

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

May 11, 2009

[Cite as *05/11/2009 Case Announcements #2, 2009-Ohio-2203.*]

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## MOTION AND PROCEDURAL RULINGS

### **2008-0873. In re Complaint of Communication Options, Inc. v. ValTech Communications, L.L.C.**

Public Utilities Commission, No. 04-658-TP-CSS. This cause is pending before the court as an appeal from the Public Utilities Commission of Ohio. Merit briefing was completed on September 4, 2008, and oral argument was held on April 21, 2009. Upon further consideration thereof,

The court notes that the Federal Communications Commission (“FCC”), in an order implementing its slamming rules, stated that “[c]hallenges to whether a state commission’s process for resolving slamming complaints is consistent with this order must be brought to the FCC in the form of a petition for declaratory ruling.” *In re Implementation of Subscriber Carrier Selection Changes Provisions of the Telecom. Act of 1996*, First Order on Reconsideration, CC Docket No. 94-129, 15 F.C.C.R. 8158, ¶ 37 (May 3, 2000). See also *id.* ¶ 28 (“[T]hese rules do not preclude the filing of a petition for declaratory ruling alleging that a state has improperly implemented our verification or liability rules.”). It is further noted that appellant may be challenging whether PUCO complied with federal requirements in resolving the slamming complaint against it, in particular in its first and second propositions of law.

It is therefore ordered that the parties file briefs addressing the following questions:

(1) Is any aspect of this appeal preempted by federal law, in particular as a challenge to whether PUCO’s process for resolving the complaint was consistent with federal requirements?

(2) Under the doctrine of primary jurisdiction, what issues in this appeal, if any, would be appropriate to refer to the FCC? For any such issues, should the court so refer them?

(3) If the court finds that any issue in this appeal is preempted or should be referred to the FCC under the doctrine of primary jurisdiction, what procedures should be followed by this court? What effect would such preemption or transfer have on this case and any related cases?

Appellant and appellee shall each file a brief addressing the above questions within 30 days of the date of this order. Both parties may then file a response within 15 days of the filing of the initial briefs.

The court also invites the United States to present its views on these questions through the filing of an amicus brief. If the United States files an amicus brief, the parties may file a response within 15 days of its filing.

O'Donnell, J., would not order briefing on the third question.