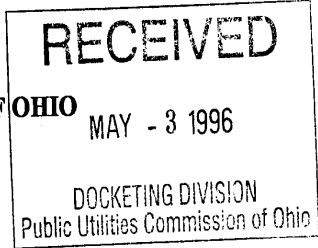


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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO



In The Matter Of Steven J. Longenecker, :
Eastland Telecommunications Consulting, Inc., :
Complainant, :
vs. :
AT&T Communications of Ohio, Inc., :
Respondent. :

Case No. 96-98-TP-CSS
Case No. 96-109-TP-CSS

MEMORANDUM CONTRA
OF
AT&T COMMUNICATIONS OF OHIO, INC.

On April 22, 1996, Steven J. Longenecker of Eastland Telecommunications Consulting, Inc. ("Longenecker") filed a pleading in the above cases entitled "Entry—Answer in Response to AT&T's Motion to Dismiss." If Mr. Longenecker intended this to be a response to AT&T's Motion to Dismiss in each case, it must be dismissed as not having been timely filed. AT&T filed its Motion to Dismiss in Case No. 96-98 on February 26 and its Motion to Dismiss in Case No. 96-109 on March 1. Under the Commission's rules, Mr. Longenecker had until March 15 and March 19, respectively, to file any memorandum contra. The pleading, if it were intended to be a response, is over a month late.

However, for purposes of determining what type of pleading this is under the Public Utilities Commission of Ohio's (the "Commission" or "PUCO") rules, AT&T will treat the pleading as a motion requesting leave to amend the Complaint pursuant to Rule 4901-1-06 of the O.A.C. and a request to allow Mr. Longenecker to represent Citizens Federal Bank as a

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non-attorney pursuant to Rule 4901-1-08(b) of the OAC. The pleading goes on to indicate the Eastland Telecommunications Consulting, Inc. ("Eastland") submits: (1) an amended formal Complaint form with the signature of Mike Gerwick, Vice President, Citizens Federal Bank; (2) a request for representation to the Commission pursuant to amended Rule 4901-1-08 of the Ohio Administrative Code (O.A.C.); and (3) a Certificate of Service to Ameritech.* AT&T submits that the complainant has satisfied neither Rule 4901-1-06 nor 4901-1-08(b), of the O.R.C. AT&T Communications of Ohio, Inc. ("AT&T") respectfully requests the Commission to deny leave to amend the Complaint and deny leave for Mr. Longenecker to represent Citizens Federal Bank. The reasons for such denial are set forth below.

I. The signature of Mike Gerwick, Vice President, Citizens Federal Bank, to a copy of the original Complaint and the letter does not cure the defect.

Although he offers no explanation, Mr. Longenecker appears to believe simply by having Mr. Gerwick of Citizens Federal Bank sign copies of both Complaints that any defect in the original filing is now cured. Mr. Longenecker has misread the new amended Rule. The new amended Rule (Rule 4901-1-08(B), O.A.C.) does permit a corporate officer or the officer's designee to represent the corporation under limited circumstance. However, those limited circumstances do not exist in this case.

Rule 4901-1-08(B), O.A.C. requires that the officer of the corporation must file acceptable proof that the designee has the requisite corporate authority to represent and bind the corporation in the Commission proceedings or in settlement negotiations with the

* Apparently, the reference to "Ameritech" was a mistake as the pleading was mailed to counsel for AT&T, as indicated in the Certificate of Service.

Commission staff or other parties. Mr. Gerwick has failed to demonstrate that Mr. Longenecker has such corporate authority.

The rule also places the burden on the bank to prove to the satisfaction of the Commission that the case or controversy is of such a nature, in terms of complexity or monetary value, that non-attorney representation is appropriate.

AT&T submits that the Commission intended to allow some non-attorney representation in simple matters where the amount of money at stake was not great. But here, Mr. Gerwick concedes in his April 18 letter that the matters involved are complex. In Finding (6) of its March 21, 1996 Entry in Case No. 95-985-AU-ORD adopting the rules, the Commission used the example that if the issues were simple and less than \$1,000 at stake, a non-attorney officer of a corporation may well be able to represent that corporation before the Commission. The amount of money sought by Mr. Longenecker is greater than \$1,000 in each of the two cases.

