

**Before the
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Terry Sky)
Glendening vs. Cincinnati Bell Telephone) Case No. 12-1968-TP-CSS
Company LLC)

MOTION TO DISMISS

Cincinnati Bell Telephone Company LLC (“CBT”) hereby moves the Commission to dismiss the Complaint filed by Terry Sky Glendening (“Glendening”) on July 2, 2012 for failure to state reasonable grounds for complaint. The grounds for this Motion are explained in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. FACTUAL BACKGROUND

The Complaint describes a repair issue that Glendening experienced in December 2011. Briefly stated, Glendening complained about static on her line so CBT scheduled a repair appointment for December 27, 2011. CBT had a technician available on December 24, 2011, prior to the scheduled appointment so it attempted to expedite the repair. The repair technician found a problem with the aerial drop to Glendening's home and reasonably believed that the repair could be made from outside the home, so he replaced the drop and installed a new NID on the outside of the house. Service was working up to the new NID at that time. On December 27, 2011, Glendening first reported that her service was not working. A technician checked the line on December 28, 2011 on the outside of the home and found no trouble in that portion of the line but could not go inside the home to check the inside portion of the line. Since that time, CBT has been unable to do any further diagnosis or repairs because Glendening has refused to schedule another appointment to allow CBT inside access.

The Complaint claims that CBT committed unfair or deceptive trade practices in violation of Revised Code § 4927.06, that it violated § 4927.17(A) by allegedly changing the terms of service without at least 15 days' notice, and § 4927.08(B)(5) by disconnecting her service without appropriate notice. She seeks various forms of relief, including the right to have a third party perform inspections and repairs at CBT's expense and to recover damages from CBT.

As explained in CBT's Answer herein, without admitting any wrongdoing, CBT has credited Glendening's account effective December 24, 2011, the alleged date she was out of service, and is issuing her a refund of the amount she paid for service after that date. Such a

credit and refund is the maximum Glendening could be entitled to recover if she proved her Complaint. Therefore, the Complaint should be dismissed as satisfied.

I. CBT HAS LIMITED LIABILITY AND GLENDENING CANNOT RECOVER ANY ADDITIONAL AMOUNTS

Glendening reported a service outage on December 27, 2011 and alleges that the outage was caused by work done by CBT on December 24, 2011. Without admitting any wrongdoing, CBT has credited Glendening's bill effective December 24, 2011 and is issuing a refund of all amounts she paid for service after that date.

Section 3.B.3 of CBT's Residence Service Agreement¹, contains a limitation of liability as follows:

The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service or facilities and not caused by the negligence of the Customer, or of the Company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, will in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which such mistake, omission, interruption, delay or error, or defect in transmission occurs.

CBT has already provided Glendening with the maximum relief she could be entitled to under the Residence Service Agreement by refunding charges as of December 24, 2011. There is no basis for awarding her any additional amounts, so this Complaint cannot result in further relief and should be dismissed.

¹ Ms. Glendening subscribed to Complete Connections, a detariffed service. The terms of service for Complete Connections are governed by CBT's Residence Service Agreement, available at www.cincinnati-bell.com/legal.

II. THE COMPLAINT DOES NOT PROPERLY ALLEGE A DECEPTIVE ACT OR PRACTICE

Glendening argues that CBT committed an unfair or deceptive trade practice in violation of Revised Code § 4927.06. Nothing alleged by Glendening constitutes an unfair or deceptive trade practice. The statute is specific as to the acts or practices that are prohibited as follows:

(1) Any communication by the company, including, but not limited to, a solicitation, offer, or contract term or condition, shall be truthful, clear, conspicuous, and accurate in disclosing any material terms and conditions of service and any material exclusions or limitations. The public utilities commission may prescribe, by rule, a commission review process to determine when disclosing such information is not practicable, and therefore nondisclosure does not result in an unfair or deceptive act or practice.

(2) Any written service solicitation, marketing material, offer, contract, or agreement, as well as any written response from the company to a service-related inquiry or complaint that the company receives from a customer or others, shall disclose the company's name and contact information. The commission may prescribe, by rule, a commission review process to determine when disclosing such information is not practicable, and therefore nondisclosure does not result in an unfair or deceptive act or practice.

(3) The company shall inform its customers, as applicable and in any reasonable manner, of their rights and responsibilities concerning inside wire, the repair and maintenance of customer-owned equipment, and the use of a network interface device, and of any charges that the company imposes for a diagnostic visit, consistent with rules adopted by the public utilities commission.

