

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

THE FRANK GATES SERVICE  
COMPANY,

Complainant,

vs.

THE OHIO BELL TELEPHONE  
COMPANY d/b/a AT&T OHIO,

Respondent.

Relative to Billing Dispute and Deceptive  
and Misleading Practices

Case No. 12-2638-TP-CSS

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**COMPLAINT AND REQUEST FOR RELIEF**

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Now comes the Frank Gates Service Company ("Frank Gates"), pursuant to Sections 4905.04, 4905.05, 4905.06, 4905.22, 4905.26, 4905.35, 4905.37, 4927.04, 4927.06, 4927.21 of the Ohio Revised Code, and Rules 4901-9-01 and 4901:1-6-16 of the Ohio Administrative Code (O.A.C.), and hereby makes this complaint to the Public Utilities Commission of Ohio ("Commission") against Ohio Bell Telephone Company d/b/a AT&T Ohio ("AT&T") and all other entities that it is doing business under with regard to this dispute and the services provided pursuant to the telecommunications services agreement,<sup>1</sup> and seeks the relief set forth herein.

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<sup>1</sup> The Master Services Agreement appears to only list AT&T Corp. as the provider of the telecommunications services to Frank Gates; however, related service contracts list SBC Global Services, Inc., and/or other AT&T Corp.-owned local exchange carriers, including AT&T Ohio and Ohio Bell Telephone Company.

Frank Gates respectfully requests that the Commission direct AT&T to discontinue its unreasonable and unjust service practices, and unjust and unreasonable attempts to collect improper charges from Frank Gates. The charges that AT&T seeks to collect stem from the unfair and deceptive practices used by AT&T during the course of the service relationship between AT&T and Frank Gates, particularly in the aftermath of Frank Gates' decision to exercise its rights to switch its service to an alternative telecommunications provider.

In light of the unfair and deceptive practices of AT&T as it relates to the termination of services it once provided to Frank Gates, Frank Gates respectfully requests that the Commission find that AT&T acted in violation of Ohio law and the Commission's rules as set forth herein, and that it grant Frank Gates all relief necessary to redress AT&T's wrongdoing, which relief is further delineated below.

In support of its Complaint, Frank Gates states as follows:

### **PARTIES**

1. Frank Gates is a corporation organized under the laws of the state of Ohio, duly authorized to conduct business in the state of Ohio, in good standing with the Ohio Secretary of State, and whose principal place of business is Dublin, Ohio.

2. Frank Gates provides certain third-party administrator services for workers' compensation claims, medical managed care, and other liability claims on behalf of thousands of self-insured employers and groups, insured and state-funded employers, and alternative risk clients nationwide.

3. At all times pertinent to the Complaint, Frank Gates received

telecommunications services from AT&T and was a customer of AT&T.

4. AT&T is a corporation organized under the laws of the state of Ohio, duly authorized to conduct business in the state of Ohio, currently in good standing with the Ohio Secretary of State, and whose principal place of business is Cleveland, Ohio.

5. AT&T is an incumbent local exchange carrier ("ILEC") in the state of Ohio, and is a public utility and telephone company as defined in Sections 4905.02 and 4905.03, Revised Code.

6. AT&T, its parent company, and several AT&T Corp.-owned ILECs collectively entered into a Master Services Agreement for services with Frank Gates and its affiliates, and were providers of telecommunications services including local, long distance, and data services to Frank Gates.

### **JURISDICTION**

7. AT&T is authorized to provide telecommunications services within the state of Ohio and is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, 4905.06, and 4927.04, Revised Code.

8. The Commission has jurisdiction over the subject matter of this Complaint pursuant to Sections 4905.04, 4905.05, 4905.06, 4905.22, 4905.26, 4905.35, 4905.37, 4927.04, 4927.06, 4927.21, Revised Code.

9. The Commission has jurisdiction to provide the relief requested by this Complaint pursuant to Sections 4905.04, 4905.05, 4905.06, 4905.22, 4905.26, 4905.35, 4905.37, 4905.54, 4927.04, 4927.06, 4927.21, Revised Code.

### **STATEMENT OF FACTS**

10. At all times pertinent to the Complaint, AT&T, its parent company, and/or several AT&T Corp.-owned ILECs provided local telephone service, long distance service, toll-free service, and managed data services to Frank Gates in the state of Ohio, and elsewhere through the parties' respective affiliates.

11. On April 21, 2003, Frank Gates and AT&T entered into the Master Services Agreement, along with related service contracts with its parent company, and/or several AT&T Corp.-owned ILECs, which would govern the provision of voice and data services by AT&T to Frank Gates at its corporate headquarters in Dublin, Ohio, and at its affiliate locations. Exhibit A. AT&T had actual knowledge that it was contracting with an Ohio entity in entering into the Agreement. AT&T authored the Master Services Agreement, and the Master Services Agreement was a contract of adhesion with respect to Frank Gates.

