

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|-----------------------------------|---|-------------------------|
| In the Matter of the Complaint of |) | |
| Chad Kister, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 11-3467-TP-CSS |
| |) | |
| AT&T Ohio, |) | |
| |) | |
| Respondent. |) | |

ENTRY

The Commission finds:

- (1) On June 7, 2011, the complainant, Chad Kister, filed a complaint in this case against the respondent, AT&T Ohio (AT&T). On June 28, 2011, the respondent filed its answer to the complaint and also a motion to dismiss the complaint accompanied by a memorandum in support of that motion.
- (2) On February 29, 2012, the Commission issued an entry which dismissed those portions of the complaint which pertained to issues beyond the scope of the Commission's jurisdiction. At the same time, the Commission's entry indicated that this complaint case should proceed, but should be narrowly focused to encompass only those portions of the complaint alleging that any rate, practice, or service of the respondent is, or has been, as applied to the complainant, unjust, unreasonable, unjustly discriminatory, or in violation or noncompliance with any provisions of Sections 4927.01 to 4927.20, Revised Code, or a rule or order adopted or issued by the Commission under those sections.
- (3) A settlement conference was held in this matter on March 26, 2012; however, the parties were unable to resolve the dispute.
- (4) By entry issued September 18, 2012, an evidentiary hearing in this matter was originally scheduled to occur on October 10,

2012. By entry issued on October 3, 2012, in order to allow the parties additional time to complete discovery, the October 10, 2012, hearing was postponed and rescheduled to occur on December 13, 2012. The entry specified that all discovery requests should be conducted in accordance with Rules 4901-1-16 to 4901-1-24, Ohio Administrative Code (O.A.C.). Later, the December 13, 2012, hearing was postponed indefinitely, by a December 5, 2012, entry which indicated that the hearing would not be rescheduled until the discovery process in this case was completed.

- (5) On November 20, 2012, AT&T filed a motion to compel discovery pursuant to Rule 4901-1-23, O.A.C.
- (6) By entry issued on February 11, 2013, the attorney examiner granted AT&T's motion to compel discovery, and specifically found that, in order to be given a fair chance to prepare and present its defense in this case, AT&T is entitled, under the Commission's rules, to receive in a timely manner reasonably in advance of any hearing that is held, the information that was the subject of the respondent's November 20, 2012, motion to compel discovery. Specifically, the information that the entry compelled the complainant to provide the respondent consisted of the following:
 - (a) The names and addresses of each person having personal knowledge of any of the facts or circumstances alleged in the complaint.
 - (b) The identity of each witness the complainant will call at hearing in this matter.
 - (c) Copies of any notes, logs, correspondences, compilations, or other documents in the complainant's possession pertaining to the allegations of the complaint.
- (7) The February 11, 2013, entry established a deadline of February 28, 2013, for the complainant to provide the respondent with the information listed above, and indicated that if that deadline was not met, then no hearing in this

matter would be scheduled and, instead, the Commission would expect to consider dismissal of this case for lack of sufficient prosecution by the complainant. The entry advised the complainant that if he believed that, for any reason, he lacked the ability to provide the required information by the established deadline, his only option to preserve his ability to prosecute, in a future case, the same issues that he has raised in this case, would be to file, by no later than February 28, 2013, a motion seeking to withdraw this case without prejudice.

- (8) On March 19, 2013, the respondent filed a motion to dismiss this case with prejudice. AT&T alleges that the complainant has ultimately failed to provide to the respondent the information, as described in Finding 6(a), 6(b), and 6(c) above, covered by the February 13, 2013, entry compelling discovery. Consequently, argues AT&T, this case should be dismissed with prejudice, based on the complainant's failure to comply with the February 13, 2013, entry compelling discovery and, consequently, to sufficiently prosecute this case.
- (9) We note that, at no time, has the complainant, by filing a request to withdraw without prejudice his complaint in this case, sought to preserve his ability to prosecute, in a future case, the same issues that he has raised in this case. Nor has the complainant filed anything in this case disputing AT&T's allegation that he has ultimately failed to provide to the respondent the specific information that he was compelled to produce, for purposes of discovery, pursuant to the February 13, 2013, entry. Consequently, the complainant has failed to comply with that entry. As a result, we conclude that this case should now be dismissed, with prejudice, for lack of sufficient prosecution by the complainant.

It is, therefore,

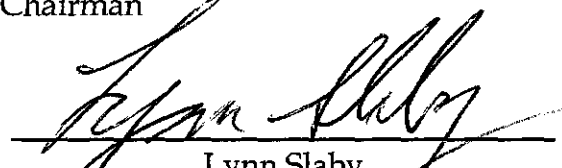
ORDERED, That, in accordance with the above findings, pursuant to Rule 4901-1-23(F)(4) and (5), O.A.C., this case is dismissed, with prejudice, for lack of sufficient prosecution by the complainant. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Smithler, Chairman


Steven D. Lesser

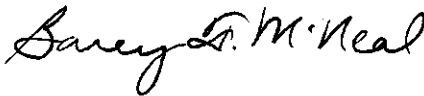

Lynn Slaby


M. Beth Trombold

DEF/sc

Entered in the Journal

MAY 29 2013



Barcy F. McNeal
Secretary