

OPINIONS OF THE SUPREME COURT OF OHIO

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Ohio Domestic Violence Network, Appellant, v. Public Utilities Commission of Ohio et al., Appellees.

[Cite as Ohio Domestic Violence Network v. Pub. Util. Comm. (1992), Ohio St.3d .]
Public Utilities Commission -- Intervenor appeals from order of commission -- Intervenor lacks standing, when.
(No. 92-1435 -- Submitted November 10, 1992 -- Decided December 11, 1992.)

Appeal from the Public Utilities Commission of Ohio, Nos. 90-467-TP-ATA and 90-471-TP-ATA.

On Motion to Dismiss.

On March 20, 1990, intervening appellee, Ohio Bell Telephone Company ("Ohio Bell"), filed applications with appellee Public Utilities Commission of Ohio ("commission") to amend its tariff to provide two new optional services: Caller ID and Automatic Callback. By entry issued April 11, 1991, the commission found that Ohio Bell's proposed tariff amendments may be unjust and unreasonable and set the applications for hearing pursuant to R.C. 4909.18. The commission also granted appellant, Ohio Domestic Violence Network ("ODVN"), permission to intervene.

By its order issued March 26, 1992, the commission denied the proposed tariff amendments, finding each to be unjust and unreasonable. The commission further found that if Ohio Bell still wished to offer the proposed services, it must file revised applications consistent with the terms of its order.

Ohio Bell and ODVN, among others, filed applications for rehearing of the March 26, 1992 order. In its entry on rehearing issued May 21, 1992, the commission modified the terms under which Caller ID would be acceptable, and found that Ohio Bell could offer Automatic Callback as originally proposed, subject to compliance with various non-tariff conditions. The authority to offer the services remained contingent upon Ohio Bell's willingness to file revised applications which met the specific terms set by the commission, or which contained acceptable alternatives. There is no indication in the record before us that such revised applications have been filed with, or approved by, the

commission in this case.

ODVN filed its notice of appeal from the commission's orders on July 20, 1992. This cause is now before the court upon the commission's motion to dismiss.

Hahn, Loeser & Parks, Janine L. Migden, Maureen R. Grady and Randy J. Hart, for appellant.

Lee I. Fisher, Attorney General, James B. Gainer and Ann E. Henkener, Assistant Attorneys General, for appellee.

Charles S. Rawlings and William H. Hunt, for intervening appellee, Ohio Bell Telephone Company.

Per Curiam. The commission argues that ODVN lacks standing to bring this appeal. We agree and, for the reasons which follow, grant the commission's motion to dismiss.

In *Ohio Contract Carriers Assn. v. Pub. Util. Comm.* (1942), 140 Ohio St. 160, 23 O.O. 369, 42 N.E.2d 758, syllabus, we held that "[a]ppel lies only on behalf of a party aggrieved by the final order appealed from. Appeals are not allowed for the purpose of settling abstract questions, but only to correct errors injuriously affecting the appellant." We explained that a "final order" under former G.C. 544, now R.C. 4903.13, is one "affecting a substantial right" (see R.C. 2505.02; *Hall China Co. v. Pub. Util. Comm.* [1977], 50 Ohio St.2d 206, 4 O.O.3d 390, 364 N.E.2d 852), and characterized the interest necessary to create a substantial right as a "'present interest'" and an "'immediate and pecuniary'" interest. *Id.*, 140 Ohio St. at 161-162, 23 O.O. at 369-370, 42 N.E.2d at 759. Accord *East Ohio Gas Co. v. Pub. Util. Comm.* (1988), 39 Ohio St.3d 295, 530 N.E.2d 875, wherein we also recognized that an order may be final as to one party but not to another.

The orders complained of in this proceeding did not authorize Ohio Bell to implement the services proposed, but made implementation contingent upon its willingness to accept the terms and conditions imposed by the commission. This acceptance was to be manifested by the filing of revised applications. Because the revised filings have not been made or approved in this proceeding, Ohio Bell does not have the authority to provide the proposed services and ODVN's present and immediate interests have not been affected. Clearly, if we were to decide the merits of the commission's orders on the basis of the record before us, we would be rendering the type of advisory opinion which we found improper in *Ohio Contract Carriers Assn.* Accordingly, we conclude that the orders complained of did not affect ODVN's substantial rights, that the order is not final and appealable as to ODVN, and that ODVN lacks standing to bring this appeal.

Appeal dismissed.

Moyer, C.J., Sweeney, Holmes, Douglas, Wright, H. Brown and Resnick, JJ., concur.