12. Beginning in 2010, Frank Gates elected to switch many of the services provided by AT&T to another telecommunications carrier. When the new services were up and running, Frank Gates canceled the now unnecessary accounts and services with AT&T.

13. Frank Gates has maintained that it is not liable for charges relating to accounts that it attempted to cancel with appropriate notice, or which stem from accounts for which AT&T was no longer providing services.

14. Despite offers by Frank Gates to compromise the amounts in bona fide dispute as to service, AT&T has consistently maintained that it has the right to continue

charging Frank Gates for non-existent services pursuant to a hyper-technical and unreasonable reading of the Master Services Agreement and other related service contracts between the parties. AT&T's actions in this respect are in bad faith, and a violation of the implied duty of good faith and fair dealing.

15. After the most recent failure to reach a compromise settlement, AT&T has sued Frank Gates in a civil action in the United States District Court for the Southern District of Ohio. AT&T alleges that it is entitled to \$184,967.35 in unpaid charges, as well as costs and attorneys fees, even though it has actual knowledge that some or all of those charges are the subject of a bona fide dispute.

16. Based on the internal reconciliation performed by Frank Gates, substantial portions of the sum AT&T is requesting reflects charges or late fees that directly stem from AT&T's unfair and deceptive practices.

### **COUNT I**

17. Complaint reallages and incorporates, as if rewritten herein, each of the allegations in paragraphs 1 through 16 as if fully set forth herein.

18. AT&T engaged in unfair, deceptive, unreasonable, and unjust practices by failing to honor unambiguous requests from Frank Gates to designated AT&T customer account representatives to discontinue accounts and services administered by AT&T, by charging Frank Gates for those accounts and services well past the thirty days provided for in the parties' Master Services Agreement, and by relying on Frank Gates' alleged failure to complete a duplicative, confusing, and unnecessary web-based form as purported rationale for failing to honor a reasonable and unambiguous customer request.

With regard to the data services provided by AT&T, representatives of Frank Gates were in direct contact with customer service personnel and account managers from AT&T. When a particular line in a particular location was ready to be switched over, Frank Gates personnel e-mailed AT&T account managers and provided the overall account number, the location of the line, and a specific circuit identifier to facilitate the termination of service for that line.

19. AT&T responded with a computer-generated form e-mail response containing boilerplate text. On first glance, the e-mail appears to be a confirmation of the request to discontinue service. Exhibit B.

20. In actuality, and deceptively, the computer-generated form e-mail goes on to request information that is duplicative of the information already provided by Frank Gates. The requested information duplicates information already provided by Frank Gates in its original disconnection request, and/or information that was readily available to AT&T in its own records; and added requests for marketing research-related information—such as the reason for the disconnection—which has no possible connection to the ability of AT&T to disconnect the requested service. In other words, AT&T already had in hand all of the information needed to honor Frank Gates' disconnection requests, but sent deceptive, misleading, and duplicative requests for substantially the same information to be provided in a different format. Upon information and belief, AT&T's conduct was intended to slow the speed at which disconnection requests would be processed by creating unnecessary barriers to honoring a customer request, and/or was intended to maximize AT&T's purported ability to keep billing for services that were not wanted and not utilized, so as to maximize AT&T's

profit. AT&T, as part of its pattern and practice, did not engage in commercially reasonable efforts to apprise customers of the additional steps that AT&T contended were required to complete a disconnection request. Instead, AT&T buried its purported additional requirements in boilerplate text contained in automatically generated e-mails, knowing that such communications would be unlikely or less likely to be noticed by average consumers. AT&T, upon information and belief, intended to profit from customers' inability to reasonably ascertain the additional alleged termination requirements.

21. Based on Frank Gates' alleged failure to fill out the information request buried within boilerplate text contained in automatically generated e-mails, AT&T took the position that it could continue to bill Frank Gates for months after Frank Gates' disconnection requests. AT&T continued to assess charges and late fees to the accounts in question, even though the accounts were clearly not in use, and had been subject to a clear and unambiguous disconnection request directed to an authorized AT&T representative. Exhibit C.

22. AT&T has contended that the contract of adhesion, or the Master Services Agreement, that it has with customers, such as Frank Gates, entitles it to insist on the resubmission of duplicative information on a special form before honoring a customer's request to terminate services. In actuality, the provision of the Master Services Agreement relied upon by AT&T states that a customer may process a termination request through either the electronic form, or a "designated alternative procedure." Communicating directly in writing with an employee, agent, and authorized representative of AT&T, who holds himself or herself out as the account

representative/manager having actual and/or apparent authority to act for AT&T on designated matters, is commercially reasonable, and sufficient to comply with the Master Services Agreement's contemplation of a designated alternative procedure. AT&T should have honored a request using such procedures.

