

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

American Broadband and Telecommunications Company,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 12-966-TP-CSS
	)	
AT&T Ohio,	)	
	)	
Respondent.	)	

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AT&T OHIO'S MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
MOTION TO HOLD IN ABEYANCE

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AT&T Ohio<sup>1</sup>, pursuant to Ohio Admin. Code § 4901-1-12, moves to dismiss the captioned Complaint. Alternatively, AT&T Ohio moves to hold the case in abeyance pending the completion of the dispute resolution processes specified in the parties' interconnection agreement. A memorandum in support of this motion follows.

Respectfully submitted,

AT&T Ohio

By:                     /s/ Jon F. Kelly                    

Jon F. Kelly (Counsel of Record)  
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AT&T Services, Inc.  
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(614) 223-7928

Its Attorneys

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<sup>1</sup> The Ohio Bell Telephone Company is a public utility in Ohio and provides certain Commission-regulated services in Ohio as well as other services. The Ohio Bell Telephone Company uses the name AT&T Ohio, which was used in the Complaint and is used in this Motion.

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MEMORANDUM IN SUPPORT OF  
AT&T OHIO'S MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
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Introduction

The Complaint must be dismissed or, at the least, held in abeyance because the Complainant has not abided by the terms of its interconnection agreement with AT&T Ohio in addressing the disputes it raises in its complaint. In several respects, the Complainant exhibits confusion about or willful non-compliance with important provisions of the parties' interconnection agreement. For the complaint to proceed at this time would improperly interfere with the terms and conditions that the parties themselves have agreed to and would invade the sanctity of the very agreement that the Commission has approved. Here, the interconnection agreement specifically provides that "*[t]he parties desire to resolve disputes arising out of this Agreement without litigation*" and it establishes a detailed dispute resolution framework to accomplish that goal. ICA, Section 10.2.1 (emphasis added), and, generally, Section 10 (see

Attachment). A Complainant should not be permitted to evade its obligations under the interconnection agreement and negate that agreement's dispute resolution provisions by pursuing a complaint before the Commission.

### The Interconnection Agreement

Key to the resolution of this motion are several provisions of the parties' interconnection agreement. That agreement resulted from the Complainant's adoption of the agreement between AT&T Ohio and Excel Telecommunications, Inc. that was approved by the Commission on August 9, 2002 in Case No. 02-1121-TP-NAG. The parties' agreement was filed for Commission review pursuant to Section 252 of the Telecommunications Act of 1996 in Case No. 03-2126-TP-NAG. A Staff memo indicating Commission approval of that agreement carries an effective date of January 15, 2004.

The pertinent dispute resolution provisions, set forth in Section 10 of the interconnection agreement, address the customary three stages of dispute resolution. See Exhibit 1. They provide for 1) service center dispute resolution; 2) informal dispute resolution; and 3) formal dispute resolution (10.3.11, 10.3.1.2, and 10.3.1.3). Complainant alleges that it invoked informal dispute resolution by its letter dated November 16, 2011. However, that letter was not received by AT&T in accordance with the interconnection agreement until March 14, 2012, the very date the complaint was filed. Contrary to the Complainant's allegation, AT&T did not receive that letter or acknowledge its receipt until March 14, 2012. Thus, the informal dispute resolution process has just been invoked and must be permitted to proceed without interference.

Following the resolution of the informal dispute resolution process, the interconnection agreement also contemplates escalation of unresolved disputes to formal dispute resolution. Section 10.6. In this process, some claims are subject to arbitration (either mandatory or elective); others are not. The Complainant must follow - - and the Commission must respect - - the specific dispute resolution provisions of the Interconnection Agreement. Pursuing the complaint at this time would nullify the very provisions to which the parties have agreed and which the Commission has approved.

#### Commission Precedent Requires It To Defer To The Interconnection Agreement's Dispute Resolution Processes

In a recent CLEC complaint case, the Commission found that basic principles of contract law and specific provisions of federal law governing interconnection agreements militated against considering the claims in the context of a complaint case. McLeodUSA Telecommunications Services, Inc. et al. v. AT&T Ohio, Case No. 11-3407-TP-CSS, Entry, para. 36. This was as much a reasonable and lawful policy decision as it was an appropriate legal one.

Also pertinent to the issue presented here is the Commission's 2006 decision in Revolution Communications, where the Commission found that the CLEC's requests for Commission action were premature and directed the parties to address the dispute in accordance with the dispute resolution provisions of their interconnection agreement. Revolution Communications, Ltd., Case No. 05-1180-TP-CSS, Entry, February 1, 2006. In that case, the Commission held as follows:

The Commission finds that Revolution's pending motion is premature. Although Revolution contends that injunctive relief is necessary due to AT&T Ohio's intent to cease processing new orders and terminate Revolution's service, the Commission notes that AT&T Ohio has stated that it has voluntarily withheld further collection action at this time. Therefore, Revolution's motion for an immediate order requiring AT&T Ohio to cease and desist from suspending Revolution's provisioning is currently premature. ***The parties are directed to address the current dispute in accordance with the dispute resolution provisions of the applicable interconnection agreement.***

Id., pp. 4-5 (emphasis added). Here, the Commission recognized and enforced the interconnection agreement's dispute resolution provisions by directing the parties to follow them. Allowing the Complainant here to pursue its complaint would be in conflict with their interconnection agreement's dispute resolution provisions.

Consistent with the parties' interconnection agreement and with the Commission's precedents in the McLeod and Revolution Communications cases, all of the claims made by American Broadband are required to be pursued to conclusion through the dispute resolution provisions of the interconnection agreement. They have not been, so the Commission should not entertain the Complaint.

## Conclusion

For all of the foregoing reasons, the Complaint should be dismissed or, in the alternative, held in abeyance pending the conclusion of the dispute resolution processes under the parties' interconnection agreement.

Respectfully submitted,

AT&T Ohio

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12-966.motion to dismiss

Certificate of Service

I hereby certify that a copy of the foregoing has been served by e-mail this 4th day of April, 2012 on the following:

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Summary: Motion to dismiss or, in the alternative, motion to hold in abeyance and memorandum in support electronically filed by Jon F Kelly on behalf of AT&T Ohio