BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission, considering the complaint, the evidence of record, the arguments of the parties, and the applicable law, hereby issues its opinion and order:

APPEARANCES:

Dr. Terry Sky Glendening, 19 Apple Lane, Milford, Ohio 45150, on her own behalf.

Douglas E. Hart, 441 Vine Street, Suite 4192, Cincinnati, Ohio 45202, on behalf of Cincinnati Bell Telephone Company LLC.

OPINION:

I. PROCEDURAL HISTORY

On July 2, 2012, Dr. Terry Sky Glendening (complainant or Dr. Glendening) filed a complaint against Cincinnati Bell Telephone Company LLC (CBT or Cincinnati Bell). Briefly summarized, the underlying premise for the whole complaint revolves around the complainant's allegations that: (a) CBT scheduled, but then failed to show up for, a service appointment with her, causing her to "sacrifice" lost income; and (b) actions taken by CBT's service technician prior to the scheduled service appointment, including the installation of a new network interface device (NID) on the company's side of what, until then, had been the point of demarcation, resulted in a complete loss of her service, which, she claims, has remained an unresolved issue ever since. Based on these underlying allegations, the complainant asserts that CBT: (a) violated certain statutes; (b) engaged in unfair and deceptive trade practices; (c) charged her for services never received and for repairs never made; (d) failed to

provide her credits; (e) denied her written request for service termination; (f) disconnected her service without proper notice; and (g) continued to assess monthly charges wrongfully, even after service was disconnected. The complainant seeks: (a) to have a third-party, at CBT's expense, both perform inspections and make any necessary repairs; (b) to have charges removed from her billing history; (c) to be refunded amounts she believes she is entitled to; (d) to have CBT pay reparations for damages she has incurred; and (e) to have the Commission hold CBT accountable for any of its actions that the Commission finds to be unacceptable.

On July 23, 2012, CBT filed both its answer and a motion to dismiss the complaint. CBT admits that, prior to the scheduled service appointment, it attempted to make repairs by, among other things, installing a new NID. CBT also acknowledges its responsibility to put the complainant's line in working order up to the original NID inside her house, but asserts that the complainant has unreasonably refused to allow the company inside access to diagnose the problem with her service and to make any necessary repairs.

Among other things, in its answer, CBT: (a) denies that the complainant is entitled to have a third-party perform any inspections; (b) denies that it has violated any statute or Commission rule; (c) denies that it has charged the complainant for any repairs; (d) asserts that it has issued credits for all charges as of the date on which the complainant first claimed a loss of dial tone; (e) denies that it owes the complainant any compensation beyond the credit that has already been granted; and (f) asserts that the complainant's service was properly terminated and, also, that she has not requested that it be restored.

A settlement conference was scheduled for, and held on, August 14, 2012. However, at the conference, the parties were unable to resolve any of the issues raised in this matter. A hearing in this case was scheduled for, and held on, December 14, 2012. Two witnesses testified at the hearing. Dr. Glendening testified on her own behalf and Mr. Robert W. Wilhelm Jr., Regulatory Pricing Manager for CBT, in which capacity he oversees most state regulatory activities of the company including complaints, testified on the respondent's behalf.

II. APPLICABLE LAW

CBT is a public utility, as defined in Section 4905.02, Revised Code, and a telephone company as defined in Section 4905.03, Revised Code. As such, CBT is subject to the jurisdiction of the Commission.

Section 4927.21, Revised Code, requires that the Commission set for hearing a complaint against a telephone company whenever reasonable grounds appear that

any rate, practice, or service of the company may be unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any provision of Sections 4927.01 to 4927.20, Revised Code, or a rule or order adopted or issued under those sections. The Commission notes that the burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

III. SUMMARY OF THE EVIDENCE

A. Dr. Glendening's Testimony.

Dr. Glendening began her testimony by indicating that, in the fall of 2011, she began to have problems with the services provided by Cincinnati Bell, including excessive phone static and sporadic internet service failures. In time, this resulted in her calling CBT to schedule a service repair visit (Tr. 7). In a phone call that, according to CBT's witness, occurred on December 16, 2011, the service appointment was scheduled for December 27, 2011, between 12:30 and 4:30 p.m. (Tr. 210, 211). According to Dr. Glendening's testimony, the company specified that it was necessary for an adult to be on the premises in order to provide access to the inside of the home (Tr. 7). The representative who scheduled the appointment explained that the repair technician would call beforehand, and unless he could confirm the complainant's presence ahead of arrival he would not show up (Tr. 7, 8).

The complainant testified that she kept the appointment on December 27, but that CBT did not. When the repair technician did not show up during the appointed time, the complainant contacted CBT to find out when she could expect his arrival. She was told that he was not coming and that CBT had canceled the appointment without contacting the complainant (Tr. 8).

According to the complainant's testimony, CBT stated that, without the complainant's knowledge or consent, a repair technician had shown up on December 24, 2011. Dr. Glendening testified that, contrary to the policy expressed by CBT when scheduling her December 27, 2011, appointment, a service technician did perform work on December 24, 2011, while no adult was available on the premises. As a result of this work, claims Dr. Glendening, the technician "completely disconnected my service." In fact, says the complainant, the technician created a new problem: there is no dial tone, no Caller ID data, and no communication is possible by phone or internet (Tr. 8). Moreover, the technician left no notice that he had been there, and CBT did not contact Dr. Glendening to cancel the December 27, 2011, appointment (*Id.*).

The witness stated that, in a call she made to CBT on December 27, 2011, CBT "agreed to have someone come out to try to fix the problem on December 28, 2011,"

even though the complainant explained to the person scheduling the service appointment for December 28, 2011, that Dr. Glendening would not be available to provide inside access to her home on that day (Tr. 8). During the same call, the complainant was instructed to wait 24 hours after the technician had been there on December 28, and then, if she found that the problem was resolved, to call CBT to report that the problem was resolved (Tr. 9). Under this arrangement, emphasized the witness, CBT would know the problem was not resolved unless the complainant called to say the problem was resolved (*Id.*).

Dr. Glendening testified that the problem was not fixed on December 28 and so she "patiently waited for a letter of explanation" (*Id.*). Instead she received a bill "with full charges for the time both before and after the repair attempt"(*Id.*). Dr. Glendening presented a hearing exhibit (Complainant's Exhibit No. 7) which is a letter she sent to CBT dated January 22, 2012. In the letter, the complainant writes:

> I am in receipt of your bill dated January 8, 2012. Please explain why I have been sent a bill, given that your service department disconnected my phone and internet services over a month ago. I have been waiting for a letter explaining why the problem has not been corrected, and instead I have received a bill for services not provided.

Dr. Glendening presented a hearing exhibit (Complainant's Exhibit No. 8) which is her follow-up letter, dated February 6, 2012. In the letter, the complainant writes:

> I have not yet received a letter of response to my correspondence of January 22, 2012. It has, however, come to my attention that a message was left on voice mail, which I retrieved from an outside location. Please be aware that your service man disconnected my phone and internet completely on December 24th. I have no service inside my home. It may take days before I am in a position to retrieve messages or e-mails from a remote location, so communicating through those media are not effective. Please respond by mail!

