the home under construction on the property at issue in this complaint. The witness also stated that he had discussed obtaining utility services with Ameritech, American Electric Power Company (AEP) and Warner Cable immediately after purchasing the property. The complainant testified that he had also obtained the necessary variances to construct the home from the City of Upper Arlington.

Further, James Gallucci testified that he initially contacted Ameritech about relocating their facilities to a new pole on the property in June or July 2001. The complainant stated that the pole was actually the property of AEP. According to Mr. Gallucci, he spoke with Jim Masters, an Ameritech representative in Wisconsin. Mr. Gallucci recalled he and Mr. Masters discussing Ameritech personnel coming out to visually inspect the pole and facilities. The complainant states that there were at least three or four conversations, between he and Mr. Masters to discuss various aspects of moving the telephone facilities and equipment before the new pole was installed. However, according to the complainant, no charge for relocating Ameritech's facilities was ever mentioned during the conversations (Tr. 12). Mr. Gallucci testified that Mr. Masters gave him the impression that Ameritech's facilities consisted of only a few wires. Mr. Gallucci also recalled that after several conversations with Mr. Masters, he spoke with two other Ameritech representatives, Dan Long and another individual whose name he could not recall.

Mr. Gallucci stated that AEP installed the new pole in November 2001, just before Thanksgiving. Mr. Gallucci offered into evidence an invoice from AEP dated March 7, 2002 (Complainant Ex. 1). The complainant states that after AEP installed the new pole, he contacted Mr. Masters. Mr. Gallucci testified that Mr. Masters indicated that he would commence the process to relocate Ameritech's facilities. Mr. Gallucci also testified that he did not believe Ameritech had visually inspected the site before AEP installed the new pole. The complainant testified that shortly after the new pole was installed, Jim Masters left a message for him that the relocation of Ameritech's facilities involved more than just a few wires (Tr. 18-19). In a subsequent conversation with Dan Long or another Ameritech

representative, the complainant states that Ameritech suggested the cost to relocate their facilities would be approximately \$22,000. Mr. Gallucci stated that Ameritech's charge to relocate their facilities would have halted the plan to construct the home on the property. He further stated that construction of the home had not begun when Ameritech first informed him of the \$22,000 cost estimate (Tr. 19). Mr. Gallucci states that after learning of the charge to relocate Ameritech's facilities he began to negotiate with Ameritech to see if the charge could be reduced (Tr. 21). The witness states that after he left a few messages for Mr. Masters, weeks went by before Ameritech got back in touch with him. He stated that sometime in December, Ameritech called him with a revised fee to relocate their facilities to the new pole, \$12,000. Mr. Gallucci testified that even the additional \$12,000 expense would have substantially decreased his profit margin on the home (Tr. 21).

Further, Mr. Gallucci testified that Ameritech began construction to move their facilities the week of March 18, 2002. Mr. Gallucci stated that after the settlement conference, he and Mr. Kelly, counsel for Ameritech, spoke about scheduling for Ameritech to move their facilities. Mr. Gallucci asserts that he informed Mr. Kelly that he would schedule the equipment and personnel necessary to dig the basement four to five weeks from the date of their conversation. Mr. Gallucci believed that four to five weeks, would give Ameritech sufficient time to move their facilities and allow him to commence construction (Tr. 30-31). The witness further stated that someone had indicated that it would take Ameritech approximately four days to relocate their facilities (Tr. 31).

On cross-examination, Mr. Gallucci admitted he was not exactly sure when Ameritech began construction to relocate their facilities (Tr. 31-33). Upon observing a report from the Franklin County Auditor's Office, Mr. Gallucci recalled that the property at issue was purchased December 21, 2000 (Ameritech Ex. 1). Mr. Gallucci also stated that although Ameritech had completed 95 percent of the project, the ditch which Ameritech dug had not been backfilled and their construction equipment was still on the property (Tr. 34). Mr. Gallucci testified that out of all the homes he has built, this is the first time he was required to relocate a utility pole. The complainant also acknowledged that the first written estimate received from Ameritech was dated January 24, 2002 for \$9,987.09, prior to the settlement conference (Ameritech Ex. 2). Mr. Gallucci also acknowledged that he returned the estimated cost and authorization for special construction form to Ameritech on February 20, 2002 and had not been billed by Ameritech for the project (Ameritech Ex. 4, Tr. 47-48). The witness further acknowledged that he had made no payment to Ameritech for the relocation of their facilities (Tr. 46). The witness further acknowledged that Exhibit 4, which was transmitted to him on January 24, 2002, included a tentative construction completion date of March 15th. Mr. Gallucci testified that he had to once again reschedule construction personnel and equipment to dig the basement (Tr. 34). Mr. Gallucci stated that he did not recall being offered \$300-\$700 fee for design engineering charges to obtain a more detailed estimate of the project (Tr. 118-119). Further, Mr. Gallucci admitted that no one at Ameritech had specifically stated there would not be a charge to relocate their facilities (Tr. 40-41).

