

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                  |   |                         |
|----------------------------------|---|-------------------------|
| The Frank Gates Service Company, | ) |                         |
|                                  | ) |                         |
|                                  | ) | Case No. 12-2638-TP-CSS |
| Complainant,                     | ) |                         |
|                                  | ) |                         |
| v.                               | ) |                         |
|                                  | ) |                         |
| AT&T Ohio,                       | ) |                         |
|                                  | ) |                         |
| Respondent.                      | ) |                         |

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**AT&T OHIO’S REPLY**

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The Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”)<sup>1</sup>, Respondent herein, pursuant to Ohio Admin. Code §4901-1-12, files this Reply to the Memorandum Contra Motion to Dismiss filed by The Frank Gates Service Company (“Frank Gates”) on December 10, 2012. Frank Gates misses the essential point of AT&T Ohio’s motion - - that the Commission has no jurisdiction over interstate services or the Company’s policies and practices related to them. This is black letter law in Ohio. Marketing Research Services, Inc. v. Pub. Util. Comm. (1987), 34 Ohio St. 3d 52; 517 N.E.2d 540; 1987 Ohio LEXIS 440. In that case, the Court reviewed the Commission’s jurisdiction, not just under statutory law in Ohio, but also in light of the power that Congress had given the FCC over interstate services under the Commerce Clause of the United States Constitution. It is therefore incumbent upon the Complainant to identify the intrastate services at issue over which the Commission does have jurisdiction.

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<sup>1</sup> The complaint names The Ohio Bell Telephone Company d/b/a AT&T Ohio as the Respondent. In keeping with the Commission's practice, the name AT&T Ohio is used in this pleading.

The General Assembly, aided by the Ohio Supreme Court, has defined this Commission's authority and the services that are relevant to this Complaint. The Commission has limited jurisdiction over the services provided by AT&T Ohio to Frank Gates.

The Complainant has the burden of proving the allegations made in its complaint, and must also specifically identify the services that are subject to the Commission's jurisdiction. The policy statements cited by the Complainant and the other provisions of Chapter 4927 do not expand the Commission's jurisdiction to include the provisioning and billing of interstate services or the Company's policies and practices related to them. No enactment by the General Assembly has changed the black letter law of the Marketing Research Services case.

For these reasons, the Commission should dismiss this complaint.

Respectfully submitted,

By: /s/ Mary Ryan Fenlon

Mary Ryan Fenlon

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Its Attorneys

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served via e-mail on the parties listed below on this 17th day of December, 2012.

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Summary: Reply to The Frank Gates Service Company Memorandum Contra electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Ohio