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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
Francesca Brumley,)
)
Complainant,)
)
v.) Case No. 05-834-TP-CSS
)
Sage Telecom, Inc. and AT&T Ohio,)
)
Respondents.)

OPINION AND ORDER

The Commission, considering the complaint, the evidence of record, the arguments of the parties, and the applicable law, and being otherwise fully advised, hereby issues its opinion and order:

APPEARANCES:

Francesca Brumley, 1339 Franklin Avenue, Kent, Ohio 44240, on her own behalf as the complainant.

Bricker & Eckler, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of Sage Telecom, Inc.

Jon F. Kelly, 150 East Gay Street, Room 4-A, Columbus, Ohio 43215, on behalf of AT&T Ohio.

OPINION:

I. HISTORY OF THE PROCEEDING

On June 29, 2005, Francesca Brumley (complainant) filed a complaint against Sage Telecom, Inc. (Sage or respondent) and SBC Ohio now known as AT&T Ohio (AT&T or respondent). In her complaint, Ms. Brumley alleges that she has experienced repeated service-related problems and respondents have not corrected the problems. On July 27, 2005, Sage filed its answer in this proceeding, denying the allegations of the complaint. Sage also filed a motion to dismiss and asserted that complainant has failed to state that Sage provided unreasonable, unjust, or insufficient service in violation of the law. Sage asserts that at no time has it failed to abide by the Commission's Minimum Telephone Standards (MTSS), or to provide complainant with reasonable and adequate service. On July 28, 2005, AT&T filed its answer in this case, denying the allegations of the complaint. AT&T also contends that it has properly responded to trouble reports submitted by Sage

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in a reasonable manner and that it has breached no legal duty to complainant or to respondent Sage. On August 2, 2005, Ms. Brumley filed a response to Sage's motion to dismiss, asserting that the Commission should investigate the failure of the respondents to provide adequate service over an extended period.

A prehearing settlement conference was conducted by telephone on September 19, 2005, in compliance with the attorney examiner entries issued on September 8 and September 15, 2005. The purpose of the settlement conference was to determine whether this matter could be resolved informally. The parties, however, were unable to resolve this matter at that time. Subsequent settlement efforts were unable to resolve the issues in this case.

On December 1, 2006, Ms. Brumley filed additional information in this proceeding, which describes a continuation of the problems identified in her complaint, and also identifies additional issues. On December 20, 2006, Sage filed a supplemental answer in response to complainant's December 1, 2006 filing, generally denying the additional allegations.

An evidentiary hearing was held on April 16, 2007, at Kent State University, Kent State Student Center, Room 316, Kent, Ohio 44242, in compliance with the attorney examiner entry issued March 22, 2007. At the hearing, the testimony of five witnesses was presented: Francesca Brumley, the complainant; Lori Brosky, on behalf of Sage Telecom, Inc.; Kathleen Gentile-Klein, Kenneth D. Allen, and David Baum, on behalf of AT&T Ohio.

II. APPLICABLE LAW

Section 4905.26, Revised Code, requires, among other things, that the Commission set for hearing a complaint against a public utility whenever there are reasonable grounds to find that:

any rate, fare, charge, . . . or service rendered, charged, [or] demanded . . . is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained

Sage and AT&T are telephone companies as defined in Section 4905.03(A)(2), Revised Code, and, as such, are public utilities as defined by Section 4905.02, Revised Code. Accordingly, Sage and AT&T are subject to the jurisdiction of this Commission, in accordance with Sections 4905.04 and 4905.05, Revised Code.

The statutory obligation of a public utility concerning the service and facilities that it must provide is set forth in Section 4905.22, Revised Code, which states that:

Every utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

In complaint proceedings such as this one, the burden of proof rests upon the complainant. *Luntz Corp. v. Pub. Util. Comm.*, 79 Ohio St. 3d 509, 513-514 (1997); *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 190 (1966). The standard of proof required is "by a preponderance of the evidence." *Ohio Bell Telephone Co. v. Public Utilities Comm. of Ohio*, 49 Ohio St. 3d 123, 126 (1990). By a preponderance of the evidence means "the greater weight of evidence;" that is, the evidence of one side outweighs that of the other. 44 Ohio Jur. 3d Evidence and Witnesses § 951 (2003).