Ameritech offered the testimony of two witnesses: George Hess and Dan Long. George Hess, Area Manager for the Customer Growth Group, testified that the Customer Growth Group facilitates the billing for special construction projects within Ameritech's five-state region. The complainant worked with Jim Masters. Mr. Hess is Jim Master's

supervisor.¹ The witness testified that the first contact that he was aware of between the complainant and Mr. Masters was in late August 2001. Mr. Hess testified to Ameritech's policies and procedures when someone requests that Ameritech's facilities be relocated or other special construction. Mr. Hess testified that it is Ameritech's policy to charge the person requesting the relocation of their facilities and equipment. He stated that when the client contacts the company to have facilities relocated, Ameritech personnel explains to the client that there are engineering charges, between \$300 and \$700, for developing a cost estimate (hereinafter referred to as the design engineer fee) to determine the charges associated with moving the facilities or other special construction project. According to Mr. Hess, once the customer agrees to the design engineer fee, the Customer Growth Group assigns and notifies the appropriate design engineer. The design engineer goes out to the project site and develops a detailed cost estimate to relocate the facilities (Tr. 59-59).

Further, Mr. Hess testified that when Mr. Gallucci contacted Ameritech in August 2001, Mr. Gallucci indicated to Mr. Masters that the complainant thought there would be no charge associated with the project. Subsequently, Mr. Masters informally requested that a design engineer visually inspect the facilities. In mid-September, according to Mr. Hess, the design engineer informed Mr. Masters that the estimated cost of relocating Ameritech's facilities could be \$15,000 to \$20,000 since there were major facilities involved (Tr. 60). Mr. Hess states that Jim Masters explained that the more detailed estimate produced by the design engineer could not be obtained without the customer agreeing to the design engineer fee. The witness believed there were several conversations between the complainant, Mr. Masters and the design engineer to determine if there was a way to lower the \$15,000-\$20,000 estimated cost to move Ameritech's facilities.

Mr. Hess also testified that Jim Masters opened a customer request and issued the necessary paperwork to have a detailed cost estimate developed for the project by a design engineer on January 14, 2002. The witness stated the design engineer's cost report was received by the Customer Growth Group on January 24, 2002 and forwarded to Mr. Gallucci that same day (Ameritech Ex. 2, Tr. 61-62, 64). The cost for the project was estimated by the design engineer at just under \$10,000. Mr. Hess stated that once the authorization was returned to Ameritech on February 20, 2002, the job was turned over to the design engineer and to the appropriate field personnel for construction. Mr. Hess further testified that between January 24, 2002 and February 20, 2002, discussions were had that Ameritech would agree to relocate their facilities and the parties would work out the payment arrangement later. According to Mr. Hess, special construction requests are put into the field staff's work schedule depending on weather conditions, the number of repair work requests and the reestablishment of service in the event of outages (Tr. 63).

On cross-examination, Mr. Hess stated that Mr. Gallucci implied that if the cost to relocate Ameritech's facilities was \$15,000 to \$20,000 it was not profitable or feasible for him to construct a home on the property as planned. Mr. Hess also admitted that it was not documented that Mr. Masters informed Mr. Gallucci about the \$300 to \$700 design engineer fee to develop the detailed cost estimate for the project (Tr. 80-87).

¹ Mr. Masters had just returned to work due to a serious illness. According to Mr. Hess, Mr. Masters is only working a half-day two times per week and, therefore, could not be present at the hearing.

Ameritech also offered the testimony of Dan Long, an Ameritech Design Engineer. Mr. Long testified that he works with six field employees to design jobs to install facilities and inspect facilities for customers, among other duties. The witness further testified that based on business records developed and retained by his department, he was first contacted about this project on September 1, 2001 (Ameritech Ex. 11, Tr. 91-92, 107). The witness further stated that according to Ameritech records, the job commenced on March 18, 2002.

Mr. Long noted that according to Ameritech Exhibit 13, the location of the existing pole was approximately 12 feet from the new pole location (Tr. 101). Mr. Long also testified regarding the Ameritech facilities involved in this project. The witness testified that the cable attached to the pole is older cable (circa 1950s) which serves a large area and runs to a manhole. The witness stated that because the cable runs to a manhole, air pressure is constantly maintained on the cable to prevent leaks and damage to the lines (Tr. 98). Mr. Long stated that the relocation of these particular facilities is a complex project. More specifically, because the facility is underground and would be required to be relocated as an above ground facility, additional equipment would need to be installed, the conduit redirected and laterals relocated which increase the cost of the project (Tr. 100, 102-104).

Ameritech witness Long admitted talking to Mr. Gallucci about the cost of the project after Ameritech gave the complainant the verbal estimate of \$15,000-\$20,000. Mr. Long recalled that the conversations focused around the cost of the project and that the cost of the project was a "roadblock" to Mr. Gallucci's construction of a home on the property (Tr. 100-101). Mr. Long also testified that as of the morning of the hearing, the project was more than halfway completed.

On cross-examination, Mr. Long claimed that Ameritech learned that AEP had installed a new pole as a result of a field visit some time after September 14, 2001 (Tr. 114). Mr. Long testified that the first contact he received from the Customer Growth Group was on September 1, 2001 (Tr. 107). Further, Mr. Long admits that the detailed cost estimate was completed on January 24, 2002.

III. Discussion:

The complainant argues that Ameritech's business practices are unjust and unreasonable in association with the relocation of Ameritech's facilities on the property at 2222 Wickliffe. The Galluccis also contend that Ameritech has provided them with inadequate service.

Based on the evidence of record, the Commission finds that Ameritech acted reasonably in this case. Mr. Gallucci is an experienced builder and has constructed approximately 30 homes since 1988. Based on the complainant's own testimony he contacted Ameritech about the project in June or July 2001.² Mr. Gallucci does not dispute that he received a verbal estimate of the costs for the project in mid-September 2001 and

² Although, there is some discrepancy between the parties as to the date of the first conversation, the Commission will use the dates testified to by the complainant for its analysis of the complaint.

this fact is supported by the complaint. Further, the record is clear that Mr. Long and Mr. Gallucci subsequently had at least a few conversations in which they and other Ameritech personnel discussed the initial estimated costs of the project, \$15,000 to \$20,000, and ways to reduce the costs after mid-September 2001. Mr. Gallucci admits that an additional expense of \$15,000 to \$20,000 would jeopardize the construction of the home he planned to build on the property and he clearly communicated such to Mr. Masters and Mr. Long.

The Commission finds that Mr. Gallucci failed to meet the his burden of proof to substantiate that he was not timely offered or informed that he was required to pay the design engineer fee to obtain a detailed written estimate of the cost to relocate Ameritech's facilities to the new pole. Mr. Hess contends that it is Ameritech's policy to inform the customer of the design engineer fee and obtain the customers agreement to pay the fee before the project is sent to the design engineer. Mr. Gallucci testified that he was not informed by any Ameritech personnel that he needed to agree to pay the design engineer fee of between \$300 and \$700 to obtain a more detailed cost estimate of the project. The complainant also admitted that no one from Ameritech told him or indicated that the project would be free.

The Commission further notes that Ameritech's tariff specifically addresses special construction requests like the circumstances at hand. Ameritech's tariff provides:

Where rearrangement of any facilities provided by the Telephone Company on private property is made at the request of or to meet conditions imposed by the customer, the expense incurred by the Telephone Company for such rearrangement shall be borne by the customer.