(4) The company shall not commit any act, practice, or omission that the commission determines, by rulemaking under section 4927.03 of the Revised Code or adjudication under section 4927.21 of the Revised Code, constitutes an unfair or deceptive act or practice in connection with the offering or provision of telecommunications service in this state.

With respect to subpart (1), the Complaint does not allege that CBT made any solicitation or offer to Glendening, or that CBT failed to disclose any material terms and conditions of its service or any material exclusions or limitations to its service. Rather, Ms. Glendening quibbles over the details of communications with CBT regarding repair efforts. In any event, none of the alleged communications with Ms. Glendening regarding repair efforts failed to disclose any

material terms and conditions of CBT's service. This scenario does not constitute a practice prohibited by § 4927.06(A)(1).

With respect to part (A)(2) of the statute, Ms. Glendening does not allege that any communication from CBT did not disclose CBT's company name and contact information. Therefore, it does not state a violation of § 4927.06(A)(2).

Ms. Glendening does not allege that CBT failed to inform her of her rights and responsibilities concerning inside wire, the repair and maintenance of customer-owned equipment, the use of a network interface device, or of any charges that the company imposes for a diagnostic visit. Therefore, she states no violation of § 4927.06(A)(3). Ms. Glendening's complaint is that CBT installed a second NID on her home, but she does not allege that CBT failed to inform her of her rights and responsibilities with respect to inside wire, customer-owned equipment, the use of a NID or CBT charges for repair visits. The purpose of § 4927.06(A)(3) is to ensure that customers are aware of their responsibility for inside wire and their own equipment and that they may be charged if the telephone company is called to repair something that is the customer's responsibility. Here, CBT has never attempted to charge Ms. Glendening for any repair, certainly not for any repair that was her responsibility. The Complaint fails to state a claim for violation of 4927.06(A)(3)

Lastly, the Complaint does not state a claim for violation of § 4927.06(A)(4). That section makes it a violation to do something that the Commission has previously declared to be an unfair act or practice either through rulemaking or a prior adjudication. Ms. Glendening does not identify any act, practice or omission that the Commission has determined through a previous rulemaking or adjudication constitutes an unfair or deceptive act or practice. Therefore, she fails to state a claim under § 4927.06(A)(4).

III. CBT DID NOT CHANGE THE TERMS OF SERVICE IN VIOLATION OF R.C. §4927.17(A)

Revised Code § 4927.17(A) requires a telephone company to provide at least fifteen days' notice of any material change in the rates, terms, and conditions of a service. Ms. Glendenning complains that CBT moved the NID on her house without providing her advance notice. But the moving of a NID (or in this case, actually, the installation of a second NID) does not constitute a change in the terms of service, which remained exactly the same before and after.

The installation of a second NID outside Ms. Glendenning's home was not a material change in the rates, terms and conditions of service. The Definition and location of a NID is specified in CBT's Residence Service Agreement, Section 2:

CC. Network Interface Device (NID)

A jack conforming to Sub-part F of Part 68 of the FCC's rules provided by the Company as part of the Local Exchange Carrier (LEC) network. It will be located on the customer premises and is considered to be the termination of the LEC network if installed by the Company. (See Demarcation Point)

* * *

O. Demarcation Point (Network Interface)

The point of demarcation and/or interconnection between Company communications facilities and terminal equipment, protective apparatus or wiring at a customer's premises. Company installed facilities at or constituting the demarcation point will consist of wire or a jack conforming to Subpart F of Part 68 of the FCC's rules. "Premises" as used in this section generally means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the Company's reasonable and nondiscriminatory standard operating practices. The "minimum point of entry" as used in this section will be either (1) the closest practicable point to where the wiring crosses a property line or (2) the closest practicable point to where the wiring enters a multiunit building or buildings. The Company's reasonable and nondiscriminatory standard operating practices will determine which of (1) or (2) will apply. The Company is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which of (1) or (2) above will apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.

1. Single Unit Installations

For single unit installations existing as of December 27, 1991, and installations installed after that date, the demarcation point will be a point within twelve inches of the protector or, where there is no protector, within twelve inches of where the telephone wire enters the customer's premises.

Ms. Glendening acknowledges that CBT installed a NID on the outside wall of her home on December 24, 2011 and that the NID contains a telephone jack. There is no allegation that the NID that CBT installed was not in conformance with Part 68 of the FCC rules and the terms of CBT's Residence Service Agreement. Nor is there any claim that the NID is not within twelve inches of where the telephone wire enters Ms. Glendening's home.