While "inadequate service" in a complaint proceeding is not specifically defined in Title 49 of the Revised Code, the Commission has addressed in several cases the factors which we will consider in determining whether a utility has provided inadequate service. In *Wilson v. AT&T Communications of Ohio, Inc.*, the Commission noted that we will consider several factors, including, but not limited to, the number, severity, and duration of service problems, whether the service could have been corrected, and whether the service problems likely are caused by the utility's facilities. *Wilson v. AT&T Communications of Ohio, Inc.*, Case No. 03-2294-TP-CSS, Opinion and Order (June 2, 2004) at 7. See also *Carpet Color Systems v. The Ohio Bell Telephone Company*, Case No. 85-1076-TP-CSS, Opinion and Order (October 9, 1987), and *State Alarm, Inc., v. Ameritech Ohio*, Case No. 95-1182-TP-CSS, Opinion and Order (March 25, 1999), Entry on Rehearing (November 30, 2000).

III. DISCUSSION AND CONCLUSION

A. Alleged Service-Related Issues

At hearing, Ms. Brumley testified that she switched to Sage from AT&T in July 2004 due to the service problems she experienced with AT&T. She asserted that, approximately two months after this switch, she began experiencing various problems, including loss of dial tone, dropped calls, clicks, static, fax-like sounds, tweets, cross talk, and disruptions in conversations, just as in her service-related problems with AT&T. (Tr. 10-11, 18, 21, 22; Complainant Ex. 1; Sage Ex. 1; AT&T Ex. 5.) She testified that, at the time of her switch to Sage, she did not know that Sage would in fact provide her telephone service via AT&T's network. She stated that she thought her service would get better with Sage, but it got

worse. (Tr. 36-37.) Ms. Brumley asserted that she kept a daily call log starting December 1, 2005, to record the problems that she experienced. (Tr. 12-14; AT&T Ex. 5.) She explained that this information was given to Chris King, at Sage, and then AT&T and Sage would come to her house to check the trouble. (Tr. 14.) Ms. Brumley asserted that she continued to log her service problems from the last informal settlement conference, in February 2006, to the day of the hearing. (Tr. 18-20; Complainant Ex. 1.)

In describing AT&T's response to her service complaints, Ms. Brumley recalled that on one occasion AT&T came to her house and rewired her basement. (Tr. 14-16; AT&T Ex. 10.) She stated that AT&T also changed the outside cables from a location on (South) Depeyster Street all the way to Franklin Avenue and Cherry Street, and to her house. She explained that both of the visits and wiring changes were made by AT&T to try to fix the problem, but the problems continued. Ms. Brumley testified that the problem was isolated to the telephone. Ms. Brumley recalled that she only had one telephone at that time. (Tr. 16-18, 22-23; AT&T Ex. 10.) The Commission notes that the maintenance tickets referenced at this point in Ms. Brumley's testimony were each dated in February 2004, before her switch to Sage.

With respect to her service problems as a Sage customer, Ms. Brumley testified that Sage, first, replaced all of her jacks. She recalled that Sage waived the wire maintenance charges twice. (Tr. 23-27; Complainant Ex. 4; Sage Ex. 2.) Ms. Lori Brosky appeared and testified on behalf of Sage. Ms. Brosky testified that Sage's records indicate that Sage dispatched a technician to Ms. Brumley's home on multiple occasions, and when the technician isolated a malfunctioning jack, that jack was replaced. (Tr. 77-78; Sage Ex. 3.) Ms. Brumley recalled that Sage also sent her a telephone to use. (Tr. 31, 119.)

She asserted that even with the new telephone she was still having the same problems, but the dial tone problem was getting worse. Ms. Brumley stated that, out of seven days a week, she may only get dial tone on one day when she picks up the telephone. (Tr. 24-25.) Ms. Brumley testified that Chris King, from Sage, was trying to resolve the problems through e-mails sent to AT&T. (Tr. 30-31; Sage 1.) She stated that she kept Mr. King advised that she was still continuing to have problems.

Ms. Brumley testified that a vendor meet (a meeting between AT&T and Sage) was conducted at her home on May 9, 2005. She recalled that AT&T and Sage narrowed the problem down to the telephone given to her by Sage. (Tr. 29-30, 50-51; Sage Ex. 1.) Ms. Brumley stated that she was asked to unplug her telephone, which had no dial tone. She testified that she was then asked to plug in the new (Sage) telephone, "because ... the line in her house was just going dead." (Tr. 31-32.) She stated that she also had to plug the same telephone into the network interface device (NID) on the outside of her house, and the new telephone did not have dial tone there either. (Tr. 32, 113.) Ms. Brumley asserted that AT&T told her the telephone from Sage was no good. (Tr. 32-33.) She recalled that AT&T brought a new telephone to that vendor meet, which worked at the NID. Ms. Brumley stated that she has been using the AT&T telephone as her only telephone, and that she brought it to the hearing. (Tr. 119-121, 192.)

