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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Complaint of Francesca
Brumley,

Complainant,

v.

SBC Ohio and Sage Telecom, Inc.,

Respondents.

Case No. 05-834-TP-CSS

**SAGE TELECOM, INC.'S
APPLICATION FOR REHEARING**

Sage Telecom, Inc. ("Sage") respectfully files this Application for Rehearing from the Opinion and Order of the Public Utilities Commission of Ohio ("Commission") issued on November 28, 2007 ("Order") in the above-entitled complaint pursuant to Ohio Revised Code ("R.C.") Section 4903.10. The Commission's Order is unreasonable and unlawful in the following three respects. First, the Commission found that Sage could have provided a better explanation to Ms. Brumley concerning the message waiting indicator options for its voice mail offering and it directed Sage to develop and implement a training procedure to be used by its repair representatives and/or repair technicians in diagnosing service problems. Second, the Commission found that Sage's collect call policy is "analogous to violating" the Minimum Telephone Service Standards ("MTSS") rules 4901:1-5-04(B) and 4901:1-5-13(A)(3)(b), and it directed Sage to cease the use of its collect call policy immediately, while giving Sage the opportunity to submit a revised tariff and related collect call limit notices for Commission

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review. Third, the Commission determined that Sage's suspension notice used to inform customers of past due balances is unclear and inconsistent with its rules.

Sage requests that the Commission reconsider and rescind its determinations concerning these three issues. The reasons supporting this Application for Rehearing are given in the Memorandum in Support below.

MEMORANDUM IN SUPPORT

Almost two and a half years ago, on June 29, 2005, Francesca Brumley ("Complainant") filed a complaint against Sage and AT&T Ohio (formerly known as SBC Ohio) alleging an array of service problems, such as interruptions in dial tone, dropped calls, "hang-ups" and other issues, while arguing that her account was not in arrears. Sage filed its answer and motion to dismiss on July 27, 2005, arguing the Complainant failed to allege that Sage provided inadequate service in violation of the MTSS. By entries dated September 8 and September 15, 2005, the Attorney Examiner denied Sage's motion to dismiss and scheduled a prehearing conference to determine whether this matter could be settled. Over the next several months meetings were held among the parties in an effort to address the Complainant's service issues, including premises visits by the Commission staff. Despite these efforts, the parties were unable to resolve the Complaint.

On December 1, 2006, nearly a year after the conclusion of the mediation, Complainant filed a letter alleging both continued and new service-related issues. Sage filed a supplemental answer in response to Complainant's letter, again requesting that the Commission dismiss the Complaint. Complainant submitted yet another letter, which was docketed on January 5, 2007, alleging that Sage had blocked her ability to receive collect calls. By entry dated March 22,

2007, the Attorney Examiner again denied Sage's motion to dismiss and scheduled an evidentiary hearing. The hearing was held on April 16, 2007, on the campus of Kent State University in Kent, Ohio. The hearing produced a 200-page transcript, along with 23 exhibits.

Status of Brumley Account

Subsequent to the hearing in this case, the Complainant cancelled her service with Sage, leaving behind a balance owed of \$239.69 (Attachment A). This amount, combined with the \$536 that Complainant owes AT&T (AT&T Ex. 1), and the approximately \$1,000 in service credits that Sage extended to Complainant, tends to establish a pattern with respect to Complainant's actual motivations behind her complaint, rather than any issues concerning her service.

Issues for Rehearing

Sage appreciates the extraordinary due process that the Commission provides consumers of regulated utility services in Ohio. Sage also deeply appreciates the fact that the Commission has found that Sage has not provided the Complainant with inadequate service. Further, Sage understands that improvements to its customer experience are always possible and Sage takes very seriously any suggestions or recommendations that can be used to improve its service quality. If the record in this case illustrates anything, it exemplifies the efforts that Sage is willing to invest to ensure a positive experience for its customers. Nevertheless, Sage is compelled to take issue with the Commission's Order with respect to three points where the Commission has directed Sage to take remedial action with respect to its business practices without a sound basis for determining that those practices violate the Commission's rules or regulations, or without even determining that they were related to the issues raised in the

complaint. Sage urges the Commission to rehear and reconsider its Order and rescind its findings with respect to the following three issues.

