

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 REPLY

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AT&T Ohio<sup>1</sup>, pursuant to Ohio Admin. Code § 4901-1-12(B)(2), replies to the Complainant's Memorandum Contra ("Memo Contra") AT&T Ohio's motion to dismiss or, in the alternative, motion to hold in abeyance.

The Commission's usual approach in a case like this would be to hold the case in abeyance while the dispute resolution processes - - mandated by the parties' interconnection agreement - - proceed to conclusion. Under the circumstances of this case, however, the Commission should rethink that approach here and dismiss the Complaint. This is because the parties' interconnection agreement forecloses litigation in favor of alternative dispute resolution. The interconnection agreement provides, in relevant part, as follows:

The parties desire to resolve disputes arising out of this Agreement *without litigation*. Accordingly, the Parties agree to *use the following Dispute Resolution procedures with respect to any controversy or claim* arising out of or relating to this Agreement or its breach.

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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 Reply.

ICA, Section 10.2.1 (emphasis added).

The Complainant offers several hollow reasons why it filed its premature Complaint and why it believes it should not be dismissed. First, it claims, without support, that AT&T Ohio "refused to work" with it to resolve the billing disputes. Memo Contra, p. 1. To the contrary, AT&T Ohio has worked with the Complainant on its billing disputes, despite the Complainant's own misunderstanding of the applicable processes and its own dereliction in getting those matters addressed and resolved. The Complainant's circumstances - - which included suspension of its ordering privileges and imminent disconnection of its services - - were totally of Complainant's own making.

Second, AT&T Ohio and the Complainant are not engaged in "settlement negotiations," despite the Complainant's claim. Memo Contra, p. 2. Rather, they are engaged in the informal dispute resolution process specified in their interconnection agreement.<sup>2</sup> Some resolution of the dispute will hopefully come out of that process.

Third, the Complainant claims to have invoked the informal dispute resolution process by its November 16, 2011 letter. But, as AT&T Ohio has asserted, it did not receive that letter or acknowledge its receipt until March 14, 2012.<sup>3</sup> Thus, the Complaint was filed even

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<sup>2</sup> Complaint mischaracterizes the current process as "formal dispute resolution." Memo Contra, p. 3. It is the informal dispute resolution process specified in Section 10.3.1.2 of the parties' interconnection agreement.

<sup>3</sup> AT&T even assisted the Complainant in invoking that process in the November 2011 timeframe but Complainant did not properly follow through, as it should have.

before the informal dispute resolution process required by the interconnection agreement was properly invoked.

AT&T Ohio has demonstrated that the Complaint is, at best, premature and was filed in violation of the parties' interconnection agreement. Why, then, should the Commission allow the Complaint to just sit on its docket while the mandatory dispute resolution processes continue? If, at the conclusion of those processes, the Complainant still has issues, it can refile its Complaint. This would not be a huge effort, as Complainant suggests. Memo Contra, p. 3. The Commission's processes and its docket should not be encumbered because of the mere "possibility that the dispute resolution process will fail." Id. Nor should AT&T Ohio's resources be tied up in litigation that should not proceed under the terms of the interconnection agreement.

Under the circumstances presented, AT&T Ohio urges the Commission to dismiss the Complaint without prejudice to its refiling at a later date.

Respectfully submitted,

AT&T Ohio

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12-966.reply

Certificate of Service

I hereby certify that a copy of the foregoing has been served by e-mail this 18th day of April, 2012 on the following:

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Summary: Reply electronically filed by Jon F Kelly on behalf of AT&T Ohio