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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of AT&T)
Ohio, Inc. to Introduce its New Optional) Case No. 07-53-TP-ZTA
Duplicate Bill Copy Service.)

In the Matter of the Motion of the Office)
Of the Ohio Consumers' Counsel for an)
Investigation into Telephone Companies') Case No. 07-138-TP-UNC
Charges for Duplicate Bill Copies.)

AT&T Ohio's Memorandum Contra the Office of the
Ohio Consumers' Counsel's Motions

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AT&T Ohio's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motions

Introduction

AT&T Ohio, by its attorneys, files this Memorandum Contra the Office of the Ohio Consumers' Counsel's ("OCC") Motion for Full Suspension,¹ filed in Case No. 07-53-TP-ZTA, and its Motion for Immediate Investigation into Telephone Companies' Charges for Providing Duplicate Bills to Ohio Residential Consumers, filed in Case No. 07-138-TP-UNC. AT&T Ohio encourages the Commission to investigate expeditiously the proposed \$5.00 charge by reviewing the supporting cost study and to reverse immediately the inappropriate suspension to allow the duplicate bill copy tariff to be in effect and to dismiss the OCC's baseless allegations in their entirety.

Background

Last year the Internal Revenue Service ("IRS") announced that it would stop collecting the Federal Excise Tax ("FET") on long-distance telephone calls², effective August 1, 2006, and refund those taxes that were paid after February 28, 2003. The IRS stated that taxpayers are eligible to file for a refund for the 41-month period on their 2006 income tax returns, where they can apply for a standard refund amount or an itemized refund amount based on the actual amount of FET they paid. Residential customers

¹ Although AT&T Ohio sees no merit in the OCC's arguments, AT&T Ohio does not oppose OCC's Motion for Intervention included in the filing in Case No. 07-53-TP-ZTA.

² (c) Long distance service. Long distance service is telephonic quality communication with persons whose telephones are outside the local telephone system of the caller. IRS Notice 2006-50.

choosing the standard refund will only “need to fill out one additional line on their tax returns.” Standard refunds range from \$30.00 to \$60.00, depending on the number of exemptions claimed on the taxpayer’s 2006 federal income tax return. A married couple filing a joint return with two dependent children, for example, is eligible for the maximum standard refund amount of \$60.00.³

Individuals who decide not to claim the standard refund must calculate their refund using the actual amount of FET they paid. Individuals can base their refund requests on phone bills and other records. Individuals do not need bills or records covering the entire 41-month period. They simply need to have records adequate to support the refund amount they are requesting.⁴

In response to potential customer needs regarding the IRS FET refund, and absent any state or federal requirement to do so, AT&T spent millions of dollars to retrieve and make available appropriate bills (encompassing the 41-month period) for its customers. AT&T established two ways by which customers can obtain copies of their bills. Contrary to the OCC’s assertions, no such service was offered before.

First, AT&T provides on-line access to these archived records to its customers, via the Internet, free of charge. The Company’s website includes information about the free, on-line service. Customers who have an existing on-line billing account can access their previous billing statements directly from their on-line account. Customers who do

³ IRS website found at <<http://www.irs.gov/newsroom/article/0,,id=161506,00.html>>

⁴ Id.

not have an on-line account can utilize the simple, yet confidential, process developed to assist customers without on-line accounts. This electronic process is quick, easy, and private, and eliminates the need for a customer to work directly with a customer service representative to request their billing records. If a customer calls the Company seeking a copy of an old bill, customer service representatives are advising customers of the free on-line service. In addition, AT&T is directing customers to its website for information on how to retrieve copies of old bills via the following bill page message which started running on January 1, 2007, and will continue through April 30, 2007:

Answers about the Federal Excise Tax refund can be found at www.irs.gov. For answers on how to retrieve AT&T bill copies in support of Federal Excise Tax amounts, see www.att.com

The information on the AT&T website provides a plethora of information about the FET refund program and offers a link for customers' use to quickly and easily secure copies of their old bills.

Second, and even though the free on-line accessibility is anticipated to meet the needs of the vast majority of its customers, AT&T Ohio went a step further for those customers who choose not to use the Internet or do not have access to the Internet, by tariffing a service for customers to place an order for historic paper bills by calling an AT&T Service Center. A tariff application was filed on January 22, 2007, "to introduce a new, optional service that permits customers to request duplicate paper copies of their bills...subject to Company retention policies, availability of the bill(s), and the ability of the Company to retrieve the bill(s)." AT&T Ohio proposed to charge customers a nominal \$5.00 per bill copy. Case No. 07-53-TP-ZTA. The \$5.00 charge per bill was

established to recover only some of the Company's incremental costs (e.g., labor, paper, and postage). It does not recover the millions of dollars of costs incurred over the last six months for compiling and retrieving the historic billing information.