Ms. Kathleen Gentile-Klein appeared and testified on behalf of AT&T. Ms. Gentile-Klein testified that she had reviewed the service complaints filed by Ms. Brumley when she was an AT&T customer. Based on AT&T's records, Ms. Brumley filed 15 trouble reports in 2003 regarding chronic tap noise or clicking. Ms. Gentile-Klein asserted that in the majority of the instances, AT&T found that the service was good to the NID. She recalled the service records indicated that the trouble was a customer premise equipment problem located inside the home. Ms. Gentile-Klein testified that when Ms. Brumley was an AT&T customer, Ms. Brumley was enrolled for its "linebacker service." She stated that under the linebacker service, Ms. Brumley was not charged when AT&T dispatched a technician to repair an inside wiring problem or replace jacks. (Tr. 110-112.) Last, Ms. Gentile-Klein testified that she coordinated three vendor meets between AT&T's senior technicians and Sage, which were conducted after Ms. Brumley's formal complaint was filed with the Commission. She asserted that vendor meets between AT&T and Sage were also conducted before the filing of Ms. Brumley's complaint. (Tr. 113.) Ms. Gentile-Klein further asserted that, each time AT&T went out to test the service at the NID at Ms. Brumley's house, the testing showed that there were problems with the customer's premise equipment, which would be her telephones. (*Id.*)

Mr. Kenneth D. Allen appeared and testified on behalf of AT&T. Mr. Allen testified that he works in AT&T's network technical support group, which investigates and tries to resolve chronic customer issues. He stated that he has 21 years experience in this area. (Tr. 122.) Mr. Allen testified that he started reviewing Ms. Brumley's reports of service problems in October 2005. He first reviewed Ms. Brumley's service records to learn what work had been completed in response to the customer's service complaints. Mr. Allen testified that AT&T changed all of Ms. Brumley's facilities numerous times, in response to her trouble reports. (Tr. 138.)

Mr. David Baum also appeared and testified on behalf of AT&T. Mr. Baum explained that he also works in the second tier technical support group. (Tr. 164-165.) His testimony described the actions taken by AT&T to check the facilities from the central office to the NID at Ms. Brumley's home. Mr. Baum asserted that, as a result of several changes, AT&T ran an entirely new path from the central office to Ms. Brumley's house. (Tr. 166-168.) He also testified that the central office equipment assigned to Ms. Brumley's telephone number was changed several times. (Tr. 176-187; AT&T Exs. 7, 8, 9, 11, 12, 13.) Mr. Baum asserted that, based on his investigation, AT&T's network facilities were not causing the reported problems. (Tr. 169-172, 183, 195-196.)

Mr. Baum also described the testing at one of the vendor meets, during which Ms. Brumley was asked to plug in and then unplug three different telephones (Ms. Brumley's original telephone, the telephone provided to Ms. Brumley by Sage, and the telephone that AT&T brought to the vendor meet). He testified that, when two of the three telephones were plugged in, his testing equipment registered "high resistance shorts, which can cause service interruptions" and other times not. (Tr. 173.)

Mr. Allen recalled placing an Ellipsys test set on Ms. Brumley's line to analyze her telephone calls. (Tr. 124-125.) He explained that the test set would recognize when a customer picked up the telephone to make a call, whether there was a dial tone, and the digits dialed. Mr. Allen testified that the test set detects whether or not the customer hung up first or the network hung up first. The test set also detects a ring if the customer receives a call and whether digits are dialed during the call. He asserted that this test set also detects any call processing tones, such as busy signals, audible ringing, and call waiting tones. (Tr. 125-126; AT&T Exs. 5-6.) Mr. Allen discussed the results of the test set analysis, which will be grouped by the type of service complaint:

