

FILE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Duke Energy Ohio for an)	Case No. 08-709-EL-AIR
Increase in Electric Distribution Rates)	
In the Matter of the Application of)	
Duke Energy Ohio for Tariff)	Case No. 08-710-EL-ATA
Approval)	
In the Matter of the Application of)	
Duke Energy Ohio for Approval)	Case No. 08-711-EL-AAM
to Change Accounting Methods)	

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**DE-OHIO'S MEMORANDUM IN OPPOSITION TO
THE MOTION TO INTERVENE OF tw telecom of ohio, llc**

I. INTRODUCTION

Comes now Duke Energy Ohio (DE-Ohio), by and through counsel, and respectfully requests that the motion to intervene of tw telecom of ohio, llc (TWTC) be denied. TWTC does not have a real and substantial interest in these proceedings such that it can properly establish a right to intervene. Furthermore, its intervention, if granted, would inject needless delays and compel the parties to expend unnecessary resources in addressing immaterial issues. TWTC's motion, therefore, must be denied.

II. DISCUSSION

A. TWTC does not have a permissive right to intervene in these proceedings.

OAC 4901-1-11(A)(2) sets forth the prerequisites to permissive intervention in a proceeding pending before the Public Utilities Commission of Ohio (Commission). Significantly, a prospective intervenor must demonstrate that it "has a real and substantial interest in the proceeding, and [that it] is so situated that the disposition of the proceeding

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may, as practical matter, impair or impeded [its] ability to protect that interest... ."¹ Moreover, the prospective intervenor must demonstrate that its interests are not adequately represented by any other party to the proceeding.

Here, TWTC alleges that it has a real and substantial interest in the proceeding because of an existing pole attachment agreement between it and DE-Ohio. Specifically, TWTC maintains that the terms of that agreement *could* be impacted by the attachment rate set forth in the proposed pole attachment tariff here *should* the Commission apply that proposed rate to all pole attachments, regardless of the underlying technology.² But TWTC's speculation as to the effect and extent of the proposed pole attachment tariff is misplaced.

The pole attachment tariff proposed by DE-Ohio expressly pertains to pole attachments by entities other than public utilities. This limitation is consistent with R.C. 4905.71, which concerns attachments by "any person or entity *other than a public utility*."³ TWTC is a public utility.⁴ As such, agreements into which it may enter for the purpose of attaching to the poles of other public utilities are not within the purview of R.C. 4905.71. And TWTC's current agreement with DE-Ohio, including the attachment rate, will not be impacted by the proposed pole attachment tariff. Moreover, whether the rate set forth in the pole attachment tariff at issue will extend to public utilities is not an issue here. Thus, TWTC cannot demonstrate a real and significant interest in this proceeding.

¹ OAC 4901-1-11(A)(2).

² See Motion to Intervene of tw telecom of ohio, llc., Memorandum in Support at page 2.

³ R.C. 4905.71(A). Emphasis added.

⁴ See Exhibit A, for the docket in Case No. 90-9011-TP-TRF, original tariff filing in 1990 and subsequent tariff revisions. Case No. 08-1215-TP-CSS in which tw telecom of ohio llc filed a complaint against AT&T of Ohio stating in paragraph one that they are a public utility and a telephone company as defined in R.C. Section 4905.03(A)(2).

Furthermore, TWTC has not established that no other party to this proceeding is similarly situated such that it can adequately represent the purported interests of TWTC. Here, the Ohio Cable Telecommunications Association (OCTA) has sought intervention.⁵ This entity has aggressively pursued discovery on the pole attachment tariff at issue.⁶ And it is thus appropriate to conclude that the basis for the proposed rate – as it applies to entities other than public utilities – has been the subject of detailed review. TWTC's interests have been adequately represented by the OCTA insofar as the proposed rate is concerned. Accordingly, TWTC has not satisfied the requirements for permissive intervention, and its request must be denied.

B. Intervention by TWTC would unreasonably delay these proceedings and introduce issues that are immaterial to the proposed pole attachment tariff at issue.

