

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

Trevor Kershevich,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 14-1209-TP-CSS
	)	
AT&T Ohio,	)	
	)	
Respondent.	)	

---

AT&T OHIO'S MOTION TO DISMISS

---

AT&T Ohio<sup>1</sup>, Respondent herein, pursuant to Ohio Admin. Code §4901-1-12, moves to dismiss the Complaint to the extent it seeks relief concerning digital subscriber line ("DSL") provisioning and internet services because those are matters over which the Commission lacks subject matter jurisdiction. A memorandum in support of this motion is attached.

Respectfully submitted,

AT&T Ohio

By:                     /s/ Jon F. Kelly                    

Jon F. Kelly  
AT&T Services, Inc.  
150 E. Gay St., Room 4-A  
Columbus, Ohio 43215

(614) 223-7928  
jk2961@att.com

Its Attorney

---

<sup>1</sup> The Ohio Bell Telephone Company is a public utility in Ohio and provides certain Commission-regulated services and other non-regulated services. The Complainant used the name "AT&T" in his complaint. The Ohio Bell Telephone Company uses the name AT&T Ohio, which is used in this pleading.

---

MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS

---

1. Introduction

The Complaint in the captioned case should be dismissed because it seeks relief concerning digital subscriber line ("DSL") provisioning and internet service and those are matters over which the Commission lacks subject matter jurisdiction.

2. DSL and Internet Service Issues Are Beyond This Commission's Jurisdiction

The Complaint seeks to have the Commission exercise jurisdiction over digital subscriber line ("DSL") service and internet service, matters as to which both this Commission and the Federal Communications Commission ("FCC") have held are subject to the FCC's exclusive jurisdiction. DSL has been found to be an interstate information service. Similarly, internet service, by its very nature, is an interstate service. The precedents require that this Complaint be dismissed and that Complainant must, if he seeks to pursue relief, do so at the FCC.

Since 2005, the FCC has consistently ruled that DSL is an interstate information service that is not subject to state commission jurisdiction. It has stated as follows:

First, we find that we have subject matter jurisdiction over providers of broadband Internet access services. These services are unquestionably "wire communication" as defined in section 3(52) because they transmit signals by wire or cable, or they are "radio communication" as defined in section 3(33) if they transmit signals by radio. The Act gives the Commission subject matter jurisdiction over "all interstate and foreign

communications by wire or radio . . . and . . . all persons engaged within the United States in such communication” in section 2(a). Second, with regard to consumer protection obligations, we find that regulations would be “reasonably ancillary” to the Commission’s responsibility to implement sections 222 (customer privacy), 255 (disability access), and 258 (slamming and truth-in-billing), among other provisions, of the Act. Similarly, network reliability, emergency preparedness, national security, and law enforcement requirements would each be reasonably ancillary to the Commission’s obligation to make available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communication.”

*In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline*

*Facilities, Report and Order and Notice of Proposed Rulemaking*, FCC 05-150, Released

September 23, 2005, para. 110 (available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-05-150A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-150A1.pdf)). At footnote 333 of the same order, the FCC stated:

Similarly, in its GTE DSL Order, the Commission found that GTE’s asynchronous DSL (ADSL) service offering was interstate and appropriately tariffed with the Commission. GTE Telephone Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148, 13 FCC Rcd 22466, para. 1 (1998) (GTE DSL Order), recon., 17 FCC Rcd 27409 (1999) (GTE DSL Reconsideration Order).

Id., footnote 333.

This Commission has, consistently and on numerous occasions, adopted and followed the guidance provided by the FCC. In *Don Damyanic v. Verizon North Inc.*, PUCO Case No. 06-270-TP-CSS, the Commission concluded as follows:

Verizon's motion to dismiss should be granted. The Federal Communications Commission has deemed retail DSL service offered by Verizon Online to be an information service. Therefore, Mr. Damyanic's complaint should be pursued at the federal level. Thus, this matter should be dismissed and closed of record.

Entry, April 10, 2006, p 3.

In *Louis Green & Associates v. AT&T Ohio*, Case No. 07-108-TP-CSS, the Commission found that the FCC had asserted exclusive jurisdiction over DSL service. Entry, April 7, 2007. It reiterated that finding in its Entry adopted August 1, 2007, citing its earlier Entry for the proposition that it "determined that high speed Internet service is an interstate service subject to the exclusive jurisdiction of the Federal Communications Commission (FCC)."

Following these precedents, in *Barbara Gadstka v. AT&T Ohio*, Case No. 08-1128-TP-CSS, the Attorney Examiner concluded that "[t]he Federal Communications Commission has deemed retail DSL service to be an information service. Both DSL service and any charges or credits related to it are matters beyond the Commission's jurisdiction." Entry, November 17, 2008, pp. 1-2 (footnote omitted). The Commission followed these precedents and dismissed the complaint entitled *Mark Drake v. AT&T Ohio*, Case No. 10-411-TP-CSS (Entry, June 22, 2011) and the DSL-related aspects of the complaint entitled *Chad Kister v. AT&T Ohio*. Case No. 11-3467-TP-CSS (Entry, February 29, 2012).

### 3. Conclusion

For all of the foregoing reasons, because the captioned complaint relates only to DSL and internet service, it should be dismissed as beyond the Commission's jurisdiction.

Respectfully submitted,

AT&T Ohio

By:                                 /s/ Jon F. Kelly                                

Jon F. Kelly  
AT&T Services, Inc.  
150 E. Gay St., Room 4-A  
Columbus, Ohio 43215

(614) 223-7928  
jk2961@att.com

Its Attorney

14-1209.motion to dismiss

Certificate of Service

I hereby certify that a copy of the foregoing has been served this 28th day of July, 2014 by first class mail, postage prepaid, on the party shown below.

/s/ Jon F. Kelly  
Jon F. Kelly

Trevor Kershevich  
3017 Church Avenue  
Cleveland, OH 44113

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

**Commission of Ohio Docketing Information System on**

**7/28/2014 10:22:11 AM**

**in**

**Case No(s). 14-1209-TP-CSS**

Summary: Motion to dismiss and memorandum in support electronically filed by Jon F Kelly  
on behalf of AT&T Ohio