Tweets and fax-like noises

Mr. Allen recalled that the "tweet" sound reported by Ms. Brumley was occurring every half hour, typically at 5 or 35 minutes after the hour. (Tr. 127.) He testified that, through his investigation, he determined that the "tweet" was actually the result of the visual message indicator associated with her voice mail feature. Mr. Allen explained that when a customer has the voice mail feature, the customer can be notified of voice mail messages by auditory and/or visual indicators: the auditory indicator is a stuttered dial tone that the customer hears when the receiver is picked up to make a call, while the visual indicator is used to light a lamp on the customer's telephone to show that there are voice mail messages waiting. (Tr. 127-128.) Mr. Allen testified that the visual indicator is a signal sent from the central office to the customer's telephone every 30 minutes. He indicated that in order for the signal to be sent to the customer's telephone, to either light the lamp or turn the lamp off, the following actions occur in milliseconds: the dial tone is taken off the customer's line, the signal is sent, and the dial tone is returned to the customer's line. As to the reported "tweet" sounds, he explained that this sound is actually made by Ms. Brumley's telephone, when the visual indicator signal, or frequency, is sent from the central office to her telephone. Mr. Allen testified that some telephone bells are more sensitive to voltage changes and the signal will cause the bell to tap or "tink." (Tr. 128-131, 144-145, 151.) He explained that at one point, the voice mail feature (and message waiting indicators) was removed from Ms. Brumley's line as part of the investigation. When the voice mail feature was removed the tweet problem stopped. (Tr. 133.)

Mr. Allen also testified that Ms. Brumley's voice mail feature was set to use both the auditory and visual indicators to alert her when she had voice mail messages. He explained that the customer can also have either the auditory signal or the visual indicator to light a lamp on the customer's telephone. (Tr. 131-133.) On cross-examination, Mr. Allen testified that, if the customer's telephone set does not have a lamp, there is no sense in having the message waiting (visual) indicator for the voice mail feature, and the customer can choose not to have it. (Tr. 145-146.) Ms. Brumley stated that her telephone does not have a lamp on it. (Tr. 147, 158-159.) After further discussion at hearing, Ms. Brumley indicated that she would like for Sage to remove the visual message waiting indicator from her voice mail to see if it will resolve some of the problems. (Tr. 200.)

With respect to the fax-like noises, Mr. Allen testified that the frequency of the visual message indicator is a very short burst, which sounds like a fax machine. (Tr. 128-129, 143.) He asserted that if the customer happens to pick up the telephone to make a call when the visual indicator signal is being sent, it is possible for the customer to hear the fax-like sound of the signal. (Tr. 129-130.)

Calling party being muted

Mr. Allen testified concerning Ms. Brumley's service complaints about the calling party's voice fading during conversations. He stated that Ms. Brumley also has a feature called "look-see call waiting." He explained that with this feature, in addition to receiving a call waiting tone, the customer has the ability to see the calling party information on the caller ID display without having to flash the switch hook. Mr. Allen testified that the following actions occur: the central office sends a message to the caller ID device, in addition to the call waiting tone; the caller ID equipment accepts the message and sends an acknowledgement tone back to the central office; that acknowledgement tone is interpreted at the central office to then send the caller's ID to the telephone set. He further explained that during this process there is a mute to prevent the parties from hearing the blast of the millisecond tone that contains the caller ID information. (Tr. 135-136.)

In addition, Mr. Allen testified that he and his partner, Dave Baum, have investigated other voice "deadening" issues. In their investigation they have determined that the customer's voice can actually duplicate the (look-see call waiting) acknowledgement frequency during a conversation. When this occurs, the central office will "deadend the line for a brief moment," because it is expecting to send caller ID information, and it will sound like someone muted the telephone. (Tr. 136.) Mr. Allen asserted that this customer duplication more predominately occurs with female voices, where the voice goes up an octave. He testified that this phenomenon did occur, briefly, when the test set was on Ms. Brumley's line. (Tr. 136-137, 152-153; AT&T Ex. 6.)

Line Tapping

Ms. Brumley stated her belief that someone was tapping her telephone line. When asked what led her to note "phone tapped" entries in her daily log, she replied that AT&T had gone through all the work to replace the outside wiring and rewired her basement. Her jacks were also replaced, yet she could hear people talking when she was on the telephone. Ms. Brumley testified that she recognized the voices of people that she knew and who worked at the recreation center near her. She reasoned that, for her to continue to have the types of problems that she is having, there must be an illegal tap. (Tr. 21-23.)

With respect to the allegation that someone was tapping her telephone, Mr. Allen testified that he marked the terminals on her line at the central office so that he could monitor whether someone was placing a tap on her line. He asserted that he did not see any indication that her telephone was being tapped. (Tr. 140-142, 162-163.)