When presented with a motion to intervene, the Commission must determine, among other things, whether the requested intervention would “unduly delay the proceeding or unjustly prejudice any existing party.”⁷ Here, it is undeniable that the joinder of TWTC would unduly delay the proceedings. TWTC is seeking to challenge the limited application of the proposed pole attachment rate to entities other than public utilities. Because TWTC is a public utility, it must be asserting this challenge. But the tariff at issue is one authorized under R.C. 4905.71, which does not apply to public utilities. Thus, any attempts to inject other provisions of the Revised Code into this proceeding are improper and unnecessary. Furthermore, TWTC's attempts to inject

⁵ *In re DE-Ohio Distribution Rate Application*, Case No. 08-709-EL-AIR *et al.* (Motion to Intervene of The Ohio Cable Telecommunications Association) October 17, 2008.

⁶ *In re DE-Ohio Distribution Rate Application*, Case No. 08-709-EL-AIR *et al.* See, e.g., notices of deposition issued by OCTA to DE-Ohio dated November 13, 2008, December 5, 2008, December 23, 2008 and rescheduling notice dated January 13, 2009.

⁷ OAC 4901-1-11(B)(4).

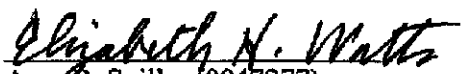
patently irrelevant issues into this proceeding expose all parties and this Commission to addressing and responding to needless discovery requests, motion practice, and the presentation of immaterial evidence at hearing.

The pending proceeding – a rate case – is not the vehicle through which TWTC should seek to challenge the attachment rate contained in its negotiated contract with another public utility. Thus, allowing TWTC to intervene here for the sole purpose of contesting rates charged among public utilities would unnecessarily delay the proceedings and force the unwarranted expenditure of time and resources by the Commission, its Staff, and all other parties.

III. CONCLUSION


For the reasons set forth herein, Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio deny tw telecom of ohio llc's motion to intervene.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via first-class mail delivery, postage prepaid or overnight delivery on the following parties this 26th day of January 2009.


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CASE NUMBER: 90-9011-TP-TRF

CASE DESCRIPTION: TW TELECOM OF OHIO, LLC

DOCUMENT SIGNED ON: 1/13/2009

DATE OF SERVICE: _____

12/30/2008 Revised tariff pages, PUCO Tariff No. 8, filed by C. Wightman on behalf of tw telecom of ohio llc.

11/04/2008 Revised replacement tariff pages of Time Warner Telecom of Ohio, LLC for PUCO Tariff No. 8 filed by C. Wightman.

10/31/2008 Revised certificate 90-9011 issued. (PMA attached)

10/30/2008 Certificate 90-9011 issued. (PMA attached)

10/28/2008 In the matter of the application of tw telecom of ohio llc to amend its certificate, electronically filed by Teresa Orahood.

10/10/2008 Final tariff filing for PUCO No. 2, on behalf of tw telecom of ohio llc by C. Wightman.

09/19/2008 Revised tariff pages, PUCO No. 2 filed by C. Wightman on behalf of tw telecom of ohio llc.

09/17/2008 Revised tariff pages, PUCO No. 2 filed by C. Wightman on behalf of tw telecom of ohio llc.

09/02/2008 In the matter of the application of tw telecom of ohio llc to file an access tariff compliance revision.

06/26/2008 Corrected Certificate 90-9011 issued. (PMA attached)

06/23/2008 Certificate No. 90-9011 issued. (PMA attached)

05/06/2008 Revised tariff continued. Part 3 of 3

05/06/2008 Revised tariff continued. Part 2 of 3

05/06/2008 Revised tariff PUCO No. 6 on behalf of Time Warner Telecom of Ohio LLC, local exchange tariff, electronically filed by Mrs. Barbara E. del Castillo. Part 1 of 3

04/10/2008 Certificate No. 90-9011 issued. (PMA attached)

04/08/2008 Application of Time Warner Telecom of Ohio, LLC for a detariffing package for private line service Tariff No. 5. electronically filed by Mrs. Barbara E. del Castillo on behalf of Time Warner Telecom of Ohio, LLC and Barbara del Castillo

04/02/2008 In the matter of the application of Time Warner Telecom of Ohio, LLC. to Detariff Certain Tier 2 Services electronically filed by Mrs. Barbara E. del Castillo on behalf of Time Warner Telecom of Ohio, LLC.

03/27/2008 In the matter of the application of Time Warner Telecom of Ohio LLC to amend its certificate and tariff to include the Pataskala and Rathbone exchanges in Licking and Delaware Counties.

02/13/2008 Revised tariff pages, PUCO Tariff No. 6 filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.

