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Public Utilities Commission of Ohio

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Walter J. Skotynsky)	Case No. 17-2554-TP-CSS
)	
v.)	
)	
The Ohio Bell Telephone Company)	
d/b/a AT&T Ohio)	
)	

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Now comes the Complainant, Walter J. Skotynsky, and hereby submits the
Following Memorandum in Opposition to AT&T Ohio's Motion to Dismiss.

I. FACTUAL BACKGROUND

The complainant does not dispute that as of April, 2017 he was receiving service
from AT&T Ohio at his office at 1018 Adams Street, Toledo, Ohio for the following services:

1. Telephone number 419-255-4864 - business landline
2. Telephone number 419-243-0519 - business landline
3. Telephone number 419-241-8811 - consumer (residential) U-verse
4. Telephone number 419-241-7267 - consumer (residential) U-verse
5. U-verse Internet Service

Moreover, the Complainant had no knowledge that the two (2) business landlines
noted above were cancelled.

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As stated in the memorandum in Support of Motion to Dismiss, the Complainant, on or about April 24, 2017, placed orders with AT&T to migrate the residential service to a business service in order to accommodate a static IP number. Ultimately, he does not dispute that the lines in fact migrated from residential u-verse to business u-verse service, nor does he dispute that the connection to that service from the residential service account number 129896868 account was disconnected on April 26, 2017, and the numbers were transferred to the business U-verse account number 136641627.

As to the remaining allegations in the factual background, the complainant states that he has no knowledge that on June 14, 2017, U-verse VoIP telephone number 419-241-8811 was removed from the U-verse account and telephone number 419-241-7267 remained. The complainant also states that he has no knowledge that on October 19, 2017, the U-verse account was moved to his new address at 1900 Monroe Street in Toledo, Ohio, with U-verse Internet service and VoIP number 419-241-7267.

The complainant alleges that the migration of the u-verse lines and his internet service were not handled properly and he experienced significant disruption in his telephone service in November/December 2017 timeframe as indicated in the Complaint filed herein.

II. RESPONSE TO AT&T'S ARGUMENT THAT THE COMMISSION HAS NO JURISDICTION OVER THIS COMPLAINT REGARDING INTERNET SERVICE AND VoIP

Ohio law authorizes the commission to exercise jurisdiction over telephone companies as set forth in Ohio Revised Code §4905.02(A)(5) as follows:

- (5) Any provider, including a telephone company, with respect to its provision of any of the following:**
- (a) Advanced services as defined in 47 C.F.R. 51.5;**
 - (b) Broadband service, however defined or classified by the federal communications commission;**
 - (c) Information service as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20);**
 - (d) Subject to division (A) of section 4927.03 of the Revised Code, internet protocol-enabled services as defined in section 4927.01 of the Revised Code;**
 - (e) Subject to division (A) of section 4927.03 of the Revised Code, any telecommunications service as defined in section 4927.01 of the Revised Code to which both of the following apply:**
 - (i) The service was not commercially available on September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.**
 - (ii) The service employs technology that became available for commercial use only after September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.**

With respect to the broadband service, it is submitted that the initial service to the complainant was not broadband service and only became broadband services after the transfer of the service from complainant's business landline to residential service.

Further, it is obvious that the Respondent is attempting to avoid responsibility for negligent services due to transfer to broadband service which was not commercially available on September 13, 2010.

Notwithstanding the foregoing, the Complainant states that up until the transfer of service his prior service was commercially available and therefore the Public Utilities Commission has authority in this matter because the violations occurred prior to the migration of U-verse line and Internet service in April, 2017.

Respondent correctly states ORC 4905.02(A)(5) that a telephone company has jurisdiction over Internet services. However, Respondent ignored the fact that service to the Complainant prior to the migration of the lines was covered service, not VoIP services as defined in ORC 4923.03(A).

III. AT&T OHIO HAS LIMITED LIABILITY AND MR. SKOTYNSKY CANNOT RECOVER THE DAMAGES HE SEEKS

Respondent's attempts to limit its liability in this matter, pursuant to the terms of the service agreement set forth at

<https://www.att.com/legal/terms.internetAttTermsOfService.html>. It is submitted that Sections 14 and 18 is unconscionable and enforcement of the same permits AT&T to avoid liability for its negligent and tortuous conduct and enforcement of the same will effectively permit the Respondent to avoid any liability for any of the tortuous conduct identified in Complainant's Complaint. Complainant submits that enforcement of the aforesaid provision is against public policy.

IV. AT&T OHIO DID NOT CHANGE THE TERMS OF SERVICE IN VIOLATION OF RULE 4901:1-6-07

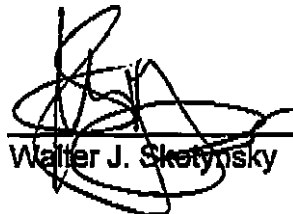
As stated in Respondent's Motion to Dismiss, Complainant alleges that AT&T Ohio made a material change in rates, terms and conditions of services provided without providing fifteen (15) days advance notice. AT&T's argument summarily attempts to dismiss the same.

Contrary to the foregoing, it is undisputed that Complainant's residential lines were being migrated into a business line in order to accommodate AT&T's services. Contrary to the argument of Respondent, it is submitted that the same is a material change and the terms and conditions of service and therefore the arguments of the Respondent do not apply.

V. THE COMPLAINT DOES NOT PROPERLY ALLEGE A DECEPTIVE ACT OR PRACTICE

It is clearly deceptive, unfair practice when the representative indicated that the IP number would be transferred within two (2) to three (3) hours and the same took within thirty (30) days and as a result of the assignment of a temporary number to the complainant, there was substantial interference with his business operations.

The Complainant's allegation of a deceptive act or practice is properly stated in the Complaint and the acts of the Respondent and their agents and employees taken in totality states that the total disregard for the business operations and rights of the Complainant in migrating the business service indicates a deceptive form of practice by AT&T and its staff. Further, the continual failure to address the needs and timely complete the migration process in accordance with the initial representations made to the Complainant were deceptive and false.

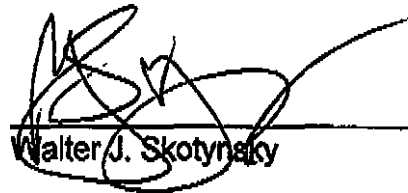


Walter J. Skotynsky

PROOF OF SERVICE

This is to certify that a copy of the foregoing Memorandum in Opposition to Motion to Dismiss was sent by fax this 27th day of February, 2018 to:

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Walter J. Skotynsky