Conclusion

The Commission finds that the record evidence in this proceeding is insufficient for a finding of inadequate service with respect to AT&T. As noted above, Ms. Brumley has, over a period of years, complained of noises, interruptions, and tapping of her telephone service. The record shows that AT&T conducted a thorough investigation, using its tier two network support group, and made several changes to its facilities in an effort to eliminate the alleged problems. AT&T's investigation found no problems from the central office to the NID at Ms. Brumley's home. The record also shows that when both telephones indicated potential problems, AT&T provided a new telephone for Ms. Brumley's use. Further, to rule out any wire tapping, Mr. Allen identified and marked Ms. Brumley's line in the central office. After a period of observation, Mr. Allen concluded that Ms. Brumley's line was not tapped. AT&T appears to have exhausted all of its technical resources and has conducted a complete investigation of Ms. Brumley's telephone service. Considering the extent and thoroughness of AT&T's investigation, the Commission cannot conclude that AT&T has rendered inadequate service.

The Commission further finds that the record evidence in this proceeding is insufficient for a finding of inadequate service with respect to Sage. The record shows that Sage made a minimum of six visits to Ms. Brumley's home during which jacks were replaced and/or vendor meets were conducted with AT&T. The record also shows that Sage provided several out-of service credits, waived wire maintenance charges, and provided bill adjustments as accommodations for Ms. Brumley's cooperation with the vendor meets. The record reflects that for the period of July 2004 through March 2007, Ms. Brumley was billed for services in the total amount of \$2329.96. Also during this time, Sage made credits or adjustments to Ms. Brumley's account, which reduced the total billed by \$993.82.¹ Considering the extent and thoroughness of Sage's investigation of Ms. Brumley's telephone service, we cannot conclude that Sage has rendered inadequate telephone service.

Next, with respect to local service packages, the Commission notes that, while a service package may contain several custom calling features, not all of those features may be appropriate for or compatible with that particular customer's telephone equipment. Based on the evidence presented in this proceeding, the Commission finds that Sage could have provided a better explanation to Ms. Brumley concerning the message waiting indicator options for its voice mail offering. Sage did not determine what type of telephone or other equipment Ms. Brumley was using in her home. It is clear from the record that Ms. Brumley's basic black telephone did not require the visual message waiting indicator. Also based on the record, it is likely that the unnecessary visual message waiting indicator created some of the line noise and the telephone "tweets" that Ms. Brumley experienced. We believe that it is appropriate to address Sage's business

¹ The sum of the credits in Sage Ex. 1 reflects a total of \$993.82. However, Sage Ex. 2 reflects total credits in the amount of \$1003.82.

practices to reduce the likelihood of similar incidents. Therefore, and in accordance with Section 4905.26, Revised Code, Sage is directed to develop and implement a training procedure to be used by its repair representatives and/or repair technicians in diagnosing service problems. Under this procedure, the repair representatives would inquire about the type(s) of telephone equipment that the customer has and then determine which custom calling features and related signals would be appropriate for that telephone equipment. Sage should file the proposed plan with the Commission in this docket, and serve a copy on the complainant, within 45 days of the issuance of this order. Upon review of the report, the Commission will determine whether the procedure is sufficient or whether additional action is necessary.

B. Alleged Improper Removal of Services

1. Improper collect call block placed on her telephone number

On January 5, 2007, Ms. Brumley filed a letter in this proceeding alleging that, on December 18, 2006, Sage placed a block on her ability to receive collect calls. Sage did not file a written response to this letter. At hearing, Ms. Brumley contended that Sage has blocked her ability to receive calls on more than one occasion. She pointed out the collect call block notations in Sage Ex. 1, to support her argument. Ms. Brumley testified that Sage also improperly placed a "collect call block" on her number on March 27, 2007, without any notice. She asserted that all of her features were working, except the ability to receive collect calls. Ms. Brumley recalled that, in October or November 2006, she had to bring her bill down to "zero" before Sage removed the collect call block. (Tr. 37-41; Sage Ex. 1 at 32-33.)

