

**Before the  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of     )  
Robert T. Hayden Against             )     Case No. 13-638-TP-CSS  
Cincinnati Bell Wireless             )

**MOTION TO DISMISS**

Cincinnati Bell Wireless (“CBW”) moves to dismiss the Complaint for lack of subject matter jurisdiction. CBW is a wireless service provider and the subject matter of the Complaint does not relate to any matter over which the Commission has jurisdiction. The grounds for this Motion to Dismiss are set out in the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Douglas E. Hart

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## MEMORANDUM IN SUPPORT

This case was filed by a wireless customer and alleges trouble the customer had trying to send pictures to a wireless handset purchased from CBW. The matters addressed in the Complaint are not within the subject matter jurisdiction of the Commission and the Complaint should be dismissed.

Ohio Revised Code § 4927.03(B)(1) provides that the Commission has no jurisdiction over wireless service or wireless service providers except as specifically provided therein. Nowhere is the Commission given subject matter jurisdiction over consumer complaints involving handsets or wireless service. The few matters over which the Commission does have jurisdiction are limited to: (a) as provided under Revised Code § 4905.84; (b) with respect to Revised Code § 4927.15(C); and (c) as provided in Revised Code §§ 4927.03(B)(2), (3) and (4). None of those three provisions applies to this Complaint, as discussed hereafter.

1. Revised Code § 4905.84 only addresses annual assessments to pay for telecommunications relay service. This section is not invoked by the Complaint.
2. Revised Code § 4927.15(C) gives the Commission authority over carrier access policy and mechanisms for carrier access reform, including, but not limited to, high cost support. This Complaint has nothing to do with carrier access or access reform.
3. Revised Code § 4927.03(B)(2), (3) and (4) cover a variety of topics, none of which is applicable here.

First, § 4927.03(B)(2) gives the Commission authority over wireless service providers, but only to the extent authorized by federal law over two topics: (a) to the extent the Commission is carrying out acts described in § 4927.04(A) - (D) and (F); and (b) as provided in Revised Code §§ 4927.05, 4927.20 and 4927.21. Sections 4927.04(A)-(D) and (F) have to do

with such matters as implementation of the Telecommunications Act of 1996, mediation and arbitration of interconnection agreements between carriers, administration of telephone numbers and portability, certification of carriers as eligible for universal service funding and administration of CPNI. None of those topics involves wireless handset or service issues. Revised Code § 4927.05 addresses registration of carriers with the Commission. Section 4927.20 authorizes the Commission to enforce its own orders, to the extent it otherwise has jurisdiction over a matter. Finally, Revised Code § 4927.21 gives the Commission authority over complaints against telephone companies *other than a wireless service provider*, but limits the Commission's complaint authority with respect to wireless service providers to those complaints between telephone companies and wireless service providers or between wireless service providers that are otherwise within the Commission's jurisdiction under §§ 4927.01 through 4927.20. This is not a complaint between carriers.

Second, Revised Code § 4927.03(B)(3) is limited to the requirements of §§ 4905.10, 4905.14 and 4911.18. Section 4905.10 is the assessment of utilities for purposes of funding the Commission. Section 4905.14 requires the filing of an annual report. And, § 4911.18 addresses depreciation. None of these regulatory topics involves consumer complaints.

Third, and finally, Revised Code § 4927.03(B)(4) gives the Commission such authority as is necessary to enforce § 4927.03(B). Thus, it is limited to matters over which the Commission has been given jurisdiction elsewhere, all of which have been discussed above.

This consumer complaint has nothing to do with any of the subjects over which the Commission has subject matter jurisdiction. Therefore, the Complaint must be dismissed.

Respectfully submitted,

/s/ Douglas E. Hart

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**CERTIFICATE OF SERVICE**

I certify that on this 27th day of March 2013, I served the foregoing Motion to Dismiss on Robert T. Hayden, P.O. Box 95, Loveland, OH 45140, by first class U.S. mail, postage prepaid.

/s/Douglas E. Hart

**This foregoing document was electronically filed with the Public Utilities**

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