Dr. Glendening claims that, despite her efforts to get answers to several questions, CBT was uncooperative and her "questions were left unanswered" (Tr. 9, 10). Also, the complainant claims that "throughout this process, CBT has acted unreasonably in ways that are unfair" and exploitive of the customer. As a result, in bringing this case, the complainant claims she is "hoping to inspire a review of CBT's

policies and practices" so that other customers will not have to endure the same frustrations she has faced (Tr. 10).

Dr. Glendening presented a hearing exhibit (Complainant's Exhibit No. 3) which is a letter to the complainant, dated February 23, 2012, from a CBT Executive Care Representative identified only by the name Sue.[1] It purports to have been sent in response to the complainant's letter to the company dated February 17, 2012. In the letter, CBT states that it received a call on December 17, 2011, requesting a credit be made to the complainant's account, due to loud static that was reported by the complainant in a call made on December 16, 2011. The letter indicates that a repair representative advised the complainant that a credit could be issued once the problem was resolved and the repair ticket closed. The letter also indicates that CBT's repair department ran a test on the line on December 20, 2011. However, it was not determined through the test whether the problem was on the inside or outside of the home. The letter further summarizes what had already occurred by stating that "since the test showed undetermined" CBT called the complainant to advise her that a repair technician was being dispatched on December 24, "to replace the aerial drop" which was defined in the letter as "the line that runs from the pole to the (SNI) the grey box on the side of your home." The letter described the results of the December 24, 2011, repair visit as follows:

> The line test was good and there was dial tone from the outside when the technician was finished. No one was home for the technician to check the dial tone on the inside.

Dr. Glendening questions why a repair technician was being dispatched on December 24, 2011, three days in advance of an already scheduled service appointment at which the customer was expected to be present to provide inside access, if: (1) the December 20, 2011, test left undetermined whether the problem was on the inside or outside of the home; (2) CBT's policy is to require that a customer be present to ensure inside access at a scheduled repair appointment; and (3) CBT had been unable to reach the customer and ensure her presence at the December 24, 2011, repair attempt. Dr. Glendening also questions why CBT did not make use of the scheduled appointment on the December 27, when the customer was present for the purpose of providing inside access, to check the dial tone on the inside of her home (Tr. 18-21).

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[1] CBT's witness, Mr. Wilhelm, provided testimony identifying this person to be Susan Jobe, a Service Representative in CBT's Executive Care Group. Further explaining her position in CBT's complaint-handling chain of command, Mr. Wilhelm indicated that she is a higher-level person who becomes involved only in significant issues or things that need to be accelerated. The function of the Executive Care Group is to work on escalated complaints, meaning those that need more time or more effort to address appropriately (Tr. 208, 209).

CBT's letter dated February 23, 2012, (i.e., Complainant's Exhibit No. 3) addresses, among other things, what the company alleges occurred on December 28, 2011, stating:

> Repair had another ticket that was put in on December 27, 2011, showing that a visit was scheduled for December 28, 2011. Another call was made to the residence advising that we were sending a technician. A technician went out and again no one was home to let him in. He left a note on the door for you to call our repair department and reschedule the visit. He checked the SNI and was getting a dial tone. This led him to believe that the problem was inside. Our technicians had no way of knowing that you did not have dial tone since we were unable to check the inside wiring.
>
> I had our repair manager run another test on the line today. At this time we will need to speak to you to make arrangements for access to the home.
>
> Cincinnati Bell has attempted to correct any repair issues outside the home. We will not be able to issue credits to your account until we have determined what the problem is.
>
> Please contact me at 513-565-6005 and I will work with repair to arrange a technician visit. If you choose to disconnect service please call 513-565-2210....
>
> As a courtesy the late fees totaling $7.41 have been adjusted from your account....

Dr. Glendening points out that she let CBT know ahead of time, when the December 28 appointment was set up on December 27, that she would not be home on December 28. Therefore, she claims, it is unfair for CBT, in its February 23, 2012, letter, through its statement that "no one was home to let the technician in" to at least imply that customer negligence played some role in CBT's failure to promptly and properly diagnosis and repair the service problems at issue. Moreover, Dr. Glendening also thinks it was unreasonable for CBT, in its February 23, 2012 letter, to instruct the customer to call CBT's repair department, given that CBT had, by then, already been advised on multiple occasions that Dr. Glendening had no personal phone service (Tr. 41).

Dr. Glendening believes that when the service technician came out on December 24 to replace the aerial drop wire, he never actually finished that job because, in her view, he never checked for and, as necessary, replaced or repaired any faults along that part of the line that extends from the outside to the inside of her house before reaching what had always before been the point of demarcation between what is the company's and what is the customer's responsibility. The technician could not do so without inside access, which he did not have on December 24, 2011, because the complainant was neither home on December 24, 2011, nor even made aware that any service visit was occurring on that day. So, says the complainant, the service technician left on December 24, 2011, without finishing the job. CBT could have kept the December 27, 2011, appointment, when the complainant stayed home for the scheduled appointment, and finished the job on that date, but, for whatever reason, did not. Instead, says the complainant, by virtue of the service attempt on December 24, 2011, CBT simply moved the point of demarcation from the old location inside her home to a new location, where the new NID was installed outside her home, without ever testing and, as necessary, replacing or repairing any faults existing along that portion of the line running between the old and new points of demarcation. By doing so, claims the complainant, CBT is attempting to transfer, from itself to the complainant, responsibility for that portion of the wire running between the old point of demarcation inside her home, to the new point of demarcation at the NID outside her home (Tr. 43). In attempting to shift responsibility in this way, the complainant further argues, CBT is also unreasonably attempting to avoid giving credits for any service issues that may be originating from the portion of the line that, prior to December 24, 2011, had always been the company's responsibility even though it is physically located inside the customer's home. In this way, says the complainant, CBT is also claiming a right, based on the fact that service is working on the company's side of the new NID, to charge for full service where, in fact, no service exists, without ever properly owning up to its responsibility to test and, as necessary, repair and replace any faults along the portion of the line extending between the old and new points of demarcation (Tr. 42, 43). Dr. Glendening introduced as exhibits, CBT's bills with invoice dates of January 8, 2012, February 8, 2012, and March 8, 2012. She contends that these bills show that CBT tried to charge the complainant for full service for these months even though, she argues, CBT's repair technician, in fact, as a result of his repair attempt on December 24, 2011, disconnected all her service (Tr. 44).

The complainant points out that, in its answer, CBT stated that:

> CBT scheduled a repair appointment for December 27, 2011. Because CBT had a technician available earlier and reasonably believed that the repair could be made from outside the home a technician replaced the aerial drop and

> installed a new NID on the outside of the house on December 24, 2011.