Ms. Brosky testified that Sage's policy is to limit the dollar amount of collect calls that a customer can receive in a billing period to \$25.00. She asserted that this policy is a way of assisting customers to better manage and safeguard their accounts. (Tr. 84-85, 97.) Ms. Brosky further testified that this limit is what Ms. Brumley experienced in December 2006. She noted that between December 8 and December 16, 2006, Ms. Brumley incurred \$27.00 in collect calls. Ms. Brosky asserted that this is a "very rapid and unusual run-up in her account balance." (Tr. 84-85.) She further asserted this is exactly the reason that Sage maintains this policy: Sage wants to "prevent trouble before its spirals out of control." (Tr. 85, 93.) Ms. Brosky explained that, once the \$25.00 limit has been reached, the customer may send a payment to Sage to reduce their collect call balance, in order to accept additional collect calls during the billing period. (Tr. 85, 97.) On cross-examination, Ms. Brosky testified that the customer is not notified, in advance, that there is a collect call limit per billing period. She explained that the customer is advised of the \$25.00 collect call limit when the customer calls Sage. (Tr. 87.) Ms. Brosky indicated that all customers have a collect call limit, but this limit is not documented for their customers. (Tr. 88, 98.)

Conclusion

The Commission notes that MTSS Rule 4901:1-5-04(B), Ohio Administrative Code (O.A.C.), requires that each local service provider tariff shall contain the conditions under which the company may take any of the following actions: (1) disconnect a subscriber's service; (2) refuse to provide a subscriber service; (3) require a deposit and/or advance payment before providing service; and (4) impose toll caps or credit limits. Based on the testimony presented, the Commission finds that Sage's policy, to limit collect calls to \$25.00 per billing period, is analogous to both the toll cap and the credit limit, addressed in Rule 4901:1-5-04(B), O.A.C. Next, we note that MTSS Rule 4901:1-5-13(A)(3)(b), O.A.C., addresses the use of toll caps as a method of extending limited credit to subscribers. Rule 4901:1-5-13(A)(3)(b), O.A.C., requires that the terms and conditions of the toll cap be set forth in a Commission-approved tariff.² Specifically, the terms and conditions under which a toll cap is imposed, as well as the steps that the subscriber may take to have the toll cap removed, must be disclosed in writing by the telecommunications service provider at the time a toll cap is imposed. Based on a review of the testimony presented and a review of Sage's tariff, the Commission finds that Sage's collect call policy is analogous to violating both MTSS rules. Accordingly, the Commission directs Sage to cease the use of its collect call policy immediately. Sage may submit a revised tariff, and related collect call limit notices, for Commission review.

2. Improper removal of calling features and long distance

Ms. Brumley also alleged that, in October 2006, Sage started removing her calling features, including long distance, when her payment was late, which left her with only "a straight line" and dial tone. She contended that Sage has never done this before, and she has not changed her payment pattern. Ms. Brumley contends that, since Mr. King left his job at Sage, Sage is treating her differently and no longer taking her service issues seriously. (Tr. 18-19, 25, 35-36, 44-45; Sage Ex. 1.) Ms. Brumley recalled that Mr. King's voice mail directed people to call Lori Brosky. Ms. Brumley testified that, at first, Ms. Brosky seemed to be interested. She contended that, later on, when Ms. Brosky heard Ms. Brumley's voice, Ms. Brosky hung up on her. (Tr. 37.) Ms. Brumley recalled that she did receive a suspension notice on March 22, 2007, but the balance was \$0.00. (Tr. 37-38; Complainant Ex. 2.)

For Sage, Ms. Brosky testified that Ms. Brumley has carried a past due balance with Sage consistently since she became a customer. (Tr. 81-82.) Ms. Brosky asserted that Sage has been left with no option but to send numerous suspension letters to Ms. Brumley during the time that she has been a Sage customer. Ms. Brosky asserted that at no time has

² The Commission notes that the present requirement, to set forth the terms and conditions under which a toll cap is imposed, is the same under newly adopted MTSS Rule 4901:1-5-05(B)(2), O.A.C., effective January 1, 2008. See Case No. 05-1102-TP-ORD (05-1102) *In the Matter of the Review of Chapter 4901:1-5, Ohio Administrative Code*, Entry on Rehearing signed July 11, 2007.

Ms. Brumley's local service been disconnected, only her vertical features and long distance. (Tr. 81-83; Sage Exs. 1, 4.)

Conclusion

Based on a review of the evidence presented, the Commission finds that Sage's removal of Ms. Brumley's vertical services and long distance service for nonpayment was in conformance with the Commission's rules. The testimony and the exhibits both indicate that Sage sent notices to Ms. Brumley concerning an outstanding balance prior to the removal of her vertical services and long distance service. The Commission notes that, under MTSS Rule 4901:1-5-17(C), O.A.C., when a partial bill payment is made, the payment must be applied first to past due regulated local service charges (basic local exchange service), before any payment is applied by the telecommunications provider to any past due long distance (toll) and regulated custom calling features, or unregulated charges, such as voice mail. In other words, under Rule 4901:1-5-17(C), O.A.C., in the case of nonpayment, the unregulated services and long distance would be removed first, and basic local service would be the last part of a service package to be disconnected.

On the other hand, the Commission finds the "suspension notice" issued by Sage to be unclear and inconsistent with our rules for several reasons. For discussion purposes we will use Complainant's Ex. 2, which is a Sage suspension notice dated "3-22-07." First, the notice itself is captioned "Suspension Notice." The MTSS rules do not address the suspension of service, only disconnection of service. Further, Sage's tariff does not define what it means by the term "suspension," as compared to the disconnection of service. Next, the pertinent paragraphs of this notice state, as follows:

Our records indicate your account is past due in the total amount of **\$57.29**.

Under Ohio law, you must pay **\$0.00** (\$22.10 per line, per invoice plus applicable taxes and fees) to prevent your basic local service from being suspended on **4/5/2007**. Non-payment of any other charges, such as Long Distance Service, Directory Assistance, and all calling features up to and including Voice Mail, Caller ID, Call Waiting, 800 Telephone Numbers, etc. will result in those services being blocked.

If your telephone service is suspended, you must pay all past due charges of **\$57.29** plus a **\$44.00** reconnect fee in order to restore your service.

(Complainant's Ex. 2, emphasis in original.)

Second, the Commission notes that, under the version of Rule 4901:1-6-21(C)(2)(b)(iii), O.A.C., applicable at the time of the complaint, the disconnection notice must provide both the total amount due to retain the entire service package and the amount due for the customer to retain the basic local exchange component of the service package. Further, under former Rule 4901:1-6-21(C)(2)(b)(ii), O.A.C., if a competitive local

exchange carrier (CLEC) does not offer stand-alone basic local exchange service, it must provide a value for that service component in its tariff, which would then be the minimum payment that a customer must make in order to retain basic local exchange service. A review of Sage's tariff indicates that Sage does not offer stand-alone basic local exchange service; however, Sage's tariff includes a value for its basic local exchange service in the amount of \$24.99, which is in compliance with former Rule 4901:1-6-21(C)(2)(b)(ii), O.A.C.

Yet, based on a review of both notices presented as evidence in this proceeding, we find that the notice text is not clear or consistent with Sage's own tariff. Rather than the \$22.10 stated on both notices, the amount should be the \$24.99 value assigned in Sage's tariff. (Complainant's Ex. 2; Sage Ex. 5.) Further, the actual text in Complainant's Ex. 2 exhibit indicates "\$0.00 (\$22.10 per line, per invoice plus applicable taxes and fees), is the amount that must be paid to prevent the "basic local service from being suspended." We believe that this amount is in error. As noted above, the Sage tariff does not define what it means by the suspension of basic local service. This concern will be discussed further below.

Third, the last sentence in this paragraph states that "Non-payment of any other charges . . . will result in those services being blocked." Again, Sage's tariff does not define the term "blocked." A review of the evidence presented in this proceeding indicates that the services are actually removed and restored via service orders issued to AT&T. (Sage Ex. 1.) Further, the services identified in the text appear to be a mix of regulated and unregulated services. We note that Rule 4901:1-5-17(L), O.A.C., requires that each category of services - regulated, unregulated, and toll - be identified separately, with the separate amounts owed, on the disconnection notice.³

Fourth, the third notice paragraph advises the customer that, if "your telephone service is suspended, you must pay all past due charges of \$57.29 plus a \$44.00 reconnect fee in order to restore your service." We also find that this language is not clear. Requesting payment of a reconnect fee would only be appropriate in the case where the customer's basic local service was physically disconnected from the network, yet the term "suspended" is used.

Accordingly, for the reasons discussed above, we direct Sage to work with Staff, specifically the Service Monitoring and Enforcement Department (SMED), to revise its disconnection notice to be more clear and to conform to the Commission's rules, including Rules 4901:1-5-17 and 4901:1-6-21, O.A.C., in the interim as discussed above, and to comply with the newly adopted MTSS rules.

³ The Commission notes that the present requirements of Rule 4901:1-5-17, O.A.C., will remain in effect and govern service disruption, until June 1, 2008. After that date, newly adopted MTSS Rule 4901:1-5-10, O.A.C., will address service disconnection. See 05-1102, Entry Nunc Pro Tunc signed October 10, 2007, and Entry on Rehearing, signed July 11, 2007.

Finally, issues and arguments raised by the parties but not discussed herein are rejected.

FINDINGS OF FACT:

- (1) The complaint in this case was filed on June 29, 2005.
- (2) Ms. Brumley's local telephone service during the period at issue was provided by Sage Telecom, Inc.
- (3) Sage Telecom, Inc. is a CLEC that has been authorized by this Commission to provide basic local exchange service and interexchange telecommunications services in the State of Ohio.
- (4) A prehearing settlement conference was conducted by telephone on September 19, 2005.
- (5) The evidentiary hearing in this matter was held on April 16, 2007, at Kent State University, Kent State Student Center, Room 316, Kent, Ohio 44242, in compliance with the attorney examiner entry issued March 22, 2007. The complainant presented herself as a witness; Sage presented 1 witness and AT&T presented 3 witnesses.
- (6) Sage's policy, to limit collect calls to \$25.00 per billing period, functions as both a toll cap and a credit limit.

CONCLUSIONS OF LAW:

- (1) Sage and AT&T are telephone companies as defined in Section 4905.03(A)(2), Revised Code, and, as such, are public utilities as defined by Section 4905.02, Revised Code. Accordingly, Sage and AT&T are subject to the jurisdiction of this Commission, in accordance with Sections 4905.04 and 4905.05, Revised Code.
- (2) Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect, unjust, unreasonable, or in violation of law or that any practice affecting or relating to any service furnished is unjust or unreasonable.
- (3) The Commission has jurisdiction, under Section 4905.26, Revised Code, to hear and determine the issues set forth in the complaint.

- (4) Section 4905.22, Revised Code, provides that every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities as are adequate, and in all respects, just and reasonable.
- (5) In complaint proceedings such as this one, the burden of proof rests upon the complainant. *Luntz Corp. v. Pub. Util. Comm.*, 79 Ohio St. 3d 509, 513-514 (1997); *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 190 (1966).
- (6) Based on the evidence presented, AT&T did not provide inadequate service to the complainant.
- (7) Based on the evidence presented, Sage did not provide inadequate service to the complainant.
- (8) Based on the evidence presented, there is sufficient evidence to conclude that Sage's collect call policy is in violation of MTSS Rules 4901:1-5-04(B), and 4901:1-5-13(A)(3)(b), O.A.C.
- (9) Based on the record in this proceeding, the complainant failed to carry her burden of proof with respect to the inadequate service allegations in her complaint.

ORDER:

It is, therefore,

ORDERED, That Sage cease the use of its collect call policy immediately. Sage may submit a revised tariff, and related collect call notices, for Commission review. It is, further,

ORDERED, That Sage should file its proposed procedure to be used by its repair representatives in diagnosing service problems, as discussed above, with the Commission in this docket, and serve a copy on the complainant, within 45 days of the issuance of this order. Upon review of the report, the Commission will determine whether the procedure is sufficient or whether additional action is necessary. It is, further,

ORDERED, That Sage shall work with Commission (SMED) staff to revise its disconnection notice, as discussed above. It is, further,

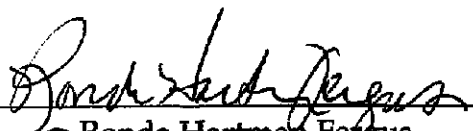
ORDERED, That this complaint is granted in part and denied in part, as discussed above. It is, further,

ORDERED, That a copy of this Opinion and Order be served on all parties of record and their counsel.

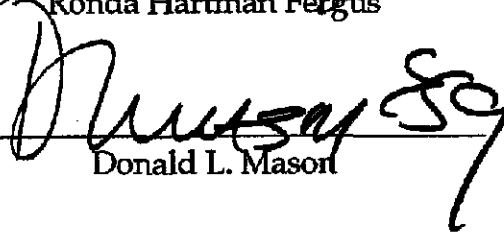
THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


Paul A. Centolella



Ronda Hartman Fergus


Valerie A. Lemmie


Donald L. Mason

JKS/ct

Entered in the Journal

NOV 28 2007


Renee J. Jenkins
Secretary