(The Ohio Bell Telephone Company, P.U.C.O. No. 20, Part 2, Section 5, Original Sheet No. 2, effective October 2, 1995)

To determine whether Ameritech acted reasonably in this case, the Commission must find that it was appropriate for Ameritech not to provide Mr. Gallucci with a written estimate until he agreed to pay the design engineer fee. Ameritech witness Hess testified to Ameritech policy and the process for special construction requests. According to testimony offered at the hearing, Ameritech requires the customer to agree to pay the design engineer charges of \$300-\$700 before the design engineer will be directed by the Customer Growth Group to develop a detailed price estimate for the requested project. The customer is required to pay the fee even if the customer subsequently decides not to proceed with the requested project. The Commission finds Ameritech's policy to require the customer to agree to pay the design engineer fee to develop a detailed estimate for a project to be performed at the customer's request to be just and reasonable. We find the design engineer fee (\$300-\$700) to be similar to the diagnostic fee for automotive services or the base charge for plumbing or electrical services. The customer who requests such services is required to compensate the company for the time the service provider must spend to provide the customer with the additional information necessary to evaluate completing the requested project. There is no evidence in the record that Mr. Gallucci ever agreed to pay the design engineer fee. The Commission finds it reasonable for Ameritech to proceed with the development of the expense associated with a customer's project only after receiving an agreement to pay the design engineer fee. Accordingly, we find that

Ameritech acted reasonably under the circumstances of this case and, was not required to provide the complainants with a written, detailed cost estimate for the project until after the complainants agreed to pay the design engineer fee. Therefore, we conclude Ameritech provided the complainants with adequate service.

Furthermore, we note that Mr. Gallucci and counsel for Ameritech agreed that Ameritech would proceed with the relocation of its facilities and allow the Commission to determine which party is responsible for the cost of relocating Ameritech's facilities.

Mr. Gallucci admits that he requested that the facilities be relocated to allow him to construct a home on the property. Thus, we find based on our discussion above and the clear language of Ameritech's tariff that the complainants are responsible for the expenses associated with this project. More specifically, the complainants agreed to and are responsible for the \$9,987.09 project expense as detailed in Ameritech Exhibit 4.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The complaint was filed on December 3, 2001.
- (2) A settlement conference was held on January 30, 2002.
- (3) A hearing in this matter was held on March 26, 2002.
- (4) Ameritech is a telephone company as defined by Section 4905.03(A)(2), Revised Code, and a public utility by reason of Section 4905.02, Revised Code. Thus, Ameritech is subject to the jurisdiction of this Commission under the authority of Sections 4905.04 and 4905.05, Revised Code.
- (5) These proceedings are properly before this Commission, pursuant to the provisions of Section 4905.26, Revised Code.
- (6) In a complaint case, such as this one, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).
- (7) Based on the evidence presented, Ameritech's special construction process is just and reasonable.
- (8) Ameritech's business policies and practices in regards to the complainants' request to relocate Ameritech's facilities were just and reasonable.
- (9) Ameritech provided the complainants with adequate service under the circumstances of the complaint.

ORDER:

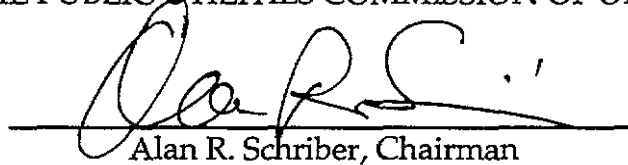
It is, therefore,

ORDERED, That the complaint be dismissed and this matter closed of record. It is, further,

ORDERED, That the complainants are responsible for the expenses associated with the relocation of Ameritech's facilities at 2222 Wickliffe, Columbus, Ohio. It is, further,

ORDERED, That a copy of this Order be served upon the Galluccis, Ameritech and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


Judith A. Jones


Donald L. Mason

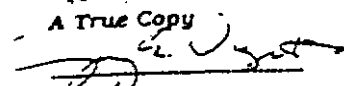

Clarence D. Rogers, Jr.

GNS/vrm

Entered in the Journal

NOV 7 2002

A True Copy


Gary E. Vigorito
Secretary

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in

Case No(s). 18-1512-TP-CSS

Summary: Motion AT&T OHIO'S MOTION TO DISMISS electronically filed by Mr. Mark R Ortlieb on behalf of AT&T Ohio and Ohio Bell Telephone Company