Dr. Glendening questions how it can be true both that CBT, as it says in its answer, on December 24, 2011, reasonably believed that the repair could be made from outside the home, while even later, in its letter to the complainant dated February 14, 2012, CBT was still taking the position that "we are not able to repair [the] phone line until we determine if the trouble is on the inside or the outside, and, on February 12, 2012, was still explaining that, in order to make this determination, CBT "would need for someone to allow our repair technician access to your premises" (Tr. 52). The complainant argues that, with regard to this, it amounts to a deceptive trade practice for CBT to "give contradictory explanations based on whatever is convenient at the time" (*Id.*). The complaint also believes that it is a deceptive and unfair practice for CBT to claim, in its answer, that it "replaced the aerial drop" when, in the complainant's view at least, "CBT has: (1) avoided replacing a portion of the faulty drop; (2) installed an unnecessary NID; (3) claimed the remaining portion is the responsibility of the customer; and (4) avoided the opportunity to finish replacing the remaining portion by neglecting to keep the scheduled appointment" (*Id.*). Dr. Glendening argues that, if the repair technician believed that replacing only a portion of the aerial drop on December 24 was sufficient and that it was reasonable to cancel the appointment on December 27, it would have been appropriate for him to have left – which he did not -- a notice of the cancellation on the door, so that the customer would have not had to wait -- as she did -- for a service technician who never showed up (Tr. 56, 57). Dr. Glendening argues that, since he clearly knew that the existing NID was located inside the home, it was unreasonable for the technician, once he concluded that the aerial drop was faulty and in need of replacement, to have believed that he could finish the job on December 24, 2011, without inside access (Tr. 57).

Dr. Glendening presented a hearing exhibit (Complainant's Exhibit No. 12) which is a letter to the complainant, dated May 22, 2012, from Stephen Watson, a Customer Service Investigator, in the Commission's Service Monitoring and Enforcement Department. Mr. Watson's letter purports to indicate that CBT's response to his inquiries concerning the informal complaint, involving the same issues that later became the basis for this formal complaint case, confirm what Dr. Glendening had reported to the Commission during the informal complaint process. Mr. Watson's letter reflects that, since the CBT repair technician who made the December 24 repair attempt was unable to confirm whether service was working inside the home, he was required, under CBT company policy, to leave a "No Access Card" that would have instructed the customer to contact CBT and make arrangements for access. Dr. Glendening testified that no such card was left (Tr. 57). She pointed out that, ironically, she had already made arrangements to provide inside

access, at the December 27, 2011, appointment that CBT scheduled but neglected to keep (*Id.*).

The complainant points out that, in its answer, CBT also stated that:

> CBT denies that it has transferred responsibility to [Dr.] Glendening for the portion of the drop wire leading to the original NID inside her house. [Dr.] Glendening has denied CBT access to that portion of the drop wire and prevented it from diagnosing any problem with that wire or repairing it.

The complainant contends that this language directly contradicts what CBT stated in Complainant's Exhibit No. 10, its letter to her dated April 18, 2012, as follows:

> CBT has made multiple tests and trips to your home to verify that service to the NID is working properly.... CBT is responsible for providing service to the NID. Service beyond the NID is considered inside wire and is the responsibility of the property owner.

In Dr. Glendening's view, CBT has lied by claiming that she has denied CBT access to that portion of the drop wire. She asserts that she did provide such access and did grant CBT the opportunity to diagnose any problem with it and/or repair it. She testified that she did so on December 27, 2011, during the appointment time dictated specifically by CBT. She explains this further, indicating that if CBT had not, without contacting her, changed that appointment to December 24 or if CBT had shown up to finish the job on December 27, then CBT would have had inside access in the manner it had originally planned (Tr. 59).

The complainant, at page 59 of the transcript, claims that at Paragraph 11 of its answer, CBT has stated that:

> CBT has the right to establish the demarcation point at [Dr.] Glendening's home at the new NID and .... to maintain service only to that point.

At this point in her testimony, the complainant attempts to argue that this language she quotes contradicts other language in CBT's answer in which CBT has denied transferring to the customer, responsibility for the portion of the service line between the old and new point of demarcation (Tr. 59). It must be pointed out here that the complainant has improperly quoted Paragraph 11 of the answer. The

contradiction alleged by the complainant simply disappears when Paragraph 11 of the answer is quoted in full, as follows:

> CBT acknowledges responsibility to put [Dr.] Glendening's line in working order up to the original NID inside her house. However, CBT must be given access in order to be held responsible for repairing it. Furthermore, once any repairs have been made in the line between the old NID and the new NID, CBT has the right to establish the demarcation point at [Dr.] Glendening's home at the new NID and should service be ordered at that address in the future to maintain service only to that point.

Nevertheless, the complainant argues further, that a utility does not, or should not, have the right to change the demarcation point "without revealing just cause for said act" (Tr. 59). In presenting this argument, Dr. Glendening testified that she has "not been provided with documentation of this right" (*Id*).

Next, Dr. Glendening addresses the issue of whether she "has acted unreasonably by not scheduling another appointment for the job to be finished" (Tr. 60). She asserts that "it seems reasonable for [a] customer to seek answers to her questions prior to scheduling another repair appointment" (*Id.*). She summarizes her reasons for believing that CBT actions or inactions, up to this point, amount to negligence, then argues that CBT, "without providing an explanation or taking responsibility for its actions, expects the customer to make whatever sacrifices are necessary to be available yet again" (Tr. 60).

Next, Dr. Glendening presented three more hearing exhibits. Complainant's Exhibit No. 14 is a letter that the complainant sent to CBT, dated February 23, 2012. Complainant's Exhibit No. 15 is a letter that the complainant sent to CBT, dated March 13, 2012. Complainant's Exhibit No. 16 is a letter CBT sent to the complainant, dated March 22, 2012. These letters pertain to the complainant's concerns, and CBT's responses to those concerns, regarding the issue of identifying the reasons why CBT chose to install a new NID outside, rather than repair or replace the existing inside NID. First, Dr. Glendening argues that CBT remained elusive about revealing to her its reasons for making this choice, unreasonably prompting the complainant to write five letters addressing this topic before choosing to address it, all the while accusing the customer of causing delay (Tr. 64, 66).

The complainant contends that, when CBT finally did respond, in the letter introduced as Complainant's Exhibit No. 16, CBT cited to the so-called "twelve-inch rule" and, in doing so, according to the complainant, provided what she considers to be false information (*Id.*). As cited in the letter, the twelve-inch rule reads:

> The NID is to be located, in most instances, 12 inches inside the customer's premises. When following the 12 inch rule is not possible, due to physical limitations, the NID will be located within a point of reasonableness.[2]

Dr. Glendening contends that, in her situation, where an existing inside NID existed, the twelve-inch rule was not followed with respect to that inside NID, but could have been if the December 27, 2011, appointment had been kept by CBT (Tr. 64, 65). Dr. Glendening claims that "there was no reason to install an extra NID on the outside wall" and, because the new NID was installed outside, the rule was not followed (Tr. 65).