Repair Technician Training Issue

The Commission found that Sage could have provided a better explanation to Complainant concerning the message waiting indicator options for its voice mail offering, and it directed Sage to develop and implement a training procedure to be used by its repair representatives or technicians in diagnosing service problems. Order at pp. 8-9. The Commission has ordered Sage to take these remedial steps “in order to reduce the likelihood of similar incidents.”

Sage objects to this portion of the Order for several reasons. First, the remedial steps ordered by the Commission do not address the “problem” as it arose in this case.¹ The “problem” as identified in the course of this case stemmed from the wholesale service order placed by Sage (see, Tr. at p. 150) with AT&T in order to establish Complainant’s voicemail. That wholesale service order contained a USOC code that placed a feature on Complainant’s service that produced a sound that Complainant apparently did not like. This USOC code contained the instruction to AT&T to provision Complainant’s voicemail service with the stutter dialtone feature activated. This process takes place during the initial provisioning of customer service and does not involve service technicians. Service technicians, on the other hand, become involved in the customer service process after a customer is experiencing some difficulty. Accordingly, the Commission direction to Sage requiring it to re-train its repair representatives would address the issue only on an after-the-fact basis. This “problem” occurred during provisioning. Beyond this, the Commission’s direction is unnecessary because the presence of

¹ Sage also takes issue with the Order because the remedial steps ordered by the Commission involve matters that are not regulated by the Commission, specifically voicemail services and customer premises equipment. As a practical matter it would be impossible to train outside plant technicians on the properties of each and every piece of customer premises equipment because of the limitless array of products in question. Sage has relegated this objection to a footnote because the remedial action ordered by the Commission does not address the root problem as encountered in this case and as explained above.

the inadvertent USOC code was in fact identified in the course of a technician's investigation; e.g., Tr. at p. 128. This shows that Sage's technicians (which may include AT&T's technicians) already possess the requisite expertise in this area.

As it concerns Sage's provisioning process, further remedial steps to help prevent occurrences of this type are not necessary and would not be helpful. First, this occurrence is already exceedingly rare. Sage serves over 300,000 customers across 12 states and has never before encountered a customer complaint caused by an offending stutter dialtone signal. Based on this single occurrence, Sage has instructed its provisioning staff to be aware of potential problems that the voicemail USOC may create. Second, Sage's training procedures for its provisioning and technical staff already include a system of checks to ensure accuracy, but as with any process requiring human input of a significant amount of data, no process can be 100% foolproof.

Finally, the direction to Sage to devise a specific process to address this isolated issue is burdensome for Sage. The Order unfairly regulates the business practices of Sage in a manner different from all other regulated Ohio telecommunications carriers over this single incident. There is no evidence in the record of this case or elsewhere suggesting that this problem would recur. There is no pattern suggesting the need for remediation. Through this experience (and once is enough) Sage has learned that voicemail USOC codes may cause this peculiar customer service problem. Its provisioning staff has been educated accordingly. This is a far more effective solution to the problem than attempting to address the issue through its service technicians who will only have contact with a customer after a problem arises, either with the customer's premises equipment or the telephone network.

Collect Call Blocking Issue

The Commission found that Sage's policy of placing a \$25 limit on the balance that any customer may incur for receiving collect calls is "analogous to violating" MTSS rules 4901:1-5-04(B) and 4901:1-5-13(A)(3)(b), and the Order directed Sage to cease the use of its collect call policy immediately, while giving Sage the opportunity to submit a revised tariff, and related collect call limit notices, for Commission review. Order at p. 10.

