**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| GRANITE TELECOMMUNICATIONS, LLC,  Complainant,  v.  OHIO Bell Telephone Company D/B/A AT&T OHIO    Defendant. | Case No. 17-1713-TP-CSS |
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**GRANITE TELECOMMUNICATIONS, LLC’S**

**MOTION TO STRIKE OHIO Bell Telephone Company**

**D/B/A AT&T OHIO’S REPLY TO GRANITE TELECOMMUNICATIONS, LLC’S**

**MEMORANDUM CONTRA AT&T’S MOTION FOR PROTECTIVE ORDER**

Now comes Granite Telecommunications, LLC (“Granite”), by and through its undersigned counsel, to respectfully request that this Commission strike Ohio Bell Telephone Company d/b/a AT&T Ohio’s (“AT&T’s”) Reply to Granite’s Memorandum Contra AT&T’s Motion for a Protective Order. A memorandum in support is attached.

Respectfully Submitted,

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|  | /s/ Michael D. Dortch s  Michael D. Dortch (0043897)  Richard R. Parsons (0082270)  Justin M. Dortch (0090048)  KRAVITZ, BROWN & DORTCH, LLC  65 East State Street, Suite 200  Columbus, Ohio 43215  Tel: 614-464-2000  Fax: 614-464-2002  E-mail: [mdortch@kravitzllc.com](mailto:mdortch@kravitzllc.com)  *Counsel for Granite Telecommunications, LLC* |

**MEMORANDUM IN SUPPORT**

On August 23, 2017, Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T”) filed a Motion for a Protective Order, seeking a stay of discovery in this matter. AT&T’s Motion requested expedited treatment under Ohio Admin. Code § 4901-1-12(C). Granite Telecommunications, LLC (“Granite”) filed a Memorandum Contra to AT&T’s Motion on August 25, 2017. Yesterday AT&T filed a Reply to Granite’s Memorandum Contra in disregard for the Commission rules, which do not permit reply memoranda when the initial motion requests expedited treatment.

In relevant part, Ohio Admin. Code § 4901-1-12(C) states that when a movant has requested an expedited ruling, “[n]o reply memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner.” Neither the Commission, the legal director, the deputy legal director, nor the attorney examiner requested that AT&T file a Reply. AT&T’s Reply must therefore be stricken. *See, e.g.,* *In the Matter of the Application of Ohio Power Company for a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2)*, Case No. 13-1938-EL-WVR, Opinion, at ¶¶ 15–16, 25, 2017 Ohio PUC LEXIS 617 (July 12, 2017) (holding that no matter how titled, a filing that constitutes a reply to a memorandum contra when the initial motion requested expedited treatment should be stricken when the Commission does not request reply memoranda).

Not only is AT&T’s Reply improper under the Commission’s rules, but AT&T also fails to accurately recount the facts that have left Granite with no option but to pursue relief from this (and other) Commissions. First, contrary to what AT&T tells this Commission, Granite has been the party pushing for an Local Wholesale Complete (“LWC”) contract extension. Granite tried to commence those negotiations one year ago, when Granite first approach AT&T about another extension. AT&T refused. Granite reiterated those requests throughout last fall, winter and spring. AT&T again denied each of those requests, claiming that it was not prepared to begin negotiations, notwithstanding the fact that Granite has over 570,000 lines on AT&T’s LWC platform and the companies had negotiated prior extensions well in advance of the 6-month deadline that AT&T now points to. It was not until mid-May, 2017 that AT&T first provided Granite with a summary of its extension offer. Since receiving that offer, Granite has provided multiple responses to AT&T – all of which have been summarily rejected by AT&T, including requests for an in person meeting at AT&T’s offices. Despite what AT&T advises the Commission about wanting the negotiations to proceed, AT&T has not even bothered to respond to Granite’s last two substantive responses over the past several weeks, in which Granite has repeatedly proposed in person meetings to attempt to make some progress and to avoid the termination of services that AT&T has threatened for tens of thousands of business locations in Ohio and hundreds of thousands of locations outside of the state. There are no meetings or dates for further negotiations currently scheduled and AT&T’s deadline for termination is pending.

Second, while AT&T would have the Commission believe that Granite has multiple options to switch LWC lines to other platforms or services providers to avoid outages, none of those options is practicable within the relatively short time the parties have left. In fact, for several months, Granite has been attempting to switch a handful of lines from LWC to some of the resale platforms mentioned by AT&T without success. AT&T has responded by cancelling certain plans and advising Granite that LWC lines are not eligible for placement under resale contracts. In other instances, it has taken months to draft resale contracts, which in many cases need to be made individual customer by individual customer. In all instances, the resale / ICA process is immensely time consuming, and Granite does not believe that switching very large numbers of lines in the relatively short amount of time left before AT&T termination is practicable. Switching hundreds of thousands of lines to other service providers is not possible in many locations that Granite serves and takes months in the locations where it is possible.

Finally, AT&T repeats its assertion that Granite’s claims rest on Ohio statutes that do not apply to AT&T Ohio, but this is incorrect. In support of this assertion, AT&T relies on the statement in O.R.C. § 4927.03(C) that the statutes upon which Granite relies “do not apply to a telephone company.” (*See* AT&T Reply at 2). The actual text of O.R.C. § 4927.03(C) is as follows:

For purposes of sections 4927.01 to 4927.21 of the Revised Code, sections [4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35] of the Revised Code do not apply to a telephone company . . . except to the extent necessary for the commission to carry out sections 4927.01 to 4927.21 of the Revised Code.

O.R.C. § 4927.03(C) does not limit the Commission’s authority when considering Granite’s claims against AT&T.[[1]](#footnote-1) The phrase “For purposes of” means that the sections Granite relies on are only limited in their application to telephone companies where the Commission carries out sections 4927.01 to 4927.21. But Granite has not asked the Commission to enforce or carry out those provisions. Instead, Granite has brought claims for violations of sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35 themselves.

Furthermore, to the extent that this Commission believes that it does not have the jurisdiction to consider Granite’s claims alleging violations of sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35, the Commission may apply those provisions in considering the Granite complaint under section 4927.21. Putting aside the “For purposes of” limitation, Section 4927.03(C) states also that sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35 apply to telephone companies “to the extent necessary for the commission to carry out sections 4927.01-4927.21.” This means that sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905 apply to the extent necessary for the Commission to rule on a complaint filed against AT&T under Section 4927.21 “alleging that any rate, practice, or service of the company is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any provision of sections 4927.01 to 4927.20.” Under either point of view, the general regulatory scheme embodied within Ohio law remains applicable to AT&T and available to Granite (and the Commission).

For these reasons, AT&T’s Reply must be stricken from the record of this case, and AT&T’s Motion for a Protective Order must be denied.

Respectfully Submitted,

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|  | /s/ Michael D. Dortch s  Michael D. Dortch (0043897)  Richard R. Parsons (0082270)  Justin M. Dortch (0090048)  KRAVITZ, BROWN & DORTCH, LLC  65 East State Street, Suite 200  Columbus, Ohio 43215  Tel: 614-464-2000  Fax: 614-464-2002  E-mail: [mdortch@kravitzllc.com](mailto:mdortch@kravitzllc.com)  *Counsel for Granite Telecommunications, LLC* |

**CERTIFICATE OF SERVICE**

The PUCO’s e-filing system will serve notice of this filing upon all parties of record registered with the PUCO’s e-filing system.

Further, I hereby certify that a true and accurate copy of the foregoing was served upon the following counsel for AT&T on this 28th day of August, 2017, by electronic mail:

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/s/ Michael D. Dortch

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1. AT&T also asserts that the FCC has never held that incumbent LECs are required to provide Local Wholesale Complete Service. (*See* AT&T Reply at n.3). But the fact that the FCC has not compelled incumbent LECs to provide Local Wholesale Complete interstate service does not mean that a state commission may not do so for Local Wholesale Complete intrastate service. In any event, Granite has not asked the Commission to compel AT&T to provide this service. AT&T offered the service voluntarily. Once it did so, the manner in which it provides the service is subject to the requirements of O.R.C sections 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35 as well as Sections 201 and 202 of the Communications Act. [↑](#footnote-ref-1)