In addition, Dr. Glendening argues that there are security concerns regarding the outdoor NID that simply don't exist with regard to the existing inside NID. She explained these concerns as follows:

> The [NID] box contains an easily accessible phone jack and nothing to prevent someone from using my service without my awareness. This could include vandals, drug dealers, stalkers, and perpetrators of violence or terrorism. The house next door has been empty for years and has been vandalized .... Though a hasp on the side of the box would allow a small lock (which CBT will not provide), even an expensive lock of such small size could be cut with a strong set of metal cutters. Plus the lock would rust and need periodic treatment (Tr. 65).

Dr. Glendening also claims that the installation of the new outside NID caused damage to her vinyl siding and the walls of her home.

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[2] On cross examination, CBT's witness, Mr. Wilhelm, admitted that this CBT letter does not correctly quote the 12-inch rule as set forth in Part 68 of the FCC's Rules. Under the FCC's language, the 12-inch rule applies not to NIDs, but to the point of demarcation and specifically states that "the point of demarcation 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 (Tr. 244). This is discussed in more detail in the section of this Order pertaining to Mr. Wilhelm's testimony, but the bottom line is that the record in this case does not support a finding that the outside NID that was installed on December 24, 2011, fails to conform with Part 68 of the FCC Rules and the terms and conditions of CBT's Residence Service agreement. Nor is there any basis of record for finding that the new outside NID is not within 12 inches of where the telephone wire enters Dr. Glendening's home.

> The installation involved drilling holes through my vinyl siding and into the wall of my home, creating a potential water problem, especially over time. The holes were drilled in a wall which angles slightly upward, on the southeast side of the house. This is the worst location for vulnerability to weather. The holes compromise the surface integrity of the wall. The holes need to be plugged with weather-proof caulk, which requires maintenance. I would not have consented to this arrangement, as it creates permanent damage to the wall and will require extra work on the part of the customer (Tr. 66).

Complainant's Exhibit No. 12 contains Mr. Watson's statement that, on May 18, 2012, CBT reported to the Commission that "there is only one NID" (Complainant's Exhibit No. 12, page two, lines 4 and 5). Whether and how, even to whom, the company reported this is not made clear, and no such report, if it exists in writing at all, was ever made a part of the record in this case. Nevertheless, states the complainant, if the company actually did report what the PUCO's Mr. Watson alleges, i.e., that only one NID exists, then the company, in doing so, lied. The complainant asserts that CBT knew there were two NIDs, and that the CBT technician who visited her home on December 24, 2011, "had to know there was already an existing" NID and was obviously "aware that he was installing a new NID rather than replacing an existing one" (Tr. 67).

Dr. Glendening contends that the Commission "instructed" CBT to return to the complainant's home "to confirm why a second NID was installed" (Complainant's Exhibit No. 12, page 2, lines 3 and 4). The complainant claims that CBT never complied with this directive, but instead, without verifying any necessity for installing a second NID, repeats its claim that the installation of the second NID "is in accordance with regulations" (Tr. 67, Paragraph 5 of CBT's Answer). The complainant asserts that, while an outside NID "affords CBT more convenience, that doesn't make it necessary" (Tr. 67). Beyond this, Dr. Glendening points out that, despite CBT's claims to the contrary, the company did have access to the inside of her premises, on December 27. Therefore, even if the existing NID did, in fact, need replacement, CBT had the opportunity to maintain the existing system rather than to impose (without notice) material changes which adversely affected the customer (Tr. 68, 69).

The complainant sought to address CBT's claim, made within its answer and perhaps elsewhere, that the installation of the NID at her home on December 24, 2011, was not "otherwise than in accordance with the standard terms of service" (CBT's Answer, Paragraph 5). Dr. Glendening claims that, during discovery, she asked CBT to identify "the applicable regulation" that authorized CBT's installation of the second

NID. She introduced, as Complainant's Exhibit 17, a copy of the discovery request by which she had asked this question. She testified that, in answering her discovery request, CBT referred her to 47 CFR 68.105 (Tr. 69). The complainant asserts that there is nothing in this regulation "which permits the utility to install a second NID at all" (*Id.*). In the complainant's view, because the utility had already established the demarcation point when installing the original NID, it is unreasonable to alter the established demarcation point without cause (*Id.*). She argues that, in her particular situation, it was particularly unreasonable for CBT to have moved the original point of demarcation because: (1) CBT made the change without notice to the customer; and (2) an appointment was already pending which would have included access to the existing demarcation point established by CBT (*Id.*).

Next, Dr. Glendening argued that an answer that CBT provided during discovery "seems evasive" and, as such, is insufficient and unresponsive (Tr. 71). It is not the Commission's role, at this stage of the proceeding, to rule on the matters of discovery. Rather, the complainant should have used the discovery process itself to work out any deficiencies she perceived in the answers the company provided in responding to her discovery requests. Consequently, we will not address further, in this Order, this issue concerning the sufficiency of CBT's responses to discovery in this case.

Dr. Glendening testified that, during a December 16, 2011, telephone call she had with CBT in order to schedule a service appointment, she asked the involved CBT service representative "to reference" a call she placed to CBT's internet division on October 5, 2011 (Tr. 71, 73, 74). She claims she did so because, during the October 5 call, the CBT service representative "commented on the phone static and that it made communication difficult" (Tr. 74). Dr. Glendening clarified that the point of her request to have the October 5, 2011, call "referenced" was "to establish on record the date upon which a CBT representative acknowledged tangible proof of the [static interference] problem" and, by doing so, to identify when the "onset of the problem" occurred (Tr. 74). By asking to have the call "referenced," Dr. Glendening apparently felt she was asking, as she stated in her January 22, 2012, letter to the respondent, "that a recording of that specific conversation that occurred on October 5, 2011, be reviewed in order to document the loss of adequate phone service" (Complainant's Exhibit No. 7, page 1, Item 1). The complainant claims that she made nine attempts to get CBT to honor a simple request "to reference" the October 5, 2011, call she made to the company's internet service division; all to no avail. Dr. Glendening suspects that CBT, as a consequence of its failure to follow through, "may have allowed data to be discarded," thereby, allowing "CBT to establish December 16, 2011, rather than October 5, 2011, as the date of the onset of the problem with static and providing appropriate credit, based on that earlier date, once the repair was complete (Tr. 82).

Dr. Glendening testified that, despite having telephone conversations with CBT service representatives on two occasions in December 2011 -- which conversations the company later described as entailing requests by the complainant for credits[3] -- it was not until the settlement conference in August 2012, that anyone from CBT ever informed her that, as a matter of company policy, that CBT "typically" does not give credits for service-affecting situations, but rather does so only for periods entailing complete service outages (Tr. 73 – 77). She claims that CBT failed to apprise her of this "refund policy" on numerous occasions prior to the settlement conference, including during the telephone calls that occurred on December 16 and 17, 2011, as well as in addressing written correspondences that she had sent to the company during a nine-month period leading up the settlement conference (Tr. 76- 78).