01/22/2007 Private line tariff PUCO tariff No. 5 which introduces the 2007 CCS renewal and 2007 up sell free month promotions filed by C. Wightman on behalf of Time Warner Telecom of Ohio, LLC.

01/22/2007 Local tariff PUCO No. 6 which introduces the 2007 CCS renewal and 2007 up sell free month promotions on behalf of Time Warner of Ohio, LLC filed by C. Wightman.

12/21/2006 Tariff filing, PUCO No. 5, on behalf of Time Warner Telecom of Ohio, LLC filed by C. Wightman.

12/21/2006 Tariff filing on behalf of Time Warner Telecom of Ohio, LLC, PUCO Tariff No. 6, filed y C. Wightman.

10/11/2006 Application to revise tariff for PUCO No. 6 filed by C. Wightman on behalf of Time Warner Telecom of Ohio, LLC.

09/28/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Tariff No. 6 to incorporate a minor text change to the Modification of Service Order provision.

09/18/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise its local exchange tariff No. 6.

09/18/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to amend their certificate and tariff to introduce the Plain City Exchange in Union County, Ohio.

09/15/2006 Revised local tariff, PUCO No. 6, Sheet 45, filed by C. Wightman on behalf of Time Warner Telecom of Ohio, LLC.

09/16/2006 Amended private line tariff, 2nd revised page 35.1; delete the minimum/maximum rate filed by C. Wightman on behalf of Time Warner Telecom of Ohio, LLC.

08/30/2006 In the matter of the application of Time Warner Telecom of Ohio LLC to revise private line Tariff pages local Tariff No. 5.

08/30/2006 In the matter of the application of Time Warner Telecom of Ohio LLC to revise Local PUCO Tariff No. 6.

08/08/2006 Amended application to revise form which was submitted with Time Warner Telecom of Ohio, LLC's local tariff revision on July 18, 2006 filed by C. Wightman.

07/21/2006 Supplemental filing to update exchange listing form in order to ensure an accurate record of the exchange in which Time Warner Telecom of Ohio, LLC is offering service, filed by T. O'Brien.

07/18/2006 Amended revised private line tariff No. 5, to incorporate changes, 1st Revised Page 37; Revises references to MTSS Rules; 2nd Revised Page 53.3, incorporates minor text change/correction; Original Page 53.7, incorporates minor text changes/correction, filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.

07/18/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Local Tariff No. 6.

07/06/2006 Amended application to revise Time Warner Telecom of Ohio, LLC private line tariff No. 5, filed by C. Wightman. (See application filed on 5/31/06 PUCO # 3 price list.)

07/06/2006 Amended application to revise long distance tariff No. 3, to incorporate the Termination Liability provision with an effective date on June 1, 2006, filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.

06/27/2006 Final PUCO No. 5, page 95 and price list pages 9 and 13, local exchange services tariff, filed on behalf of AT&T Long Distance, LLC. by F. Goodwin.

06/23/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Tariff No. 5, Private Lines Services.

06/20/2006 Revised tariff PUCO No.5 filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.

06/20/2006 Amended application to revise tariff pages for PUCO No.3 filed by C. Wightman on behalf of Time Warner Telecom of Ohio, LLC.

05/31/2006 In the matter of the application to revise Time Warner Telecom of Ohio, LLC's Local Tariff No. 6.

05/31/2006 Tariff revision on behalf of Time Warner Telecom of Ohio, LLC of private line tariff No.3.

05/09/2006 Corrected tariff pages, sheet 89.1 and sheet 104 of PUCO Tariff No. 6 filed by C. Wightman on behalf of Time Warner Telecom of Ohio, LLC.

04/14/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise tariff No.6.

04/14/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise tariff No. 6.

03/23/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise Long Distance Services Tariff PUCO No. 3.

03/13/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise its Local Service Tariff No.6.

03/09/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise its Tariff No. 6.

03/09/2006 Revised local services tariff No. 6 filed by C. Wightman on behalf of Time Warner Telecom of Ohio LLC.

In the matter of the application of Time Warner Telecom of Ohio, LLC to Revise Local Services Tariff

- 02/06/2006 No. 6, to introduce the Presubscription Change Charge provision and to file updated Service Requirement Form.
- 02/06/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise Local Services Tariff No. 6.
- 01/23/2006 Letter withdrawing application filed on December 23, 2005, filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.
- 01/11/2006 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise Local Services Tariff PUCO No.6, to introduce N11 Dialing Service and incorporates text changes.
- 01/06/2006 Amended private line services tariff No. 5, and minor changes to the False Call Out Charge and Nonpayment of Charges or Deposits on Page 32 of tariff, filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.
- 01/04/2006 Notice to completely withdraw the following pages: 1st. Revised Sheet 11; 2nd Revised Sheet 33; 3rd Revised Sheet 194.1; 1st Revised Sheet 200 and Original Sheet 200.1, PUCO No. 6, filed on behalf of Time Warner of Ohio, LLC by C. Wightman.
- 01/04/2006 Revised local tariff PUCO No. 6, 2nd Revised Page 27, Incorporates changes to the Installation and Termination Provision; cancels First Revised Sheet 27, filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.
- 12/23/2005 In the matter of the application to revise Time Warner Telecom of Ohio LLC's Access Services Tariff No. 2.
- 12/14/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise private line service PUCO Tariff No.5 .
- 12/01/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC's Toll Services Tariff No. 3.
- 12/01/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC's Local Services Tariff No. 6. .
- 12/01/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC's Access Services Tariff No. 2..
- 11/17/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Tariff No. 8.
- 10/18/2005 In the matter of the application of tariff revision of Time Warner Telecom of Ohio, LLC's Access Services tariff PUCO No. 2.
- 09/20/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO No. 6 Tariff.
- 08/11/2005 In the matter of the application for tariff revision of Time Warner Telecom of Ohio, LLC, PUCO Tariff No. 6.
- 08/11/2005 In the matter of the application for tariff revision of Time Warner Telecom of Ohio LLC, PUCO Tariff No.3
- 08/11/2005 In the matter of the application for tariff revision of Time Warner Telecom of Ohio LLC, PUCO Tariff No. 2.
- 08/11/2005 In the matter of the application for tariff revision of Time Warner Telecom of Ohio, LLC, PUCO Tariff No. 5.
- 07/29/2005 Application to revise PUCO Tariff No. 6 to introduce new rates for an existing price list for Business Terminals with Telephone Number for Non-IBL/VersiPak and Flat Rate customers filed by C. Wightman on behalf of company.
- 07/19/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO No. 6, Local Services Tariff.
- 07/07/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Tariff No. 6. Revised local services tariff to introduce the VersiPak LD Bundle Promotion, available from July 1, 2005 through September 30, 2005, filed on behalf of Time Warner Telecom of Ohio, LLC by C. Wightman.
- 06/30/2005 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO No. 6, Local Services tariff to incorporate text changes to the descriptions of Emergency Reroute Service and Disaster Routing Service.
- 12/10/2004 Revised Tariff original sheets 60,61,62,73,74,75 filed on behalf of applicant by C. Wightman.
- In the matter of the application of Time Warner Telecom of Ohio, LLC for tariff revisions, this PUCO

11/18/2004 Tariff No. 7 cancels and replaces PUCO Tariff No. 2

10/28/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Tariff No. 6.

10/13/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC for authority to resell telecommunications services.

10/13/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC for the authority to resell Telecommunications Services.

10/04/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise its tariff, PUCO No. 6, to introduce rates for Non-IBL/VersiPak customers in the Dayton market area.

09/01/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Tariff No. 6.

08/09/2004 Revised Tariff PUCO No.6 filed on behalf of applicant by C. Wightman.

07/26/2004 In the matter of the Applications of Time Warner Telecom of Ohio, L.P. to resell Telecommunications Services.

07/06/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise PUCO Local Tariff No. 6.

07/02/2004 Revised Tariff PUCO No.3 filed on behalf of applicant by C. Wightman..

07/02/2004 Revised Tariff PUCO No.3 filed on behalf of applicant by C. Wightman.

06/16/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC to revise Private Line Services Tariff PUCO No. 5.

05/27/2004 Revised local tariff, to extend PRI Powerflex promotion through July 30, 2004, filed on behalf of applicant by C. Wightman.

04/05/2004 In the matter of the application of Time Warner Telecom of Ohio LLC to revise PUCO Tariff No. 6, Local Services, to introduce additional rules relating to the resale of service.

03/22/2004 Amended tariff page, PUCO Tariff No. 2, Access Services, 1st revised page 26.1 to incorporate company's name change filed on behalf of applicant by C. Wightman.

03/17/2004 Application cont'd (Part 2 of 2)

03/17/2004 In the matter of the application of Time Warner Telecom of Ohio, LP to revise the long distance tariff PUCO No. 6 to introduce a new service, Toll Blocking and incorporates the Company's name throughout the tariff. (Part 1 of 2)

02/13/2004 Amended Ohio local tariff, to revise the description of the Cancellation of Service Order, filed on behalf of applicant by C. Wightman.

02/10/2004 Revised Tariff PUCO No. 6 filed on behalf of applicant by C. Wightman.

01/28/2004 Certificate issued for 90-9011 effective January 28,2004.

01/20/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC for tariff revisions to PUCO Tariff No. 6-Local Services.

01/15/2004 In the matter of the application of Time Warner Telecom of Ohio, LLC to incorporate text changes and revise the description for Directory Assistance Call Completion

12/22/2003 In the matter of the application of Time Warner Telecom of Ohio, LP and MetroComm AxS, LP dba Time Warner Telecom for authority to transfer the certificate of MetroComm AxS, LP to Time Warner of Ohio, LP.

12/08/2003 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise long distance tariff to increase the Pay Telephone Surcharge from \$0.36 to \$0.50.

12/04/2003 In the matter of the application of Time Warner Telecom of Ohio, LP to revise PUCO tariff No. 3-Long Distance Services.

11/20/2003 Revised local tariff pages, PUCO No. 6, to introduce the PRI Powerflex Promotion offered to customers from November 22, 2003 through January 31, 2004 in the Columbus and Dayton markets only, filed on behalf of applicant by C. Wightman.

11/18/2003 Revision to Time Warner Telecom of Ohio, L.P. local tariff, to reduce the standard primary rate ISDN (PRI) monthly recurring charges for 30 and 60 month term customers, filed by C. Wightman.

11/07/2003 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise local tariff to reduce the

- standard primary rate ISDN (PRI) monthly recurring charges for 30 and 60 month term customers.
- 10/06/2003 Amended tariff; this filing incorporates additional provisions to the Jurisdictional Reports section, filed on behalf of applicant by C. Wightman.
- 10/01/2003 Amended tariff pages filed on behalf of Time Warner Telecom of Ohio, L.P.'s Access Services Tariff by C. Roesel.
- 09/25/2003 Revision to local tariff this filing introduces the Time Warner Telecom 4th quarter 2003, promotion, filed by C. Wightman.
- 09/22/2003 Amended tariff pages filed on behalf of Time Warner Telecom of Ohio, L.P.'s Access Services tariff by C. Wightman.
- 09/16/2003 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff to add new long distance services and grandfather the existing TIGR long distance services to existing customers and add the Time Warner Telecom 4th Quarter promotion.
- 08/29/2003 Final tariff pages filed on behalf of Time Warner Telecom of Ohio, Inc. by C. Wightman.
- 08/29/2003 Final tariff pages filed on behalf of Time Warner Telecom of Ohio, Inc., by C. Wightman.
- 08/29/2003 In the matter of the application of Time Warner Telecom of Ohio, L.P. Access Service tariff to change the Columbus Switched Access rates and charges.
- 08/29/2003 Final tariffs filed on behalf of Time Warner Telecom of Ohio, L.P. by C. Wightman.
- 08/28/2003 In the matter of the application of Time Warner Telecom of Ohio, LP to revise its Access Services tariff and to add PIU factor language to Jurisdictional Reports.
- 08/27/2003 In the matter of the application of Time Warner Telecom of Ohio, LP, to revise PUCO tariff No. 5, private line services tariff.
- 08/15/2003 Amended local tariff pages PUCO No. 6 local services, filed on behalf of applicant by C. Wightman.
- 08/08/2003 Amended tariff pages Tariff No. 6 local services, 1st revised sheet 45, sheet 71, original sheet 95.5 and 1st revised sheet 97, filed on behalf of applicant, by C. Wightman.
- 07/22/2003 Superseded tariff pages, tariff No. 6 local services, filed on behalf of Time Warner Telecom of Ohio, L.P., by C. Wightman.
- 07/17/2003 Revised tariff pages of PUCO tariff No. 3 Long Distance Services, to introduce the Grand Slam Promotion, filed on behalf of Time Warner Telecom of Ohio, L.P. by C. Wightman.
- 07/16/2003 In the matter of the application of Time Warner Telecom of Ohio, LP to revise Tariff No. 6 Local Services. (part 2 of 2)
- 07/16/2003 In the matter of the application of Time Warner Telecom of Ohio, LP to revise Tariff No. 6 Local Services. (part 1 of 2)
- 07/08/2003 List of exchanges for Time Warner Telecom of Ohio, L.P. and Metrocom AxS, L.P. dba Time Warner Telecom, filed by S. Bloomfield.
- 06/12/2003 Revised tariff No. 5 private line services tariff, to introduce the "Grand Slam" promotion offered to new customers from July 1, 2003 through September 30, 2003, filed on behalf of Time Warner Telecom of Ohio, L.P. by C. Wightman.
- 06/12/2003 Updated service requirement form and revised tariff No. 6, local exchange tariff, to introduce the "Grand Slam" promotion offered to new customers from July 1, 2003 through September 30, 2003, filed on behalf of Time Warner Telecom of Ohio, L.P. by C. Wightman.
- 04/25/2003 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise PUCO tariff No. 6 Local Exchange tariff to introduce the Emergency /Crisis/Disaster Restoration and Provisioning Telecommunications Service Priority (TSP).
- 03/25/2003 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 5, to introduce the Modification of Service Order, Expedited Due Date Service and Switched Native Local Area Network (SNLAN) Service.
- 03/20/2003 Revised tariff, PUCO No. 3; this filing introduces the "Grow Your Business With Voice Services" promotion, filed on behalf of applicant by C. Wightman.
- 03/20/2003 Revised tariff, PUCO No. 6; this filing introduces a new promotional offering, "Grow Your Business With Voice Services" filed on behalf of applicant by C. Wightman.

- 12/06/2002 Revised tariff filing on behalf of applicant to introduce the "Tee-it-Up" promotion offered to the company's local customers, filed by C. Wightman.
- 08/19/2002 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 5, to introduce Customer Direct Native Local Area Network Service and incorporate text changes.
- 07/05/2002 Revised tariff, this filing introduces the "More Than Local" promotion to tariff, PUCO No. 4, filed on behalf of applicant by C. Wightman.
- 07/05/2002 Revised tariff, this filing introduces a new promotion, "More Than Local", to tariff PUCO No. 3, filed on behalf of applicant by C. Wightman.
- 03/26/2002 Revised tariff, the purpose of this filing is to introduce a new promotion, FlexCall which is available to Customers who subscribe to the Company's Integrated Business Line or VersPak Service between April 4, 2002 and July 31, 2002, filed on behalf of applicant by C. Wightman.
- 03/26/2002 Revised tariff, this filing introduces a new promotional offering, "Mission Possible" which is offered to Customers who subscribe to the Company's Integrated Business Line Service between April 4, 2002 and July 31, 2002, filed on behalf of applicant by C. Wightman.
- 03/21/2002 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 5, to introduce Point-to-Point Native Local Area Network Service and incorporate miscellaneous text changes.
- 02/08/2002 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 4, to introduce extended local calling in Lebanon and Mason.
- 01/09/2002 Price list addendum; the purpose of this filing is to introduce two new promotional offerings, "Best Choice Promotion" and "Satisfaction Guarantee Promotion", filed on behalf of applicant by C. Wightman.
- 11/16/2001 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 3, to introduce TIGR InterLATA Calling Service, TIGR Calling Card Service and TIGR 8XX Toll Free Service, grandfathers TimeOut (1+Dialing) Service, TimeCard (Calling Card) Service, TimeLine8XX (Toll Free) Service and Perfect Ten Toll Option.
- 09/11/2001 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 5, to introduce a new promotion and revise the DS1 and DS3 rates.
- 08/29/2001 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 4, to incorporate the company's compliance with the Commission's toll blocking policy and rule amendments.
- 08/29/2001 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise its tariff, PUCO No. 3, to incorporate the company's compliance with the Commission's toll blocking policy.
- 04/30/2001 Price List Addendum; the purpose of this filing is to introduce a new promotion - "One Solution", filed on behalf of applicant by C. Wightman.
- 04/27/2001 Price List Addendum; this filing introduces a new promotion - "One Solution" which will be in effect from May 14, 2001 through August 31, 2001, filed on behalf of applicant by C. Wightman.
- 08/24/2000 Application for self complaint filing to increase certain maximum rates in the company's local tariff, filed on behalf of applicant by C. Wightman. (14 pgs.) (00-1549)
- 07/07/2000 In the matter of the application of Time Warner Telecom of Ohio, L.P. to revise PUCO Tariff No. 5- Private Line Service.
- 03/10/2000 Application for approval of change in control in its parent company, Time Warner Telecom, Inc. pursuant to Ohio Revised Code Section 4905.402(B), filed on behalf of applicant by M. Schermer. (50 pgs.) (00-478)
- 09/17/1999 Application to revise its tariff to incorporate minor text changes and introduce table of contents pages for Sections 7 and 8, filed on behalf of applicant by C. Wightman. (26 pgs.) (99-1108)
- 08/25/1999 Price List; the purpose of this filing is to increase the Volca Grade Service Channel Mileage fixed and per mile rate, reduce the DSI Channel Mileage fixed and per mile rate and lists current rates for DS3, filed on behalf of applicant by C. Wightman. (26 pgs.)
- 06/02/1999 Local and private line tariffs, PUCO No. 5, filed on behalf of applicant by C. Wightman. (66 pgs.) (94-1695, 98-1611)

11/13/1997 Price List Addendum; this filing revised certain tariff pages to reflect its operations in Hamilton, Butler and Clermont Counties, filed on behalf of applicant by M. Schermer. (10 pgs.)

12/01/1990 Initial tariff filed.

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FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

tw telecom of ohio llc

Complainant,

v.

AT&T Ohio,

Respondent.

Case No. 08-1215-TP-CSS

**COMPLAINT
AND
REQUEST FOR EXPEDITED RULING**

PUCO

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Now comes tw telecom of ohio llc ("TWTC"), pursuant to the Telecommunications Act of 1996 (hereinafter "TA-96"),¹ Ohio Revised Code ("R.C.") Sections 4905.22 and 4905.26, and Ohio Administrative Code ("OAC") Rules 4901:1-7-08 and 4901:1-7-28 for its Complaint against the Ohio Bell Telephone Company d/b/a AT&T Ohio ("AT&T") on the basis that AT&T is in violation of its statutory, regulatory, and contractual duties by refusing to execute TWTC's amendment to the parties' interconnection agreement to incorporate the Public Utilities Commission of Ohio's ("Commission" or "PUCO") order on transit traffic in Case No. 06-1344-TP-ORD.

For its Complaint, TWTC states as follows:

PARTIES AND JURISDICTION

1. TWTC is a Delaware limited liability company providing telecommunications services to the public in the state of Ohio. TWTC has offices in Ohio located in Columbus at

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 et seq.).

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250 W. Old Wilson Bridge Road, Worthington, Ohio 43085; in Dayton at 2 Prestige Place, Suite 440, Miamisburg, Ohio 45342; and in Cincinnati at 9490 Meridian Way, Cincinnati, Ohio 45069. TWTC is a public utility as defined in R.C. Section 4905.02 and a telephone company as defined in R.C. Section 4905.03(A)(2).

2. AT&T is an Ohio corporation with its principal place of business in Ohio. AT&T provides telephone exchange service, exchange access, and other telecommunications and information services within the state of Ohio. AT&T is a public utility as defined in R.C. Section 4905.02 and a telephone company as defined in R.C. Section 4905.03(A)(2).

3. The Commission has jurisdiction over the subject matter of this Complaint pursuant to Sections 252(d)(1) and 252(e) of TA-96 and R.C. Sections 4905.03, 4905.04, 4905.05, 4905.06, and 4905.26.

4. TWTC has complied with the dispute resolution processes set forth in Section 10 of its interconnection agreement, including sending formal written notice to AT&T and participating in good faith negotiations regarding the proposed amendment to its interconnection agreement.

FACTS

5. AT&T provides wholesale telecommunications services to TWTC pursuant to the terms of an interconnection agreement ("Interconnection Agreement") entered into under Sections 251 and 252 of TA-96, effectively approved by the Commission on July 17, 2002 in Case No. 02-911-TP-NAG.² A true and correct copy of the Interconnection Agreement is attached hereto as Exhibit 1.

² When the Interconnection Agreement was executed and later became effective, AT&T operated under the name Ameritech Ohio, and TWTC operated in Ohio under the name Time Warner Telecom of Ohio, L.P. Effective July 1, 2008, Time Warner Telecom of Ohio underwent a formal name change to tw telecom of ohio llc, and is referred to herein as "TWTC."

