BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Louis A. Green & Associates,	)	
Complainant,	)	
v.	)	Case No. 07-108-TP-CSS
AT&T Ohio,	)	
Respondent.	)	

ENTRY

The Commission finds:

(1) On February 1, 2007, Louis A. Green & Associates (Green & Associates or complainant) filed a complaint against AT&T Ohio (AT&T). Green & Associates is a professional engineering, surveying, and land planning business. At the core of the complaint is Green & Associates' claim that AT&T does not provide sufficient time for payment. As a result, Green & Associates alleges that it is frequently threatened with termination of service.

Green & Associates explains that it receives AT&T's bill between the fifth and the seventh of the month. The due date is generally the eleventh, leaving as little as four days before the bill becomes past due. According to Green & Associates, a disconnection notice arrives the day after the bill arrives. By an agreement reached in Case No. 00-1837-TP-CSS, Green & Associates states that its due date has been moved forward from the eleventh of the month to the second day of the following month. Green & Associates contends that AT&T breached the agreement that has been in place for six years.

Green & Associates alleges that AT&T, owing to an error by an AT&T sales representative, disconnected Green & Associates' high speed Internet service, which it claims is vital to its business. Normal telephone service remained intact. Explaining the error, Green & Associates states that it subscribed to high speed Internet service in October 2006.

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According to Green & Associates, the order included router equipment at no charge, provided that Green & Associates complete the installation. Nevertheless, AT&T charged for the router and installation. After contacting the company, AT&T restored service. Green & Associates alleges that the service suspension jeopardized thousands of dollars in revenue. Moreover, Green & Associates states that it lost over $500 in productive time speaking with several of AT&T's account representatives in an effort to restore its high speed Internet service.

Green & Associates contests AT&T's billing and due date practices. To Green & Associates, AT&T's actions define an unfair business practice. For a remedy, Green & Associates seeks reimbursement for the time lost. In addition, Green & Associates requests an order from the Commission prohibiting AT&T from suspending service, provided that Green & Associates pay by the second day of the month following the receipt of the monthly statement. Furthermore, Green & Associates asks that disconnection notices be terminated and that the Commission issue regulations to prohibit what it describes as unfair business practices.

(2) AT&T filed an answer to the complaint on February 22, 2007. In its Answer, AT&T admits that it provides business telephone service to the complainant and that its affiliate provides high speed Internet service. AT&T also admits that it extended the complainant's billing date. AT&T alleges that it canceled the agreement in April 2006 because of repeated late payments. Moreover, AT&T contends that incidents leading to the cancellation of the billing date agreement are unrelated and occurred prior to any dispute concerning the complainant's Internet service.

In its Answer, AT&T alleges that Digital Subscriber Line (DSL) service and high speed Internet service are interstate services subject to the exclusive jurisdiction of the Federal Communications Commission (FCC). As a final matter, AT&T, citing Sections 1329.01 and 1329.10(B), Revised Code, declares that the complainant cannot maintain this action because he has not registered his trade name.

(3) The complaint calls for the Commission to adjudicate a dispute involving high speed Internet service offered through DSL. DSL is a wireline form of broadband Internet access. To hear the complaint and decide the issues, the Commission must have subject matter jurisdiction.

Through a Report and Order and Notice of Proposed Rulemaking, the FCC determined that DSL is an "information service."[1] Because DSL is now designated as an information service, as opposed to a "telecommunications service," the FCC grants it a lighter regulatory touch.[2] An "information service" is defined in the Telecommunications Act of 1996[3] as follows:

> "[I]nformation service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.[4]

Moreover, the FCC has clarified that it has subject matter jurisdiction over providers of broadband Internet access services.[5]

Owing to the FCC's classification of DSL as an information service and the FCC's claim of subject matter jurisdiction over high speed Internet access, the Commission shall refrain from considering the issues raised by the complaint. In deference to the exclusive jurisdiction of the FCC, the complaint, insofar as it relates to broadband Internet access, shall be dismissed.

Although the Commission does not have jurisdiction over broadband Internet access, the Commission does have

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1 *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities* , CC Docket No. 02-33 et al. (Adopted August 5, 2005; Released September 23, 2005, page 12).

2 *Id.* at 4

3 The Act is codified at 47 U.S.C. 151 et seq.

4 47 U.S.C. 153 (20).

5 *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* CC Docket 02-33 et al., page 62).

> jurisdiction over local and toll telephone service. The Minimum Telephone Service Standards (MTSS) issued in Chapter 4901:1-5, Ohio Administrative Code, contain the rules that are applicable to local and toll telephone service. If the complainant believes that AT&T has violated provisions within the MTSS relating to the billing or disconnection of local or toll service, the complainant should advise the Commission within 20 days of this Entry. In the absence of any statement alleging that AT&T has violated the MTSS, the Commission will dismiss the complaint in its entirety.

It is, therefore,

ORDERED, That the complaint, insofar as it relates to broadband Internet access, is dismissed for lack of jurisdiction. It is, further,

ORDERED, That the complainant file withiin 20 days of this Entry a statement clarifying whether any claims in the complaint relate to local or toll service. If the complainant does not file a statement within 20 days of this Entry, the Commission shall dismiss the complaint in its entirety. It is, further,

ORDERED, That a copy of this Entry be served upon all parties, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

LDJ/vrm

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Reneé J. Jenkins
Secretary