

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On March 14, 2012, American Broadband and Telecommunications Company (American Broadband or complainant) filed a complaint against AT&T Ohio (AT&T or respondent).¹ In its complaint, American Broadband alleges that AT&T has billed American Broadband improperly, that AT&T has improperly suspended and terminated its service, and that AT&T has violated the parties' interconnection agreement.

In a Notice of Suspension of Orders and Disconnection dated March 7, 2012, American Broadband states that AT&T demanded payment in the amount of \$78,130. According to American Broadband, this amount is a past due balance that is the subject of a bona fide dispute. It is allocated equally between Ohio and Michigan jurisdictions. American Broadband adds that the current disputed balance is \$209,453, of which half-\$104,726-relates to services provided to Ohio retail customers.

American Broadband alleges that it entered into an interconnection agreement with AT&T, which was approved

¹ In its complaint, American Broadband included a request for expedited ruling to prevent suspension of service to its customers. In a March 21, 2012, joint filing with AT&T, American Broadband withdrew its request for an expedited ruling upon reaching an agreement with AT&T.

by the Commission in Case No. 02-1121-TP-NAG and amended in Case No. 03-2126-TP-NAG. American Broadband emphasizes that it has complied with the dispute resolution procedures set forth in Sections 10.3 and 10.6 of the interconnection agreement. Moreover, to secure AT&T's economic interests, American Broadband reveals that it has established an escrow account in the amount of \$85,000 and has provided a letter of credit in the amount of \$100,000. The total assurance of \$185,000 is to secure payment to AT&T in the event that American Broadband's billing disputes are resolved in AT&T's favor. American Broadband notes that it has paid all non-disputed balances to AT&T.

- (2) On the issue of installation charges, American Broadband states that of the \$209,453 that is in dispute, \$100,146 is attributable to improperly assessed installation charges. American Broadband argues that pursuant to Accessible Letters, installation charges were subject to a promotion. According to American Broadband, AT&T improperly disregarded the terms of the promotion, resulting in higher charges for American Broadband.
- (3) In addition to disputing installation charges, American Broadband disputes charges for vertical features, such as call waiting, 3-way calling, and automatic callback. The total amount that American Broadband disputes is \$31,973, of which half-\$15,986-is the Ohio portion.
- (4) Added to what it regards as improper charges, American Broadband disputes late fees in the amount of \$77,333. Dividing this amount in half to determine the Ohio portion yields \$38,666.
- (5) Pointing out that Section 4905.22, Revised Code, requires that charges for service be just and reasonable, American Broadband argues that AT&T has violated this provision by overbilling for its services in the amount of \$209,453.
- (6) American Broadband accuses AT&T of violating the interconnection agreement. To resolve these disputes, American Broadband alleges that it initiated the dispute resolution process provided under the terms of its interconnection agreement with AT&T. American Broadband

construes AT&T's failure to respond to American Broadband's dispute resolution requests as a violation of the interconnection agreement.

- (7) According to American Broadband, its disputes with AT&T have led to the improper suspension of its wholesale order processing services. Furthermore, American Broadband claims that it is subject to termination of service, according to the March 7, 2012, notice issued by AT&T. American Broadband contends that the suspension and termination are improper because they rise from a bona fide dispute. According to American Broadband, AT&T has disregarded the disputed claims.
- (8) On April 4, 2012, AT&T filed an answer to the complaint in which it denied all material allegations. Concurrently, AT&T filed a motion to dismiss. As an alternative to dismissing the complaint, AT&T urges the Commission to hold the case in abeyance pending the completion of the parties' dispute resolution process specified in the parties' interconnection agreement.

In support of its motion, AT&T points to provisions in the parties' interconnection agreement to support its contention that American Broadband has not completed the requisite three stages of dispute resolution that must precede the filing of a complaint. AT&T adds that some claims may be subject to arbitration. AT&T acknowledges that American Broadband invoked informal dispute resolution by a letter dated November 16, 2011. However, AT&T contends that it did not receive the letter until March 14, 2012, the date that American Broadband filed the complaint. AT&T, therefore, concludes that the informal dispute resolution process began on March 14, 2012, and should be allowed to proceed without interference. In further support of its position, AT&T points to precedent where the Commission deferred to provisions in the parties' interconnection agreement instead of ruling on the merits of the complaint. Taking into account the parties' interconnection agreement and the Commission's precedent, AT&T urges the Commission to either dismiss the complaint or hold this matter in abeyance until the parties have completed the dispute resolution procedures set forth in their interconnection agreement.

- (9) On April 11, 2012, American Broadband filed a memorandum contra AT&T's motion to dismiss. Contrary to AT&T's assertion, American Broadband emphasizes that it did follow the dispute resolution procedures in the interconnection agreement. It asserts that it provided AT&T with written notice of its claims, in accordance with the interconnection agreement. By ignoring its written claims, American Broadband accuses AT&T of failing to comply with the interconnection agreement. Only after AT&T decided to suspend American Broadband's access to wholesale ordering functionality did American Broadband decide to file a complaint.

American Broadband notes in its memorandum contra that dismissal of the case would be premature because American Broadband has a continuing basis for its complaint. Moreover, dismissal, argues American Broadband, would cause the parties to repeat their efforts. American Broadband recommends that the Commission dismiss AT&T's motion and stay this proceeding for 90 days to encourage settlement discussions.

- (10) AT&T filed a reply to American Broadband's memorandum contra on April 18, 2012. In its reply, AT&T acknowledges that the usual course would be to hold this matter in abeyance while the dispute resolution process runs its course. AT&T, however, rejects that approach because the interconnection agreement forecloses litigation in favor of alternative dispute resolution.

Adding to its reply, AT&T rejects certain assertions made by American Broadband. First, AT&T denies the claim that it refused to work with American Broadband. To the contrary, AT&T contends that it has worked with American Broadband. AT&T claims that it is American Broadband's misunderstanding of the applicable processes and its own dereliction that led to suspension of service and disconnection of services. Second, AT&T rejects American Broadband's claim that the parties are engaged in settlement negotiations. Instead, AT&T regards the parties as being engaged in informal dispute resolution pursuant to the terms of the interconnection agreement. Third, AT&T points out that it did not receive American Broadband's November 16, 2011, informal dispute

letter until March 14, 2012. Thus, it is AT&T's contention that American Broadband filed the complaint before invoking the informal dispute resolution process. Overall, AT&T believes that the complaint is premature and in violation of the parties' interconnection agreement. Rather than sit idly on the Commission's docket pending the mandatory dispute resolution process, AT&T recommends that the complaint be dismissed. If litigation becomes necessary, AT&T contends that American Broadband could simply refile its complaint.

- (11) The attorney examiner finds that AT&T's motion to dismiss should be denied. American Broadband's argument is persuasive.

The parties do not dispute that American Broadband delivered a written notice to AT&T initiating the dispute resolution process. However, the parties disagree as to when AT&T received the notice. AT&T claims that it received the notice of American Broadband's claims on March 14, 2012. American Broadband contends that it invoked the dispute resolution process by a letter dated November 16, 2011. AT&T recommends that the Commission allow the dispute process to proceed. American Broadband, without conflict, does not disagree with allowing the dispute process to proceed. Accordingly, the parties should be allowed to proceed with the dispute resolution pursuant to the agreement.

AT&T, as an alternative to dismissal, recommends that the Commission hold this proceeding in abeyance pending the conclusion of the dispute resolution process. American Broadband, on the other hand, recommends that the Commission stay this proceeding for 90 days to allow completion of the dispute resolution process. Putting AT&T's preference for dismissal aside, the parties agree that this case should be suspended to allow the dispute resolution process to proceed unhindered.

If the parties are not able to resolve their dispute through the provisions of the interconnection agreement, the dispute may become appropriate for adjudication by the Commission. Rather than put to waste the efforts of the parties by dismissal of the complaint, a more economical approach would be to preserve the investment of time, resources, and efforts of the

parties. If the dispute resolution process fails to produce a mutually agreeable result, neither party would be required to duplicate its efforts only to reach the current status of this case. Consequently, American Broadband's recommendation that this proceeding be stayed is reasonable and should be granted.

This proceeding shall be held in abeyance until July 11, 2012. By that date, the parties should either move to dismiss the complaint as a result of resolving the dispute, or file a motion to extend time to allow the completion of the dispute resolution process.


It is, therefore,


ORDERED, That AT&T's motion to dismiss the complaint is denied. It is, further,

ORDERED, That this matter be stayed until July 11, 2012, and on that date the parties either move to dismiss the complaint as a result of resolving the dispute or file a motion to extend the stay. It is, further,

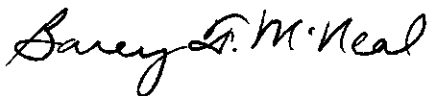
ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: L. Douglas Jennings
Attorney Examiner


JFJ/vrm

Entered in the Journal
JUN 27 2012



Barcy F. McNeal
Secretary