

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF CAR PARTS
WAREHOUSE, INC.,**

COMPLAINANT,

v.

CASE NO. 17-31-TP-CSS

AIRESPRING, INC.

RESPONDENT.

ENTRY

Entered in the Journal on March 16, 2016

{¶ 1} Pursuant to R.C. 4927.21, the Commission has authority to consider written complaints filed against a telephone company by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the telephone company that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Airespring, Inc. (Airespring or Respondent) is a telephone company as defined in R.C. 4905.03 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On January 4, 2017, Carrie Moore, on behalf of Car Parts Warehouse, Inc. (CPW) filed a complaint against Airespring, alleging that Respondent has not used reasonable efforts to provide reliable, high quality service on its multiprotocol label switching (MPLS) network. As a result of poor service, she adds, CPW has suffered considerable down time in the past 17 months, resulting in lower productivity and loss of revenue and customers.

{¶ 4} Airespring filed its answer and a motion to dismiss on January 24, 2017. Respondent admits that “over the past 17 months some of Car Parts’ approximately 22 sites experienced outages.” Airespring also admits that it has a service level agreement

with CPW for MPLS services. Airespring denies that CPW never missed any payments. Airespring contends that the Commission lacks subject matter jurisdiction over the complaint, because R.C. 4905.02(A)(5) does not define a “public utility” to include “advance services, broadband service, information service, and internet protocol-enabled services.” Respondent further asserts that because Ms. Moore is not an attorney, she cannot commence an action on behalf of CPW.

{¶ 5} The attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties’ willingness to negotiate a resolution in lieu of an evidentiary hearing. In accordance with Ohio Adm.Code 4901-1-26, any statements made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission’s legal department will facilitate the settlement process. However, nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference.

{¶ 6} Accordingly, a settlement conference shall be scheduled for April 13, 2017, at 10:00 a.m. at the Commission offices, 180 East Broad Street, 12th floor, Conference Room 1246, Columbus, Ohio 43215-3793. The parties should bring with them all documents relevant to this matter. If a settlement is not reached at the conference, the attorney examiner will conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.

{¶ 7} Pursuant to Ohio Adm.Code 4901-1-26(F) the representatives of the public utility shall investigate the issues raised on the complaint prior to the settlement conference, and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the authority to settle those issues.

{¶ 8} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E. 2d 666 (1966).

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That a settlement conference be scheduled for April 13, 2017, at 10:00 a.m. at the Commission offices, 180 East Broad Street, 12th floor, Conference Room 1246, Columbus, Ohio 43215-3793. It is, further,

{¶ 11} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

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in

Case No(s). 17-0031-TP-CSS

Summary: Attorney Examiner Entry scheduling settlement conference for 04/13/2017 in accordance with Paragraph 6. - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio