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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
The Ohio Bell Telephone Company dba)
AT&T Ohio for Approval of an)
Alternative Form of Regulation of Basic)
Local Exchange Service and Other Tier I)
Services Pursuant to Chapter 4901:1-4,)
Ohio Administrative Code.)

PUCO

Case No. 08-107-TP-BLS

REPLY TO
AT&T OHIO'S MEMORANDUM CONTRA
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On March 24, 2008, the Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of residential telephone customers,¹ filed an Opposition to the application of AT&T Ohio, Inc. ("AT&T Ohio") for alternative regulation ("alt. reg.") of basic local exchange service ("basic service") in eight exchanges.² OCC's Opposition noted that basic service alt. reg. is not in the public interest, under R.C. 4927.03(A)(1), if thousands of AT&T Ohio customers in the eight exchanges do not have the alternatives to AT&T Ohio's basic service required by the statutes that permit the Public Utilities Commission of Ohio ("Commission" or "PUCO") to consider basic service alt. reg.³

¹ OCC was granted intervention by Entry dated February 27, 2008 (at 2).

² Application (February 8, 2008). The eight affected exchanges are Chagrin Falls, Christiansburg, Hillcrest, Independence, Painesville, Pitchin, Uhrichsville and Willoughby. OCC filed its Opposition pursuant to Ohio Adm. Code 4901:1-4-09(F).

³ Despite AT&T Ohio's mischaracterization (Memorandum Contra at 4), this issue was not presented to the Ohio Supreme Court.

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OCC's Opposition showed that nearly all of the alleged alternative providers do not really provide "competing service(s)" to AT&T Ohio's basic service and/or do not have a presence in the AT&T Ohio exchanges sufficient to discipline AT&T Ohio's prices to protect those customers.⁴ Thus, basic service alt. reg. in the eight exchanges would not be in the public interest. In addition, OCC pointed out that several of the alleged alternative providers do not serve customers in some of the eight exchanges.⁵ Thus, under the Commission's rules, AT&T Ohio cannot be granted basic service alt. reg. in those exchanges.

AT&T Ohio filed a memorandum contra OCC's Opposition on April 3, 2008.⁶ AT&T Ohio asserts that OCC's Opposition ignores the recent Ohio Supreme Court decision validating the Commission's basic service alt. reg. rules.⁷ AT&T Ohio also claims that OCC's Opposition attempts to remake the rules.⁸ AT&T Ohio also attempts to dispute OCC's demonstration that some of the alleged alternative providers do not serve customers in several of the exchanges that are the subject of the Application.⁹ As discussed herein, AT&T Ohio has missed the mark in its criticisms of OCC's Opposition.¹⁰

⁴ Opposition at 12-22.

⁵ Id. at 14-15, 19.

⁶ Although the Commission's rules do not provide for a basic service alt. reg. applicant to file a response to oppositions to an application, the February 17 Entry (at 3) allowed AT&T Ohio to file a memorandum contra OCC's Opposition. The Entry also provided OCC the opportunity to respond to AT&T Ohio's memorandum contra. Id.

⁷ See Memorandum Contra at 3.

⁸ Id. at 4.

⁹ Id. at 16-18.

¹⁰ The fact that OCC does not respond to an argument raised by AT&T Ohio should not be construed as OCC's acquiescence to that argument.

II. ARGUMENT

A. **The Validity of the Rules Notwithstanding, R.C. 4927.03(A)(1) and R.C. 4927.03(A)(3) Mandate That the Commission Make a Separate Public Interest Determination Regarding a Basic Service Alternative Regulation Application.**

R.C. 4927.03(A)(1) allows the Commission to grant alt. reg. for telecommunications services “provided the commission finds that any such measure is in the public interest **and** either of the following conditions exists: (a) The telephone company or companies are subject to competition with respect to such public telecommunications service; (b) The customers of such public telecommunications service have reasonably available alternatives.” Further, R.C. 4927.03(A)(3) provides that “[t]o authorize an exemption or establish alternative regulatory requirements under division (A)(1) of this section with respect to basic local exchange service, the commission additionally shall find that there are no barriers to entry.”

The Commission’s “competitive tests” focus on the number of alternative providers that are available to customers in an exchange and the number of lines that an applicant has lost in an exchange, either to alternative providers or competitive local exchange carriers or both. These tests ostensibly address whether the services that the applicant provides to customers are subject to competition or there are reasonably available alternatives to the services in the exchange, as well as the barriers to entry issue.

The public interest, however, demands a much different analysis. The Commission should look beyond the presence or possibility of alternative providers of basic service in an exchange. Instead, the public interest analysis should also focus on the effect that basic service alt. reg. would have on basic service customers in the affected exchange. That is the focus of OCC’s Opposition.

OCC showed the wide disparity between AT&T Ohio's basic service rates and the rates charged by the alternative providers named in the Application – with customers having to pay “alternative” prices ranging from 42% to 187% higher than AT&T Ohio's basic service rates.¹¹ If AT&T Ohio's Application is granted the result would be that consumers of basic service in the eight exchanges would have no economical means to counteract an increase in AT&T Ohio's basic service rates.

Alternative providers' services do not have to be “perfect substitutes” for AT&T Ohio's basic service.¹² The alternative providers' services do, however, have to be priced **and** sufficiently available so that consumers would have a real option to AT&T Ohio's service. OCC has shown that the services of the alternative providers named in the Application do not provide such a choice. Such a situation is not in the public interest.

B. Wireless Service Is Not Being Used as an Alternative to Basic Service.

OCC noted that a factor weighing against including wireless companies as alternative providers is that landline numbers were not ported to wireless providers in the Christiansburg and Pitchin exchanges.¹³ OCC observed that AT&T Ohio's exchange summary sheet in the Application for these exchanges did not have a checkmark in the Ported Numbers category, and noted other information to support OCC's position.¹⁴

AT&T Ohio asserts that Alltel Wireless does provide service in the Christiansburg exchange,¹⁵ a claim based on coverage Alltel Wireless's service in the

¹¹ Opposition, Affidavit of Kathy L. Hagans (“Hagans Affidavit”), ¶ 29.

¹² See Memorandum Contra at 6.

¹³ Opposition at 14-15.

¹⁴ Id.

¹⁵ Memorandum Contra at 16. AT&T Ohio does not dispute OCC's findings regarding the Pitchin exchange.

45317 Zip Code.¹⁶ However, AT&T Ohio conveniently omits one key piece of information: there are seven Zip Codes in the Christiansburg exchange and Alltel Wireless serves customers in only **one** of those Zip Codes – 45317. That Zip Code has its post office in Conover, a village in Miami County. According to the Commission's Zip Code map, the 45317 Zip Code appears to cover only a very small portion of the northern part of the Christiansburg exchange.¹⁷ In fact, Conover itself is in the Fletcher-Lena exchange.¹⁸ Thus, AT&T Ohio stretches the facts in order to lead one to believe that Alltel Wireless serves the Christiansburg exchange. And if the Commission recognizes Alltel Wireless as an alternative provider for the Christiansburg exchange based on the carrier's presence in such a miniscule portion of the exchange, the Commission could be reducing the market to as small as a city block, which the Commission has recognized is "contrary to the statutory intent of Section 4927.03, Revised Code...."¹⁹

AT&T Ohio attempts to downplay the importance of the absence of telephone numbers that were ported to wireless companies in the two exchanges. AT&T Ohio states:

As for ported numbers, while it is possible for landline customers to disconnect their landline and port the telephone number to a wireless device, **such porting is done infrequently. AT&T Ohio estimates that less than one-half of one percent (0.44%) of the**

¹⁶ See *id.* at Attachment.

¹⁷ See <http://www.puc.state.oh.us/pucogis/STATEMAP/zip2008.pdf>.

¹⁸ See <http://www.puc.state.oh.us/pucogis/newcntymaps/tell109.pdf>.

¹⁹ See *In the Matter of the Application of The Ohio Bell Telephone Company dba AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4*, Ohio Administrative Code, Case No. 07-259, Opinion and Order (June 27, 2007) at 22.

wireless devices in use in its service territory are using ported telephone numbers.²⁰

Thus, the logical conclusion to be drawn from AT&T Ohio's estimate is that less than one-half of one percent of numbers being ported to wireless numbers are being used to replace a customer's primary landline, which is a Tier 1 core service under the Commission's rules.²¹ The rest of the ported numbers – 99.56% of them – are obviously being used to substitute for customers' additional landlines (i.e., second and third lines), which are not basic service under the Commission's rules but are instead Tier 1 noncore services.²²

The fact that so few landline numbers are being ported to wireless carriers in AT&T Ohio's territory substantiates OCC's position that residential customers are not in fact using wireless service as an alternative to basic service.²³ The Commission should thus reject all of the wireless providers named as alternative providers in the Application.

C. The Fact That the Website Used for Talk America Conflicts with AT&T Ohio's Information Regarding Service to Uhrichsville Casts Doubt on the Validity of AT&T Ohio's Information.

AT&T Ohio listed Talk America, which is now part of Cavalier Communications, as a facilities-based alternative provider in the Uhrichsville exchange.²⁴ AT&T Ohio based its claim on Talk America's supposed leasing of AT&T Ohio facilities and white pages listings in the exchange.²⁵

²⁰ Memorandum Contra at 17 (emphasis added).

²¹ Ohio Adm. Code 4901:1-6-05.

²² Id.

²³ Opposition, Affidavit of Karen J. Hardie, ¶ 16.

²⁴ See Application, exchange summary sheet for Uhrichsville.

²⁵ Id.