Sage objects to this portion of the Order because it unreasonably interferes in the legitimate business relationship between Sage and its customers. The Order did not find that Sage violated any Commission rule or regulation, except through an analogy to rules addressing regulated services and practices. The analogy drawn by the Order is to the Commissions toll cap rule and credit establishment rule, MTSS rules 4901:1-5-04(B) and 4901:1-5-13(A)(3)(b), respectively. This analogy is misplaced. The customer's acceptance of charges for collect calls is far more akin to a consumer credit arrangement—the customer is accepting charges for telecommunications services provided to a third party by a third party telecommunications provider. In this sense it is no different from a telephone company allowing a charge for any consumer transaction to be placed on a customer's telephone bill, such as 900 services, which are not regulated by the Commission. The ability to receive collect calls is a service that a local exchange carrier such as Sage provides to customers as a convenience. Even then, collect calling is not universally available depending on the origin of the call.

The Commission has previously determined under similar circumstances that an analogy between collect calling and toll service is unwarranted. *In the Matter of the Applications of MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. to Introduce a Billable Local Exchange Program to the Maximum Security Collect Service Section*

*of Their Respective Tariffs, PUCO Nos. 4 and 2, Case Nos. 05-888-TP-ZTA and 05-889-TP-ZTA, Finding and Order, May 10, 2006, p. 9.*² As the Commission found, the analogy fails because a collect call cap cannot result in an affected customer's disconnection from the network. *Id.* Rather, at most, the cap restricts only a customer's ability to receive collect calls (*id.* at p. 10), something provided by Sage to its customers as a convenience and an accommodation only. Beyond this, toll services are a traditionally regulated common carrier service that carry universal service implications, although to a much smaller degree today. Nevertheless, the Commission's toll cap rule is a vestige of that regulatory legacy, as local exchange carriers need not bill for, or even provide toll services, beyond access. Access to toll services carries universal service implications. The ability to receive collect calls has never carried that same level of regulatory concern.

The analogy also fails because Sage's collect call cap is not related to the establishment of credit. See, *id.* at p. 9. The Commission's toll cap rule applies specifically to instances involving credit challenged customers. Sage does not apply its collect call limit only to credit challenged customers, but rather to all of its local exchange customers. It serves to protect customers and, in turn, protects the relationship between Sage and its customers. In this case, the Complainant was simply denied an extension of credit beyond \$25 in the same manner as any other customer of Sage would be treated. No denial or blocking of a telecommunications service is involved.

Finally, the Order is overbroad in its direction to Sage because it fails to differentiate between the acceptance of interstate and intrastate collect calls. The reach of the Commission's jurisdiction is limited to the intrastate portion of the telecommunications services involved with a

² The case cited involved a tariffed telecommunications service provided by MCI whereby a direct billing relationship between the recipient of certain collect calls provided by MCI could be billed directly to the called party thereby avoiding those charges from appearing on the called party's local exchange bill. This should be distinguished from Sage's collect call cap because Sage's policy is not tied to the provision of any of the telecommunications services that it provides to its customers.

collect call. Collect calling tends to involve toll services, which, in turn, tend to be proportionately interstate.

Notwithstanding the forgoing objections, Sage intends to comply with the Commission's directions by amending its Ohio tariff and adding the appropriate language to its Ohio tariff as reflected in Attachment B.

Suspension Letter Issue

The Commission determined that the suspension notice used by Sage is unclear and inconsistent with its rules. Order at pp. 11-12. To begin, Sage takes issue with the Commission's determination regarding its suspension notice because there is nothing in the record of this case to indicate that this notice is in any way unclear or misleading. The Complaint does not raise the notice, nor do any of the Complainant's subsequent letters to the Commission. While the Complainant produced the notice in the course of presenting her case, there was no indication from the Complainant that there was anything about the notice format that she did not understand. Given the fact that no issues pertaining to the suspension letter were before the Commission, it had no basis upon which to reach its conclusion.

The Order takes issue with the fact that the notice is styled as a "suspension" notice, rather than a notice of disconnection as provided by the MTSS. While it is true that the MTSS uses the term "disconnection," there is nothing in the rule that mandates the use of this terminology in the required notices, nor is there anything misleading or unclear with respect to Sage's use of the term "suspend." Sage's notice was produced with the guidance and assistance of the Commission staff and has been in use for a number of years without incident (including the instant case). Sage uses the term "suspend" for sound business reasons not inconsistent with the MTSS. There is a distinction in the telecommunications industry between a "disconnection" and

a "suspension" that supports Sage's use of the term "suspend" rather than "disconnect." A "disconnection" would involve an order by Sage to AT&T to physically disconnect a customer's service at the switch port. Put another way, a disconnect order detaches a switch port from the service of a particular customer. It may or may not be used by another customer, but those switch resources become "up for grabs" as far as the managers of those switch resources are concerned. More importantly, a customer's telephone number "snaps back" to its "owning" LEC upon disconnection. Depending on the competition for numbering resources in a particular exchange, a disconnection may mean that a customer's telephone number is lost to that customer forever in a very short period of time. Furthermore, the Commission's "warm dialtone" rules require that a customer not be disconnected. Instead, during the 14-day warm dialtone period, customers must remain active on the switch, but access to dialtone and other features are suspended.

As the record in this case shows, Sage is very concerned with retaining each of its customers. Disconnection is a drastic step that Sage seeks to avoid if at all possible. Disconnecting a customer is expensive for Sage and for the customer. For this reason, Sage suspends customer service in the hopes that this action will prompt customers to pay their past due balances. Sage has found this to be a satisfactory procedure from both its business perspective, as well as its customers' perspective. Nothing about Sage's use of the term "suspend" is inconsistent with the MTSS, yet the term "suspend" sends the more accurate signal that the business relationship between Sage and its customer is not at an end. If Sage believed that its notice was in any way unclear or misleading, it would not be seeking rehearing on this issue.

For these reasons, Sage urges the Commission to reconsider its findings with respect to Sage's suspension notice and allow Sage to continue to use this time-tested form. As it stands, if Sage is required to comply with the Order, Sage runs the risk of working with yet a different set of staff members to craft a different notice, which, if and when a future customer were to bring a complaint against Sage, it could again be ordered to revise its notice for some unrelated reason. Once Sage has received the input and approval of the Commission staff, it should be able to rely upon that review as carrying the authority of the Commission.

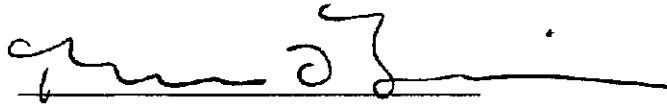
Memorandum Contra Motion for Rehearing

Finally, Complainant filed her application for rehearing on December 20, 2007. Complainant's application for rehearing raises only the allegation that the Attorney Examiner assigned to the case "covered up concrete evidence" concerning her complaint and that the evidence actually shows that she was receiving no dial tone 95% of the time.

To the contrary, the Commission's Order is extremely thorough in its treatment of the record in this case, which itself was ponderous for a case of this type. Complainant was provided every opportunity to present her case and question the witnesses of the respondents. Nothing in the record shows that Complainant's dial tone was interrupted due to a service-related problem. Complainant's application for rehearing should be denied.

WHEREFORE, Sage Telecom, Inc. respectfully urges the Commission to grant its application for rehearing and deny the application for rehearing of Complainant.

Respectfully submitted on behalf of,
SAGE TELECOM, INC.



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Application for Rehearing was served upon the following parties of record by regular U.S. Mail this 28th day of December 2007.



Thomas J. O'Brien

Ms. Francesca Brumley
1339 Franklin Avenue
Kent, OH 44240

Jon F. Kelly, Esq.
Mary Ryan Fenlon, Esq.
SBC Ohio
150 E. Gay Street, Room 4-C
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

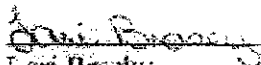
In the matter of the Complaint of Francesca)	
Brumley,)	
)	
Complainant,)	
)	
v.)	Case No. 05-834 TP-CSS
)	
SBC Ohio and Sage Telecom, Inc.)	
)	
Respondents.)	

