

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Carolyn and Michael Pocse,)	
Complainants,)	
)	
v.)	Case No. 09-567-TP-CSS
)	
FairPoint Communications)	
Respondent.)	

**ANSWER AND AFFIRMATIVE DEFENSES OF
FAIRPOINT COMMUNICATIONS**

Orwell Telephone Company d/b/a FairPoint Communications¹ (“FairPoint”) hereby answers the Complaint of Carolyn and Michael Pocse (the “Complainants”) filed July 6, 2009 (the “Complaint”) and raises its affirmative defenses thereto as follows:

A. ANSWER

1. FairPoint lacks knowledge or information sufficient to form a belief as to the accuracy of the diagram in the Complaint and, therefore, denies any allegations therein.

2. FairPoint lacks knowledge or information sufficient to form a belief as to the specific mileage from the Complainants’ home relative to the applicability of long distance service and, therefore, denies any allegations therein. Answering further, FairPoint states that it offers the Ashtabula County Local Calling Plan, which provides for measured rate or optional flat rate service between specific Ashtabula County exchanges.

¹ FairPoint Communications is the registered trade name of The Orwell Telephone Company. See *In the Matter of the Application of The Columbus Grove Telephone Company, The Orwell Telephone Company, and The Germantown Independent Telephone Company Relative to the Use of the Trade Name FairPoint Communications*, PUCO Case No. 07-140-TP-ACN (Finding and Order, March 7, 2007).

3. FairPoint lacks knowledge or information sufficient to form a belief as to the truth of the claims within the Complaint pertaining to cable, satellite, and Internet service and, therefore, denies any allegations therein.

4. FairPoint lacks knowledge or information sufficient to form a belief as to whether First Communications is Complainants' only option for service.

5. To the extent the Complaint pertains to Internet service, FairPoint denies that the Public Utilities Commission of Ohio (the "Commission") has jurisdiction over such subject matter. Answering further, FairPoint states that Complainants' address currently qualifies for DSL service.

6. FairPoint denies the allegations pertaining to the Complainants' calling area.

7. FairPoint denies all remaining allegations of the Complaint not expressly admitted herein.

B. AFFIRMATIVE DEFENSES

1. **No Violation of R.C. § 4905.26.** The Complaint fails to state grounds for a complaint against FairPoint pursuant to R.C. § 4905.26 because Complainants have not alleged any violation of any rules, regulations or laws that would constitute a violation of R.C. § 4905.26, and are therefore not entitled to relief thereunder. Because Complainants have not demonstrated that FairPoint has taken any unlawful action, the Complaint should be dismissed.

2. **Lack of Commission Jurisdiction.** As detailed in the accompanying Memorandum in Support of FairPoint's Motion to Dismiss, to the extent the Complaint pertains to Internet services, the Commission has no jurisdiction over such subject matter.

WHEREFORE, for the reasons stated above, Orwell Telephone Company d/b/a FairPoint Communications requests the Commission dismiss the Complaint with prejudice.

Respectfully submitted,

ORWELL TELEPHONE COMPANY d/b/a
FAIRPOINT COMMUNICATIONS

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Answer and Affirmative Defenses of FairPoint Communications* was served by first class mail, postage prepaid, upon the party listed below on this 27th day of July 2009:

Carolyn and Michael Pocse
6731 SR 46
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/s/ Carolyn S. Flahive
Carolyn S. Flahive

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Summary: Answer Answer and Affirmative Defenses electronically filed by Carolyn S Flahive
on behalf of The Orwell Telephone Company