Dr. Glendening testified that she requested termination of service by letter dated February 17, 2012 (Tr. 83, Complainant's Exhibit No. 9). On February 23, 2012, CBT responded with a letter (Complainant's Exhibit No. 3) that directed her to call CBT by telephone in order to arrange termination of service, even though CBT knew that she was without telephone service. She believes that she is owed an explanation as to why those termination arrangements could not have been carried out at a retail store while she returned the modem (Tr. 83). She further testified that, by letter dated March 22, 2012 (Complainant's Exhibit No. 16), which she claims was postmarked on both March 26, 2012 and March 27, 2012, and which she claims she did not receive until March 29, 2012, CBT advised her that, unless she paid her bill (which covered the service period of March 8, 2012, through April 7, 2012, and contained only charges she was contesting), her services would be terminated on March 28, 2012, i.e., the day before she received the letter (Tr. 83, 84).

The complainant then introduced Complainant's Exhibit No. 22, consisting of three bills she received from CBT, with invoice dates of March 8, April 8, and May 8 of 2012. In each bill, CBT continued to assess charges for billing calendar periods that occurred after March 28, 2012, i.e., the day CBT, in Complainant's Exhibit No. 16, said it would terminate her service (Tr. 85). Dr. Glendening claims that these bills reflect that CBT charged her for services not provided, which she considers to be "certainly an unfair trade practice." She acknowledges that the practice stopped once her formal complaint was filed (Tr. 85).

Dr. Glendening notes that, in its answer, CBT claims that she has acted unreasonably by refusing to deal with CBT by telephone and by insisting that all communications be made by mail (Tr. 86, CBT's Answer, Paragraph 3). The

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[3] Dr. Glendening insists that her purpose was not to seek an immediate credit, but rather to request that the call -- because it included a CBT representative acknowledging that static was impacting the call -- become the reference point for establishing when began the onset of the static-on-the-line problem.

complainant argues that it is unreasonable for CBT to expect the complainant to use the telephone in its communications with CBT because: (1) CBT is directly responsible for her lack of personal telephone and internet service, in that it was the CBT technician who inadvertently disconnected her services on December 24, 2011; (2) there would be no problem if CBT had kept its December 27, 2011, service appointment; (3) CBT has tested the service only on its side of the new NID, by plugging something into the jack, rather than testing the connections on the side of the box other than where the jack is; (4) the complainant has explained to CBT that she does not have a cell to use in making personal calls; (5) CBT's expectation that she should provide a telephone number at which she can be reached is unreasonable and unrealistic, and its policy not to allow appointments to be made by visiting its retail locations is left unexplained; (6) CBT's expectation imposes unreasonable burdens on the complainant's personal lifestyle (e.g., sacrifice of her tax deduction by expecting her to use a business cell phone to make a personal call); (7) phone calls are sometimes not as effective as putting communications in writing (Tr. 86-90).

Dr. Glendening testified that, subsequent to this hearing, she will give CBT another opportunity to finish replacing the aerial drop. However, her cooperation in this regard does not constitute her acceptance of the location of "the extra NID" (Tr. 90).

B. Mr. Wilhelm's Testimony.

Mr. Wilhelm testified that, in his position as the Regulatory Pricing Manager for CBT, his duties include pretty much anything that has to do with state regulatory activities, pricing, tariffing, and complaints. He stated that anything that is a complaint from the Commission comes through him (Tr. 187). Mr. Wilhelm confirmed something that Dr. Glendening had also testified to earlier, namely, that the service involved in this case that Dr. Glendening received from CBT is named "Complete Connections" (Tr. 176, 222). According to Mr. Wilhelm's testimony, Complete Connections is not a tariffed service. This means that the terms and conditions of that service are not set forth in a tariff filed with, and approved by the Commission. It also means that the Commission no longer governs the terms and conditions of the service. The terms and conditions of service for Complete Connections service are governed by CBT's Residence Service Agreement, and are available at CBT's website, namely www.cincinnatibell.som/legal. When the de-tariffing occurred, in April or May of 2011, CBT sent out a bill insert to all customers of the service which directed them to the website where the terms and conditions of the service are published (Tr. 222, 223). Respondent's Exhibit 2 is a copy of Section 3 - the regulations section -- of CBT's Residence Local Service Agreement. It sets forth the terms and conditions that apply to, among other services, CBT's Complete Connections Service (Tr. 224). The witness read various passages from that section of the service agreement into the record, including Section 3.B.3, which states:

> 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 operations 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 of transmission occurs (Tr. 256).

Mr. Wilhelm also read into the record a provision of Section C(3)(c) of the service agreement, as follows:

> The Company may make changes in its telecommunications services, equipment, operations or procedures, where such action is not inconsistent with Part 68 of the Federal Communications Commission's Rules and Regulations (Tr. 224).

Mr. Wilhelm testified that, when CBT moves the location of a NID or installs a NID, nothing in Part 68 of the FCC's rules and regulations governs where a NID must be located (Tr. 225). He also opined that the installation of a NID does not constitute a change in the terms of service because the customer is still receiving the same services that they received previously. Installing the NID is basically an upgrade to the network and amounts to no more than using a slightly different technology to get the same service to the customer according to Mr. Wilhelm (Tr. 225, 226). Mr. Wilhelm stated that when CBT installed the outside NID at Dr. Glendening's home "we just moved the network interface device" without any change to the terms and conditions of the service and without there being any inconsistency with anything in Part 68 of the FCC's rules (Tr. 226).

Respondent's Exhibit 3 is a copy of Section 2 -- the definitions section -- of CBT's Residence Local Service Agreement, which governs, among other things, CBT's Complete Connections Service. Mr. Wilhelm indicated that CBT has incorporated the same definition of the term "demarcation point" as the FCC has used to define that term within Part 68 of its rules (Tr. 237). Included in the definition is the following provision, which Mr. Wilhelm read into the record:

> For single unit installation existing as of December 27, 1991, and installation installed after that date, the demarcation point will be a point within 12 inches of the protector or, where there is no protector, within 12 inches of where the telephone wire enters the customer premises.

Mr. Wilhelm interpreted the term "protector" to mean, in this instance, for purposes of this case, the NID (Tr. 227). He testified that the NID that was installed on December 24, 2011, in this case was, in fact, installed within 12 inches of where the wire goes into the wall of Dr. Glendening's home. Further, he stated that he knows of no rule that governs whether a NID must be installed on either the inside or outside (Tr. 228).

Mr. Wilhelm explained that the connection between the new NID that was installed on December 24 and "whatever device" is in the basement of Dr. Glendening's home is currently considered to be part of CBT's network (Tr. 229). He claims that CBT was "very agreeable" to repairing that portion of its network on December 28, 2011, but knew that it could not do so without gaining access to the inside of Dr. Glendening's home, and knew that this could not happen on that date because she informed CBT, over the phone, that she wasn't going to be there on December 28, 2011 (Tr. 229). He also testified that CBT has never had the opportunity to do that work since December 27, 2011 (Tr. 230). Mr. Wilhelm is not aware of any intention by CBT to charge Dr. Glendening for repairing the connection between the old and the new NID (Tr. 229).

