

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED - COMPTROLLER

2004 JUN 23 PM 12:59

Richard J. Herrick,)
)
Complainant,)
)
v.)
)
SBC Ohio)
)
Respondant)

Case No. 04-795-TP-CSS

PUBC

RESPONSE TO SBC'S "ANSWERS" OF JUNE 11, 2004

Richard J. Herrick responds to SBC Ohio's "Answers" as follows:

The response of SBC Ohio is long on form and procedure and short on specifics as the response does not address the detailed contentions by the Complainant regarding SBC's failure to follow it's own tariff. SBC has divided the issues into two categories ...

1. The Complainant's standing before the Commission and whether he has a legal right to file a formal complaint, and
2. Denial of all claims made by the Complainant.

With regard to (1) above. The Complainant was instructed to file this formal Complaint as diplomatic channels had been unsuccessful in resolving the dispute. The Complainant will work constructively with the Commission and SBC representatives in any forum, informal or formal, provided that the result is a generalized solution to the problem and not specific to a customer.

Regarding the specifics of the complaint, SBC states:

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician CLH Date Processed 6/23/04

“1. SBC Ohio denies that it is misinterpreting its tariff in the manner alleged in the Complaint.”

As detailed in the Complaint, SBC representatives have provided two incongruent interpretations of the language found in Part 17, Section 2, Sheet 3, Rev 3, paragraph 3, 4/24/2003. Both positions cannot be simultaneously true, and neither can be supported by the clear language of the tariff. Therefore, SBC’s denial that it is misrepresenting the tariff cannot be supported.

“2. SBC Ohio avers that its tariff restrictions that are the subject of the Complaint are reasonable and lawful.”

The Complainant agrees that “tariff restrictions are reasonable and lawful” to the degree that those restrictions are documented in Tariff 20. However, neither of the divergent interpretations to Part 17, Section 2, Sheet 3, Rev 3, paragraph 3, 4/24/2003 stipulated by SBC representatives are supported by the language of the Tariff.

“3. SBC Ohio avers that its tariff restrictions that are the subject of the Complaint are similar to restrictions commonplace in business where bargain priced offers cannot be combined with other favorable offers.”

The Complainant accepts the contention that “restrictions (are) commonplace in business where bargain priced offers cannot be combined with other favorable offers.” Unregulated businesses may offer a variety of discounts and offers at any time with restrictions stipulated. SBC Ohio, however, is a regulated utility whose *modus operandi* is governed by its published Tariff 20. The Complainant has no disagreement with the Respondant’s right to offer discounts with restrictions provided those restrictions are supported by the Tariff language in force. However, the constraints SBC has placed on the purchase of the flat-rate option for Primes as a result of my efforts to sell this option to SBC customers are not supported by the tariff language. Therefore, an SBC customer should not be bound by those constraints.

The remaining numerical position statements of the Respondant are related to standing as discussed above and broad indemnification by SBC Ohio, and they require no further comment by the Complainant.

THEREFORE, the Complainant requests that Commission assist in resolving this dispute by focusing on the technical issues of Tariff 20 compliance in any forum it deems appropriate.

Respectfully submitted,

Herrick & Associates

By:



Richard J. Herrick

16962 Deer Path Drive

Strongsville, OH 44136

440-238-5290