It is also important to look at the Commission's Entry adopting this rule to determine its purpose. In Finding (6) of the March 21, 1996 Entry in Case No. 95-985-AU-ORD, the Commission indicated that the purpose of the proposed rule "is to further the public good by allowing access to the Commission process that heretofore may have been limited by a person's ability to pay an attorney to represent that party before the Commission. We believe that individuals and small corporate parties have not enjoyed the same access to the Commission that others might have and may choose not to participate because the cost of counsel might be prohibitive due to the size of the company or controversy." Citizens Federal Bank is neither an individual nor a small corporate party. Nowhere in the pleading is it alleged that Citizens Federal Bank is indigent or unable to pay an attorney to represent it before the Commission. This is simply not the type of case that the Commission envisioned as being

appropriate for non-attorney representation of corporations. The request for non-attorney representation should be denied.

II. No good cause has been shown for amending the Complaint.

Rule 4901-1-06 of the O.A.C. permits amendments of complaints by motion for good cause shown. Longenecker has shown no reason or cause why the Complaint should be amended. Leave to amend the complaint should be denied.

III. The Commission should not condone Mr. Longenecker's unauthorized practice of law.

As part of his April 22 pleading, Mr. Longenecker has attached a letter dated April 18, 1996 purportedly signed by Mike Gerwick, Vice President of Citizens Federal Bank, to Chairman Glazer requesting permission to allow Mr. Longenecker to represent the interests of Citizens Federal Bank before the PUCO. The Commission should compare the April 18, 1996 letter from Mike Gerwick with the April 8, 1996 letter from Bob Hoover, Superintendent of Northwestern Local Schools, (another Eastland client) to Chairman Glazer filed in Case No. 96-38-TP-CSS. The April 8 letter contains nearly the identical language as is contained in the April 18, 1996 letter.

It should be obvious that Mr. Longenecker, not Mr. Gerwick, drafted the April 18 letter. The significance of this is that Mr. Longenecker has now ceased being a consultant on telecommunications issues and instead has actively interpreted the law and is advising his clients on the law. From all appearances, Mr. Longenecker is now practicing law in Ohio without a license. Surely the Commission did not envision this use of technical consultants.

The Commission should deny the request for leave to amend the complaint and the request to allow Mr. Longenecker to represent Citizens Federal Bank.

IV. Conclusion

If the April 22, 1996 pleading is a response to AT&T's motions to dismiss, it must be rejected as over a month late.

If the April 22, 1996 pleading is intended to be a request to amend the complaint and to designate Mr. Longenecker as a non-attorney representative, then Mr. Longenecker has not demonstrated good cause for permitting the complaint to be amended. Likewise, any request to have Mr. Longenecker designated to represent Citizens Federal should be denied. Neither Mr. Longenecker nor Citizens Federal have met the Commission's test. Mr. Longenecker is not a corporate officer of Citizens Federal and it has not been shown that Citizens Federal has given Mr. Longenecker the corporate authority to bind Citizens Federal in proceedings before the Commission or in settlement negotiations with other parties and the staff. Mr. Gerwick acknowledges the complexity of these matters in his letter; both of the cases involve requests for money of greater than \$1,000. This contravenes the Commission's intent that some non-attorney representation would be permitted in simple matters involving less than \$1,000.

Citizens Federal has not alleged indigency nor has it alleged that it is unable to pay an attorney. Citizens Federal is neither an individual nor a small corporate party that is somehow deprived of representation before the Commission.

The Commission should deny the request to amend the complaint, the request to have Mr. Longenecker represent Citizens Federal Bank, and should dismiss the complaint.

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE

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Attorneys for
AT&T Communications of Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra of AT&T was served upon Steven J. Longenecker, Eastland Telecommunications Consulting, Inc., 8801 North Main Street, Suite 201, Dayton, Ohio 45415 by ordinary U.S. mail, postage prepaid, this 3rd day of May, 1996.

Stephen M. Howard
Stephen M. Howard