AFFIDAVIT OF LORI BROSKY

State of Texas)	
) ss.	
County of Cumberland)	

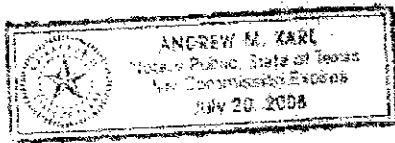
I, LORI M. BROSKY, am the Manager, Regulatory Affairs for Sage Telecom, Inc.. My business address is 805 Central Expressway South, Suite 100, Allen Texas, 75013. I have previously testified in the above-captioned proceeding before the Public Utilities Commission of Ohio concerning the account status of Complainant, Francesca Brumley. I seek to supplement that testimony by stating that on June

FURTHER AFFIANT SAYETH NAUGHT.



 Lori Brosky

SWORN TO before me and subscribed in my presence this 27th day of December, 2007.



Andrew M. Karl
Notary Public

My commission expires: July 20, 2008

SECTION 2 – DESCRIPTION OF SERVICES (cont'd)3.1 Local Exchange Telecommunications Services (cont'd)3.1.2. Local Exchange Service (cont'd)

3.1.2.B. Residential Services – Residential Services provide the Customer with the general telecommunications services listed in Section 3.1.1 of this Tariff and is not available to those locations governed by Section 3.1.2.A.

1. Residential Services cannot be used to originate calls to other telephone companies' caller-paid information services (e.g., N.A. 900, NXX 976, etc.). Calls to those numbers and other number used for caller-paid information services will be blocked by Sage, unless otherwise requested by the customer to be unlocked.
2. The company provides collect calling services to residential customers subject to a \$25.00 limit for all collect calls received. Collect calls received after the \$25.00 limit has been reached during a billing period will be blocked. The block will remain in place until the \$25.00 balance is paid or reduced. The customer may pay down the \$25.00 at any time during the month in order to restore the collect calling feature. The collect call limitation is a separate element of service and applies independently of any rate plan.
3. Service offering that include unlimited long distance usage are restricted to residential voice applications. No commercial use of any form is permitted for such unlimited service offerings. Long distance usage for dial-up Internet access, data and fax type applications and other non-voice uses are not permitted.

If the company determines¹ that the customer is using the service in violation of this Section 3.1.2.B the customer will be given seven (7) days written notice to contact the Company with regard to the usage data gathered. If no contact has been made to the Company within the specified period, the customer's account will be blocked for outgoing long distance calls. The block will remain until the customer elects to change to another Sage service plan, which does not include unlimited long distance calling. The customer would no longer be eligible to subscribe to a Sage unlimited calling plan and the application of the High Usage Charge as specified in Section 6.4, following.

The high usage Charge is applicable to all Residential service plans, whenever usage thresholds established in Section 6.4, following, are exceeded, including plans that offer unlimited usage and plans that do not offer unlimited usage. The existence of the High Usage Charge shall be communicated to the Customer in advance of its initial application, and shall thereafter apply automatically whenever the threshold is exceeded. Upon request, usage information will be provided pursuant to Section 6.4, following. The High Usage Charge is a separate element and applies independently of any unlimited rate plan

- 1 High usage accounts associated with a Sage unlimited long distance usage plan will be subject to periodic review by the Company. Each account selected for further review will be analyzed as follows:
 - The Company will track frequently dialed numbers and duration of calls. If many different numbers are being dialed for periods of seconds, use of an auto-dialer is suspected and called numbers will be sampled for business or data usage.
 - The Company will test-call frequently dialed numbers to listen for data recipient. If data is heard, use of Internet and/or facsimile is positively identified.

Issued: _____

Effective: _____

Issued By:
Robert W. McCausland
Vice President, Regulatory Affairs
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Allen, Texas 75013-2789