Mr. Wilhelm testified regarding CBT's credit policies. He noted, first, that the Commission does not have any rules or policies in place regarding credit for non-BLES services, such as the service involved in this case (Tr. 230). He stated that under the credit policy that applies to CBT's Complete Connections Service, CBT provides "prorating credits" for periods involving service outages, meaning situations in which the customer "cannot make or receive calls" (Tr. 230, 231). CBT does not have a specific policy for credits in service-affecting situations, meaning those situations where the customer can still make or receive a call, but the phone service during such a call will not necessarily function the way that it should, for example where static may be a factor (Tr. 231, 232). Whether a service credit is offered on a service-affecting problem is discretionary and a matter determined, typically, not by the initial service representative, but rather by someone higher up, once the case has been escalated (Tr. 232).

Mr. Wilhelm indicated that a credit was given to Dr. Glendening in this case. In fact, it was Mr. Wilhelm himself who directed, in this case, that CBT give credits for all service from December 24, 2011, forward. He indicated that that date was selected

because it was the date she reported that her service was no longer working (Tr. 232). He agreed that she had a service outage on December 24, 2011 (Tr. 235). Mr. Wilhelm also stated that, although Dr. Glendening's bills continued past when she did not have service, those bills have been "wiped out" (Tr. 232). Explaining further, he indicated that those bills were kept entirely within the company and no sort of credit report was made with respect to those bills. Mr. Wilhelm stated that, when he received the informal complaint, he suspended collections. This, he explained, means that she should not, from that point forward, have received any more disconnection notices, and that CBT would not send anything to either a collection agency or to a credit bureau (Tr. 233). On cross examination, Mr. Wilhelm said he was not aware that Dr. Glendening was sent a notice indicating "that she was going to be sent to collections in July, 2012," (Tr. 251). He said that it would be a surprise to him "because I credited everything to your account in July" (Tr. 252). When, while on the witness stand, he was shown a copy of Complainant's Cross Examination Exhibit No. 1, which purports to be a CBT final bill delinquent notice on the complainant's account, dated July 4, 2012,[4] Mr. Wilhelm expressed surprise and acknowledged that it looked like a standard CBT disconnect bill.

Mr. Wilhelm testified that Dr. Glendening's service was terminated, for non-payment, on April 2, 2012 (Tr. 233). He indicated that he received the informal complaint on either April 3 or April 4, 2012 (Tr. 235).

Mr. Wilhelm testified that he first got involved with this matter when Dr. Glendening brought it to the Commission's attention as an informal complaint (Tr. 187). At that time he began talking to CBT's Executive Care Group to try to get a better understanding of what had happened. What he found out from these discussions was that CBT had not been able to go inside Dr. Glendening's house and address the problem. This prompted him to write the April 8, 2012 letter (Complainant's Exhibit No. 10), which he sent to both the complainant and the Commission, in which he attempted to explain the situation and outline the issues. He received a few follow-up questions from the Commission's staff, but until it was introduced as an exhibit at the hearing, he never saw the letter from Mr. Watson that was accepted into the record as Complainant's Exhibit No. 12 (Tr. 188). In his letter, Mr. Watson mentions that he "met with the Telecommunications Manager of my department and asked that he review the information" which Dr. Glendening had provided in bringing the informal complaint (Complainant's Exhibit No. 12, page 2). Mr. Wilhelm identified that manager as Dan Anderson and testified that he had talked to Mr. Anderson on several occasions and sent e-mails back and forth to him (Tr. 189).

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[4] The exhibit contains the following language "Dear Terry Glendening, Your final bill,...with an outstanding balance of $423.75 is past due. If payment is not received by July 18, 2012, we will be left with no alternative but to refer your account to a collection agency.

Mr. Wilhelm was asked to explain his understanding of the sentence in Mr. Watson's letter indicating that Mr. Anderson "contacted CBT and instructed the company to return to your [i.e., Dr. Glendening's] home to confirm why a second NID was installed." Mr. Wilhelm testified that he never received such an instruction from the PUCO (Tr. 190). Rather, Mr. Wilhelm testified that, on May 18, he received an e-mail from Mr. Anderson which read "Per our phone call with you yesterday could you verify if there was more than one NID at the customer's house and if 12-24-11 was the first time the NID was installed at the customer's premises" (*Id.*). Mr. Wilhelm testified that, later on May 18, he responded by e-mail saying "The customer did not have a NID on the outside of her house prior to December 24." (*Id.*). He further testified that there is "a connection inside the house" but he is not sure what type of connection it is. He stated that "it may be a NID" but he explained further:

> In older homes there are other connections that can be made. There might be a NID in the house. There might be some kind of a junction box. It depends on whenever the service was last installed and addressed so I don't really know what's inside. In the discussions I had and the letter I sent back, the e-mail I sent to him, we referred to the customer having a connection in the house. We know it's somehow connected between our network and hers, but to be honest I don't know how (Tr. 191).

On direct examination, Mr. Wilhelm explained that he never specifically said directly to anyone at the Commission that there is only one NID at the house and that the language in Mr. Watson's letter, to the extent it can be read as acknowledging the existence of only one NID, represents simply Mr. Watson's interpretation of what Mr. Watson understood to be the communication on the topic that occurred between Mr. Wilhelm and Mr. Anderson (Tr. 194).

Mr. Wilhelm was asked to explain further the position taken by CBT at Paragraph 11 of its Answer, namely, that "CBT acknowledges responsibility to put [Dr.} Glendening's line in working order up to the original NID inside the house." He testified that, if everything involved with the existing inside connection is working, there may be no need to remove it. But, he explained, it is possible that the inside connection may have been the cause of the trouble and, if so, to remove it might be a necessary step in repairing the problem (Tr. 195).

Responding to the complainant's testimony about how she would like to have the line to her house restored even though Dr. Glendening is no longer a CBT customer, Mr. Wilhelm explained that CBT, as a matter of company policy, would wait until the next time that service is ordered before it would go out to the house and

address the problem (Tr. 195). He further explained that the issue of whether or not it would be necessary to remove the existing connection within the home would be determined only if and when somebody would order service (Tr. 196).

CBT maintains call centers and, in the normal course of its business, keeps records of every call that is made to its call centers. These records reflect, among other things, the time the call is made, who addressed the call, and a brief description of what the call was about. Respondent's Exhibit No. 1 was introduced, consisting of CBT's records regarding the calls placed by the complaint relating to her complaint, all of which Mr. Wilhelm had reviewed prior to testifying about them (Tr. 196, 197, 199). Mr. Wilhelm testified that there is no record of any complaint from Dr. Glendening concerning static on her line prior to December 16, 2011 (Tr. 199). The company's records do reflect a call made by Dr. Glendening to CBT's internet service help desk on October 5, 2011 (Tr. 200). Regarding what the call was about, Mr. Wilhelm testified that CBT's records reflect only that the customer called because she was having a problem with internet service, had not had an internet connection for a week, and that the agent on the phone walked the customer, successfully, through a process to effectively reboot the modem. At the end of the call, the customer had reestablished her internet connection and the trouble was considered resolved. Mr. Wilhelm testified that CBT's notes on the nature of that call do not indicate that the call included any mention of a static problem (Tr. 200).