6. The Commission has continuing jurisdiction to enforce the terms and conditions of its July 17, 2002 Order and the Interconnection Agreement.³

7. Section 21.1 of the Interconnection Agreement (the "Change of Law Provision") states as follows:

In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in this Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction *** the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

8. As part of Case No. 06-1344-TP-ORD, the Commission adopted new "carrier-to-carrier" rules having an effective date of November 30, 2007.

9. As adopted by the Commission in Case No. 06-1344-TP-ORD, new Rule 4901:1-7-13(D) reads:

The intermediate telephone company(ies) must be compensated at the intermediate telephone company's total element long run incremental cost (TELRIC) based transit traffic compensation rates. Until such time as the commission approves telephone company-specific TELRIC-based transit traffic compensation rates, an intermediate telephone company should be compensated, on an interim basis, at its tariffed switched access rates subject to a true up of these rates.

³ 47 U.S.C. §252(e); See, also, *Ohio Bell Tel. Co. v. Global Naps Ohio, Inc.* (S.D. Ohio 2008), 540 F. Supp.2d 914, 920 (holding that the "interpretation of the [TA-96] as a whole, and of § 252(e)(6), that is most consistent with Congress's broad grant of responsibility to state commissions is one which requires litigants like Ohio Bell to first raise their breach-of-ICA claims before the state commissions").

10. In January 2008, TWTC invoked its powers under the Change of Law Provision and requested that AT&T amend the Interconnection Agreement to reflect the language in new Rule 4901:1-7-13(D).

11. On April 8, 2008, counsel for TWTC sent a formal written request to AT&T seeking an amendment to the Interconnection Agreement as required by the terms of the Change of Law Provision. A true and accurate copy of the April 8, 2008 letter is attached hereto as Exhibit 2.

12. In a letter dated July 29, 2008, AT&T refused to amend the Interconnection Agreement, stating:

In the Public Utilities Commission of Ohio (PUCO) order dated August 22, 2007 in Case No. 06-1344-TP-ORD Rule 4901:1-7-13 (E) states that, "This section shall not be construed to preclude telephone companies from negotiating other transit traffic interconnection and compensation arrangements," [sic] The existing Transit Rates, as reflected in the negotiated interconnection agreement effective April 17, 2002 and extended to December 15, 2009 at the request of Time Warner Telecom pursuant to the BellSouth Merger Condition 4, meet the requirements in Rule 4901:1-7-13 (E), therefore an amendment based on change of law or Rule 4901:1-7-13(D) is unnecessary.

A true and accurate copy of the letter dated July 29, 2008 is attached hereto as Exhibit 3.

13. In August 2008, AT&T again refused to amend the Interconnection Agreement on the grounds that TWTC waived its ability to request an amendment under the Change of Law Provision on the grounds that TWTC should have incorporated the "change in law," i.e. new rule 4901:1-7-13(D), as part of its Seventeenth Amendment to the Interconnection Agreement, executed on November 28, 2007 and filed on January 15, 2008 with the Commission in Case No. 08-0041-TP-NAG. A true and accurate copy of the Seventeenth Amendment is attached hereto as Exhibit 4.

14. The Seventeenth Amendment served the purpose of extending the duration of the Interconnection Agreement through December 15, 2009.

15. In an e-mail dated August 22, 2008, TWTC explained that, as part of the Seventeenth Amendment to the Interconnection Agreement, both parties reserved their rights regarding any future change of law. A true and accurate copy of the August 22, 2008 e-mail is attached hereto as Exhibit 5.

16. In particular, the August 22, 2008 e-mail referenced Paragraph 4 of the Seventeenth Amendment to the Interconnection Agreement, which stated:

In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Agreement) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.

17. The August 22, 2008 e-mail also noted that, on February 29, 2008, AT&T availed itself of the Change of Law Provision to incorporate the holding from the PUCO's Entry of January 16, 2008 (and entered well after the filing of the Seventeenth Amendment) in Case No. 06-1345-TP-ORD.

COUNT ONE

Declaratory Relief

Pursuant to the Interconnection Agreement, AT&T Must Honor the Change of Law Provision and Agree to Jointly Amend the Interconnection Agreement to Reflect the Rates Required by OAC Rule 4906:1-7-13(D)

18. TWTC repeats and realleges, as if rewritten herein, the allegations set forth in Paragraphs 1 through 17 of this Complaint.