OCC's Opposition, however, noted that the Cavalier Communications website does not show that either Talk America or Cavalier provides service in the Uhrichsville exchange. As Ms. Hagans found: "[U]sing the list of zip codes in each exchange provided by AT&T Ohio and the zip code lookup tool on Talk America's website, it appears that Talk America does not provide service in any of the eight zip codes in the Uhrichsville exchange. (This makes AT&T Ohio's claim of a market share for Talk America suspect, to say the least.)"²⁶ AT&T Ohio's Memorandum provided nothing to disprove Ms. Hagans' finding.²⁷

The problem with AT&T Ohio's information is that it was compiled sometime before the Application was filed on February 8, 2008, apparently as of December 31, 2007.²⁸ The circumstances surrounding Talk America's presence in the market may have changed since that time. For example, in a previous AT&T Ohio basic service alt. reg. proceeding, AT&T Ohio used data that had been compiled as of December 31, 2006.²⁹ That application listed both First Communications and New Access Communications as alternative providers in several exchanges.³⁰ In the interim between the time AT&T Ohio compiled its information and the time the application was filed, however, First Communications purchased New Access.³¹ Shortly thereafter, the New Access website

²⁶ Hagans Affidavit, ¶ 31.

²⁷ Memorandum Contra at 18.

²⁸ See Application, Memorandum in Support at 4.

²⁹ See Case No. 07-259, Application (March 9, 2007), Memorandum in Support at 4.

³⁰ See, e.g., id., exchange summary sheet for Barnesville.

³¹ See *In the Matter of the Application of Acceris Management and Acquisition LLC, New Access Communications LLC and First Communications, LLC to Transfer Assets from Acceris Management and Acquisition LLC and New Access Communications, Inc. to First Communications, LLC*, Case No. 06-1500-TP-ATR, which the Commission automatically approved on January 25, 2007.

stated that the company was “no longer accepting orders for service.”³² New Access ceased providing billing, customer service, and related support to customers on March 1, 2007.³³ Although Talk America/Cavalier might not be facing the same situation as New Access, it is apparent that Talk America/Cavalier is not offering service in Uhrichsville.

OCC’s information is more recent and more verifiable than the information AT&T Ohio provided with its Application. Thus, OCC’s information should have more of a presumption of validity than the information gathered by AT&T Ohio more than two months ago.

Further, AT&T Ohio has the burden of proof in this proceeding.³⁴ The fact that AT&T Ohio offers nothing to prove its case other than the more dated and less verifiable information found in its Application weighs against AT&T Ohio on this point. AT&T Ohio has not carried its burden of proof, and the Commission should reject Talk America as an alternative provider in the Uhrichsville exchange.

III. CONCLUSION

OCC has shown that the alternative providers named in the Application offer service at rates considerably higher than AT&T Ohio’s basic service rate. If AT&T Ohio’s Application for alt. reg. for its basic service is granted, AT&T’s basic service customers in the eight exchanges will face rate increases without economical alternatives

³² See Case No. 07-259, OCC Opposition (April 23, 2007), Affidavit of Kathy L. Hagans, ¶ 74. The Commission nevertheless approved the application based, in part, on First Communications and New Access being considered as separate alternative providers. See *id.*, Opinion and Order (June 27, 2007), Attachments A and B. OCC raised the issue on rehearing. *Id.*, OCC Application for Rehearing (July 27, 2007) at 29. The Commission, however, stated only that OCC raised no issues that had not been previously addressed. *Id.*, Entry on Rehearing (August 22, 2007) at 11-12.

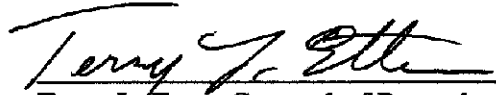
³³ *In the Matter of the Application of New Access Communications LLC to Rescind/Revoke the Certificate(s) That Authorized the Authority to Transact Telecommunications Business in the State of Ohio*, Case No. 07-1098-TP-ABN, Request for Withdrawal of Certificate (October 25, 2007) at 1.

³⁴ See Ohio Adm. Code 4901:1-4-10(A).

for service. Such a situation is not in the public interest. Thus, the Commission should deny the Application.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in dark ink, appearing to read "Terry L. Etter", is written over a horizontal line.

Terry L. Etter, Counsel of Record
David C. Bergmann
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
etter@occ.state.oh.us
bergmann@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to AT&T Ohio's Memorandum Contra by the Office of the Ohio Consumers' Counsel was provided to the persons listed below electronically and via first class U.S. Mail, postage prepaid, this 8th day of April 2008.



Terry L. Etter
Assistant Consumers' Counsel

WERNER MARGARD

WILLIAM WRIGHT

Ohio Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793
werner.margard@puc.state.oh.us
william.wright@puc.state.oh.us

JON F. KELLY

MARY RYAN FENLON

AT&T Ohio
150 East Gay Street
Columbus, Ohio 43215
jk2961@att.com
mfl842@att.com