Mr. Wilhelm indicated that, once he received the informal complaint, he requested that the operations manager for CBT's Repair Center retrieve for his review, any recordings of calls that CBT had that were associated with the complainant's account (Tr. 202, 203). According to the witness, CBT does not record all the calls that come in and go out of its call centers (Tr. 202). When asked on cross examination how CBT determines which calls are recorded and which are not, Mr. Wilhelm answered "it depends somewhat on what call center they go to" because not all of the call centers have the same capability to record the calls (Tr. 250).

Mr. Wilhelm testified concerning three calls that were recorded by CBT: the first, a call from Dr. Glendening to CBT, made on December 17, 2011, (Tr. 104-107); the second, an approximately 12-minute call from Dr. Glendening to CBT, made on December 27, 2011, (Tr. 121-132); and the third, a voice-mail message which a person from CBT Repair left on Dr. Glendening's voice-mail-box on December 29, 2011, (Tr. 134-135). The recording that CBT made of each of these three calls was played at the hearing and, as such, was transcribed by the court reporter and included in the transcript in this case. Mr. Wilhelm explained that a fourth recorded call may exist, but he was never able to confirm this or hear any such fourth recording, due to the fact that the person, Mike Owens, who provided the recordings to him had a heart attack shortly after sending him the first three recordings -- before Mr. Wilhelm could track

down whether or not a recording still exists of a fourth call. He testified that the content of the fourth call that may or may not have been recorded entailed confirmation of the December 28, 2011, service appointment (Tr. 204). He explained that if the call was recorded, it is possible that a recording of it still exists. But, he explained, Mike Owens checked, but could not find the recording, so the presumption exists that it was not recorded (Tr. 251). Mr. Wilhelm stated for the record that CBT has no record of Dr. Glendening ever calling CBT at any time after December 27, 2011.

CONCLUSION:

Upon review of the record as a whole, for the reasons explained in this section of this opinion and order, the Commission finds that the complainant has failed to sustain her burden of proof in all respects in this matter.

A. No violation of Section 4927.06, Revised Code, has been demonstrated.

First, there is no basis of record to support finding that, with respect to its treatment of the complainant in this case, CBT has engaged in any unfair or deceptive trade practices prohibited under Section 4927.06, Revised Code. That statute prohibits only limited and certain types of acts or practices.

The complainant has not shown that CBT has, at any time, failed to disclose either any material terms and conditions, or any material exclusions or limitations, of the Complete Connections service that it provided to the complainant. Therefore, no violation of Section 4927.06(A)(1), Revised Code, has been shown of record to exist.

The complainant has not shown that CBT did not disclose CBT's company name and contact information. Therefore, no violation of Section 4927.06(A)(2), Revised Code, has been shown of record to exist.

The purpose of Section 4927.06(A)(3), Revised Code, is to ensure that customers are made 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, Dr. Glendening's complaint is that CBT installed a second NID on her home, but she has not alleged, and has not shown, that CBT failed to inform her of rights and responsibilities concerning inside wire, the repair and maintenance of customer-owned equipment, the use of a network interface device, or any of the charges that company imposes for a diagnostic visit. Therefore, no violation of Section 4907.06(A)(3), Revised Code, has been shown of record to exist.

The complainant has not shown that CBT has engaged in any act, practice, or omission that the Commission has determined through a previous rulemaking or

adjudication constitutes an unfair or deceptive act of practice. Therefore, no violation of Section 4927.06(A)(4), Revised Code, has been shown of record to exist.

Given that CBT's service appointment scheduling policy is to advise customers that no repair work will be done if the repair technician is unable to confirm, beforehand, the presence of an adult on the premises where the repair is scheduled to be done, the complainant contends that it is a violation of Section 4927.06, Revised Code, for CBT to have sent a repair technician to her home, and allowed him to engage in repair work, without notice to her and without her approval, on a day when she was not home. The Commission does not find this practice, i.e., to permit its repair technician to conduct work on CBT's network, outside the customer's home when the customer is not at home, to be a violation of Section 4927.06, Revised Code. Rather we find the practice to be authorized under Section C(3)(c) of the service agreement which governs the Complete Connections service CBT provided to the complainant and, as such, does not amount to a term or condition of service that CBT has failed to disclose.

B. CBT's installation of the new outside NID was in conformance with Part 68 of the FCC's Rules and is authorized under CBT's service agreement governing the complainant's service.

The record supports a finding that CBT's installation of a new NID on the outside of her house does not constitute a change in the rates, terms, and conditions of the service CBT provided to the complainant. Rather, the applicable rates, terms, and conditions of service remained exactly the same before and after the new NID was installed on December 24, 2011. The complainant has not shown that CBT's installation of the new NID was not in conformance with Part 68 of the FCC rules. There is no basis of record to support a finding that the new outdoor NID is not installed within twelve inches of where the telephone wire enters Dr. Glendening's home.

The complainant has not shown that CBT's installation of the new NID was not in conformance with and with the terms and conditions of CBT's Residence Service Agreement, which governs the Complete Connections service CBT provided to the complainant. There is nothing in CBT's terms of service that specifies that a NID must be indoors or outdoors. 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 drop.

We do not find merit in Dr. Glendening's argument that the new outdoor NID presents an unwarranted security risk. She contends that someone may use the outside jack to make telephone calls, but the record shows that the NID is equipped with a hasp that can be used for a lock to secure the device against unauthorized access. CBT provided testimony indicating: (1) that indoor NIDs generally only

continue to exist in older homes; (2) that it would be unusual not to install a NID outside; and (3) that since at least 2005, CBT has never received a complaint involving a problem with people improperly accessing someone else's NID (Tr. 217).

Contrary to the complainant's allegations, CBT has not attempted to make Dr. Glendening responsible for the wire leading from the new outside NID to the point of demarcation, within the complainant's home, between CBT's network and her inside wire. CBT has offered to inspect and repair that wire, if necessary, but Dr. Glendening has steadfastly refused to schedule a repair visit and provide CBT with inside access.

For all of these reasons, we find no merit in Dr. Glendening's arguments that CBT's installation of the new NID amounted to a material change to her service, imposed upon her without notice and without her consent.

C. Even though the complainant received CBT's disconnection notice less than seven days before the disconnection occurred, there was no violation of Section 4927.08(B)(5), Revised Code, because that statute does not apply to the type of service that CBT was providing to the complainant.

The complainant alleges that CBT violated Section 4927.08(B)(5), Revised Code, 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. However, Section 4927.08(B)(5), Revised Code, is a service standard applicable only to basic local exchange service (BLES). The complainant 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. In any event, Dr. Glendening requested termination of her service in writing on February 17, 2012. It is unclear what type of relief the complainant is seeking, nor what her purpose has been, in contending, at hearing, that CBT ignored the request she made, in a letter dated February 17, 2012, for cancellation of her service. In any event, since she wanted to have her service terminated then, she has not shown, and most likely cannot show, how she was harmed by the service disconnection, for non-payment, that CBT imposed subsequently.

D. CBT's explanation for why the service repair that commenced on December 24, 2011, was never completed is not unreasonable.