## **COUNT II**

23. Complaint realleges and incorporates, as if rewritten herein, each of the allegations in paragraphs 1 through 22 as if fully set forth herein.

24. AT&T engaged in unfair, deceptive, unreasonable, and unjust practices by failing to close circuits and accounts when requested, and continuing to charge Frank Gates for those circuits and accounts that had been switched to an alternative telecommunications provider, where AT&T was informed of, had actual knowledge of, and participated in the switch, and therefore, knew that Frank Gates was not receiving the services for which it was subsequently charged.

25. Frank Gates sought to switch its long distance and toll-free number services to another carrier. Such changes require AT&T to deactivate the telephone numbers associated with those accounts, which AT&T did. Once those telephone numbers are deactivated, there is no way to receive service via the accounts connected with those now-deactivated numbers.

26. Frank Gates believed, reasonably, that, when AT&T deactivated the telephone numbers associated with the long distance and toll-free accounts, it would also close any accounts associated with those numbers. This belief was based on the fact that AT&T could no longer provide service to those accounts without an active telephone



number. At no point did AT&T inform Frank Gates that this understanding was incorrect, or describe any additional actions needed to carry out the switch.

27. Nevertheless, AT&T did not close those accounts, and continued to charge Frank Gates for the nonexistent service it was providing on those accounts. Exhibit D.

### **COUNT III**

28. Complaint realleges and incorporates, as if rewritten herein, each of the allegations in paragraphs 1 through 27 as if fully set forth herein.

29. AT&T engaged in unfair, deceptive, unreasonable, and unjust practices by keeping open "sub-accounts," and charging Frank Gates for those accounts, after the unambiguous request of Frank Gates to terminate the main account of which these sub-accounts are a part, when those sub-accounts were created by AT&T merely for billing purposes, and it was clear to all parties that Frank Gates' intent was to close all of the accounts associated with the primary account.

30. With regard to some of these closed accounts, AT&T closed the primary account associated with the service, but did not affirmatively close the sub-accounts associated with the primary account. The sub-accounts were created by AT&T as a vehicle to facilitate billing, and do not represent any additional services beyond those provided for originally under the primary account. A request to deactivate the primary account should have necessarily operated to deactivate the sub-accounts.

31. Nonetheless, AT&T continued to charge Frank Gates on those sub-accounts. AT&T did not reasonably inform Frank Gates that any additional steps were necessary to close the sub-accounts once the primary account was closed. Upon

information and belief, AT&T's actions were taken knowing that it would be assessing charges for services that were not performed, in a desire to maximize profit, and/or to punish a customer for switching to a different carrier for service.

#### **COUNT IV**

32. Complaint realleges and incorporates, as if rewritten herein, each of the allegations in paragraphs 1 through 31 as if fully set forth herein.

33. AT&T engaged in unreasonable and unjust accounting practices.

34. AT&T improperly applied funds received from Frank Gates to incorrect accounts, and then proceeded to assess late fees to the accounts that were not properly credited.

#### **PRAYER FOR RELIEF**

WHEREFORE, for the reasons stated herein, Frank Gates respectfully requests that the Commission grant the following relief:

1. Find that Frank Gates has stated reasonable grounds for the Complaint pursuant to Section 4905.26, Revised Code;

2. Find that AT&T engaged in unfair, deceptive, unreasonable, and unjust practices with respect to its failure to honor appropriate and actionable service termination requests, failure to cancel voice accounts after deactivating the associated numbers, failure to close the sub-accounts once the primary was close, and failure to provide reasonable notice and explanation of the steps necessary to discontinue Frank Gates' service with AT&T;

3. Find that AT&T's practices, services agreement provisions, and forms, as described herein, are unfair, deceptive, unreasonable, and unjust;

4. Find that AT&T improperly billed Frank Gates for amounts that are not due and owing, including late fees that have been assessed, and continue to be assessed, by AT&T on the improperly billed amounts and amounts in controversy that are subject to a bona fide dispute;

5. Order AT&T to cease all collections actions against Frank Gates pending the resolution of this Complaint;

6. Order AT&T to credit Frank Gates' account for amounts associated with unlawfully billed charges and late fees to reflect the cancellation of service by Frank Gates consistent with its clearly stated intent and reasonable and customary business practices;

7. Assess the maximum civil forfeitures permitted by law; and

8. Order any other relief that the Commission deems appropriate, just, and reasonable.

Respectfully submitted,



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Summary: Complaint Service Letter In the matter of The Frank Gates Service Company v. The Ohio Bell Telephone Company d/b/a AT&T Ohio electronically filed by Mrs. Kimberly W. Bojko on behalf of The Frank Gates Service Company