There is nothing in CBT's terms of service that specifies that a NID must be indoors or outdoors. Either location is within twelve inches of the point where the telephone wire enters the customer's premises. Nor is there anything in CBT's terms of service that precludes CBT from relocating a NID or adding a second NID when replacing an aerial service drop. Ms. Glendening complains that the outdoor NID is not secure against someone using the outside jack to make telephone calls, but the NID is equipped with a hasp that can be used for a lock to secure the device against unauthorized access, so this is not a reasonable complaint.

Contrary to her allegations, CBT has not attempted to make Ms. Glendening responsible for the wire leading from the new NID to her original NID inside the home. CBT has offered to inspect and repair that wire, if necessary, but Ms. Glendening has refused to schedule a repair visit and provide CBT inside access. Her position is unreasonable and makes it impossible for CBT to ever repair her line. Even more unreasonably, Ms. Glendening refuses to deal with CBT by telephone, insisting only on written communications by mail. Ironically, as relief in this case Ms. Glendening wants the right to have a third party come to her home and do the same work that CBT would do if it was given the opportunity. But to accomplish that, she would have to

make the same arrangements to give the third party contractor access to her home that she refuses to make with CBT.

IV. CBT HAS NOT VIOLATED REVISED CODE § 4927.08(B)(5)

Mr. Glendening alleges that CBT violated Revised Code § 4927.08(B)(5) because she received a letter notifying her that her service would be disconnected for non-payment on a date less than seven days before the threatened disconnection.

Revised Code § 4927.08(B)(5) is a service standard applicable only to basic local exchange service (“BLES”). Ms. Glendening does not allege that she was a BLES customer. Ms. Glendening subscribed to Complete Connections, a bundled service, not BLES. Nothing in the statute prohibits the disconnection of bundled services on different terms and conditions than BLES. More importantly, Ms. Glendening alleges in her complaint that she **requested** CBT to disconnect her service in writing on February 17, 2012. Therefore, she has no basis to complain about disconnection of her service for any reason after that date. She wanted to have her service disconnected and has not been harmed in any way by the disconnection notice she received.

V. THE COMMISSION MAY NOT AWARD MS. GLENDENING DAMAGES OR THE OTHER RELIEF SOUGHT

Ms. Glendening asks the Commission to award her damages, presumably the value of her time spent waiting for a repair appointment and the cost to have a third party inspect and repair her telephone line. As noted above, the terms of service under which Ms. Glendening subscribed to CBT’s service preclude any monetary recovery beyond a credit for the price of service, which Ms. Glendening has already received. Regardless of the nature of the damages sought, the Commission is a creature of statute and has no jurisdiction to award customers monetary damages.

Nor can the Commission permit Ms. Glendening to engage an independent contractor to repair CBT's lines. CBT is entitled under its terms of service to access Ms. Glendening's home to make any necessary repairs to its lines:

Equipment and lines furnished by the Company on the premises of a Customer are the property of the Company, whose agents and employees have the right to enter the premises at any reasonable hour for the purpose of installing, inspecting, maintaining, or repairing the equipment and lines, or upon termination of the service, for the purpose of removing such equipment or lines.

CBT Residence Service Agreement, Section 3.C.1. Ms. Glendening may not refuse CBT access and simultaneously seek relief from the Commission for CBT not repairing her line. Nor is Ms. Glendening entitled to have a third-party work on CBT's telephone lines. Section 13.E.1 of CBT's Residence Service Agreement provides:

The Customer may not rearrange, disconnect, remove, or attempt to repair, or permit others to rearrange, disconnect, remove, or attempt to repair any equipment or facilities which the Company maintains or repairs without the express consent of the Company.

CBT has repeatedly offered to repair its line free of charge, but Ms. Glendening unreasonably refuses to allow CBT to do that. She cannot charge CBT to have a third party do that work. The relief she requests cannot be granted, so the Complaint should be dismissed.

VI. CONCLUSION

For the above reasons, the Complaint fails to state reasonable grounds for complaint and should be dismissed. Any relief to which Ms. Glendenning might be entitled has already been granted by CBT through service credits. None of the allegations state violations of the referenced statutes and the Commission cannot grant the relief requested. CBT respectfully requests that the Commission dismiss the Complaint and deny the relief sought.

Respectfully submitted,

/s/ Douglas E. Hart

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CERTIFICATE OF SERVICE

I certify that on this 23rd day of July 2012, I served the foregoing Motion to Dismiss on Terry Sky Glendening, 19 Apple Lane, Milford, OH 45150, by first class U.S. mail, postage prepaid.

/s/Douglas E. Hart

This foregoing document was electronically filed with the Public Utilities

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Summary: Motion to Dismiss electronically filed by Mr. Douglas E. Hart on behalf of Cincinnati Bell Telephone Company LLC