The complainant alleges that CBT's explanation of why the service repair that commenced on December 24, 2011, but has never been completed, has been inconsistent over time and, as such, is unreasonable. We do not agree with the complainant's assessment on this point of contention between the parties. CBT states

that its service technician considered the repair job finished, and closed the repair ticket that same day, when he installed the new NID on December 24. It was only after the complainant called CBT on December 27 to report both that she had been left waiting for CBT to meet its scheduled appointment window that day, which was just then closing, and that she was also experiencing a service outage, that CBT became aware that the service outage even existed. The company acknowledges that, by mistake, it failed to notify the customer both that the early repair attempt had occurred on December 24 and that, because CBT thought that the necessary repair had been made on December 24, CBT had cancelled the service appointment on December 27 without providing appropriate notice of the cancellation to the customer. CBT apologized for all that, but nevertheless stood willing and able to come and fix the problem as soon as it was provided inside access to the customer's home. It could not do so on December 27 because, until the complainant called, at the end of the scheduled appointment window, it did not even know the service outage existed and, by then, it was too late to arrange for inside access during the appointment window that was just then ending. For the complainant to claim that she provided inside access during the scheduled appointment window is somewhat disingenuous, given that she waited until the end of that window, when she would no longer continue to be available during the period immediately following the closing window, to let CBT know that she had been experiencing a service outage for the last three days. Thereafter, she never did provide CBT with inside access and, without it, CBT was never provided with a reasonable opportunity to address and fix the service outage.

E. It was not unreasonable for CBT to leave voice mail messages which could be retrieved remotely, during the period of the service outage at her home, especially since it eventually complied with the complainant's request for a written response to her inquiries.

The complainant contends that CBT acted unreasonably in choosing to ignore her specific request for a written responses to her inquiries about the missed appointment, and by choosing, instead, to "leave voice mails that I didn't even know I could retrieve and was unable to access from my home phone"(Complaint, page 2). We do not agree with the complainant's assessment on this point of contention between the parties. The complainant admits that, eventually, CBT did, in fact, respond in writing. Moreover, the record shows that the complainant should have known she could, and, in fact, actually did remotely access her voice-mail messages. Mr. Wilhelm testified that one of the things CBT does when people sign up with CBT for voice-mail service is send them instructions on how to remotely access their voice mail messages (Tr. 236). The complainant testified that, in fact, she did remotely access her voice-mail messages (Tr. 137, 138).

F. The Commission is without authority to award some of the forms of relief that the complainant is apparently seeking in this case; she has already obtained some of the relief she has sought; and there is no basis in the record for her to be awarded the other forms of relief she is seeking.

In her complaint, Dr. Glendening indicates that the resolution she hopes to achieve in this case would include requiring CBT to provide transcripts or recordings of all conversations or messages it had with her since November 2011. This is a matter of discovery. It is not the Commission's role, at this stage of the proceeding, to rule on the matters of discovery. Rather, the complainant should have used the discovery process itself to work out any deficiencies she perceived in the answers the company provided in responding to her discovery requests. Consequently, we will not address further, in this Order, this issue concerning the sufficiency of CBT's responses to discovery in this case.

Another of the "resolutions" that the complainant claims that she hopes to achieve in this case is confirmation of CBT's responsibility for the portion of its network between the new outside NID and the original point of demarcation, inside her home, between CBT's network and her inside wire. CBT confirmed this responsibility, both in its answer and in the hearing testimony it provided in this case. Consequently, this does not constitute an issue that is actually in dispute between the parties in this case and remaining for the Commission to decide.

Closely related to this last resolution, is the complainant's announced aspiration, in bringing this case, to achieve "approval" to engage a third-party contractor to repair CBT's lines. It is both ironic, but also illogical for the complainant to seek, first, to establish that CBT is the one legally responsible for repairing and maintaining the portion of its service line in question, and once that legal obligation is confirmed, to nonetheless seek authority for the customer, herself, rather than CBT, to decide which third party should be engaged with legal responsibility for completing any repairs necessary to restore service over the line. In any event, the Commission is without authority to permit Dr. Glendening to engage an independent contractor to repair lines that are, now undisputedly of record, CBT's responsibility. CBT is entitled under its terms of service to access Dr. Glendening's home to make any necessary repairs to its lines. Section 3.C.1 of CBT's Residence Service Agreement states:

> 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 purposes of removing such equipment or lines.

Nor is Dr. Glendening entitled to have a third-party work on CBT's telephone lines. Section 3.C.1 of CBT's Residence Service Agreement states:

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

According to the complaint, Dr. Glendening is seeking both to have all invalid charges removed from her billing statements and to have proper credits given for periods when the services were not provided. The record clearly supports a finding that the complainant has been credited by CBT for all service charges that were billed and paid for beginning December 24, 2011, and beyond. Section 3.B.3 of CBT's Residence Service Agreement contains a limitation on liability, which reads:

> The liability of the Company for damages arising out of mistakes, omissions, 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.

The record shows that, by refunding charges as of December 24, 2011, CBT has provided Dr. Glendening with the maximum monetary relief she could be entitled to under CBT's Residence Service Agreement. There is no basis of record for the Commission to award her any additional amounts. Nor does the record support a finding that the Commission can or should award the complainant any of the other forms of relief mentioned in her complaint, or sought by her through the record in this case.

Accordingly, upon reviewing the evidence presented in this case, the Commission concludes that the complainant has not met her burden of proof in this case by showing that CBT violated, or in any other manner failed to comply with the

terms and conditions of its Residence Service Agreement, which governs the service it provided to the complainant, nor violated any applicable CBT tariff, nor violated any Commission rule, policy, or precedent, nor violated any provision of Title 49, Revised Code. Therefore, the complaint should be dismissed and the request for any of the relief sought in this case by the complainant should be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) CBT is a public utility, as defined in Section 4905.02, Revised Code, and a telephone company as defined in Section 4905.03, Revised Code. As such, CBT is subject to the jurisdiction of the Commission.

(2) On July 2, 2012, Dr. Glendening filed a complaint against CBT. CBT filed its answer to the complaint on July 23, 2012.

(3) A settlement conference was held on August 14, 2012, and a hearing was held on December 14, 2012.

(4) In a complaint case, the burden of proof is on the complainant. *Grossman v. Pub Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

(5) The record supports the Commission's conclusion that the complainant has not met her burden of proof in this case and, ultimately, has not shown that CBT: (a) violated, or in any other way failed to comply with the terms and conditions of its Residence Service Agreement, which governs the service it provided to the complainant; (b) nor violated any applicable CBT tariff; (c) nor violated any Commission rule, policy, or precedent; (d) nor violated any provision of Title 49, Revised Code; and, therefore, the complaint should be dismissed and the request for any of the relief sought in this case by the complainant should be denied.

ORDER:

It is, therefore,

ORDERED, That the complaint be dismissed and the complainant's request for relief should be denied. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

M. Beth Trombold

DEF/sc

Entered in the Journal

MAR 13 2013

Barcy F. McNeal
Secretary