Despite the Company's voluntary and very reasonable pro-consumer actions in response to the IRS FET refund program, on January 30, 2007, the OCC filed a motion for full suspension of the tariff. It urged the Commission to ensure that AT&T Ohio's charge of \$5.00 is just and reasonable and that it not exceed AT&T Ohio's costs.

Tariff Suspension

Without giving AT&T Ohio a reasonable opportunity to respond to the OCC's January 30th Motion, 48 hours later, the Commission fully suspended AT&T Ohio's Duplicate Bill Copy Service tariff along with AT&T Communication of Ohio's and TCG Ohio, Inc.'s similar business tariffs. Surprisingly, no rationale was given as to why the Commission suspended the tariffs. The February 1st Entry simply stated that "[a]dditional information and investigation is necessary in order to complete a review of these four applications." Entry, p. 1.⁵

AT&T Ohio's application was filed and took effect the same day. The Entry suspending the effective tariff, coming fully ten days later, did not mention that the service may not be in the public interest and does not specify any Commission rule or

⁵ The Commission's suspension of an effective tariff, without a thorough review or fact-finding involving the Company, was simply unjustified. To date, no other state Commission in AT&T's 22-state footprint has suspended the \$ 5.00 charge.

regulation that the tariff violates, as required by the Commission's own rule. O. A. C. § 4901:1-06-04 - Suspensions.⁶

Over two weeks have passed since: 1) the OCC filed its first Motion, and 2) the Commission suspended AT&T Ohio's tariff.⁷ Yet, AT&T Ohio has not been contacted by the Commission or its Staff since the Entry suspending the tariff for "[a]dditional information" that would appear to be necessary "in order to complete a review of" the tariff application.

From a policy perspective, it is inappropriate for the Commission to suspend an effective tariff absent reasonable review, contact with the utility, and a reasonable opportunity for the affected utility to respond prior to the suspension. Even if one assumes the tariff application is vague, or even deficient, the Commission cannot justify further suspension of the tariff without completing a reasonable review by engaging the Company in discussion or requesting further information and taking appropriate action. More specifically, if the tariff was suspended based on concerns, as raised by the OCC, of costs, then the Commission should review the Company's supporting cost information. The Commission has not yet requested a copy of AT&T Ohio's cost study. Therefore,

⁶ "A full suspension occurs when the commission, legal director, deputy legal director, or attorney examiner, upon its own motion, suspends the automatic time clock and precludes an application from taking effect until such time as the commission takes further action. A full suspension may also be imposed after the automatic time frame has run if an ex post facto determination is made that a service previously automatically authorized may not be in the public interest or is in violation of commission rules and regulations. If the suspension involves a service previously automatically authorized, the telephone company may be required to discontinue providing the service subsequent to the suspension until such time as the commission takes further action." O. A. C. § 4901:1-06-04(B) (emphasis added).

⁷ Since the tariff application was filed on January 22, 2007, the Commission has had over three weeks to request additional information from the Company.

the Commission did not have a reasonable basis upon which it suspended the tariff if the suspension was based on the rate charged.

Similarly, if the tariff was suspended for policy reasons, then the Commission should be discussing with the Company its policy concerns and clearly defining the policy mandate violated. Then, the Company could provide additional rationale, responsive to the policy mandate violation, for its decision to develop its reasonable billing practice. Under the current circumstances, continued suspension of the tariff is simply bad public policy.

As this service is in fact a new service that was not available before, and as this service cannot be reasonably argued to be a Tier 1 Core or Non-Core service as defined in 4901:1-4-05(C)(3), Ohio Administrative Code (“O.A.C.”), the service was appropriately tariffed as a Tier 2 service.⁸ Pursuant to 4901:1-4-05(C)(4)(b), O.A.C.: “Tier 2 service rates are not subject to any rate cap and may be priced at market-based rates.”

The Company’s \$5.00 rate is not unreasonable when compared to other companies’ rates. The OCC’s February 8th Motion cites five other Ohio LECs that have tariffed charges for similar services.⁹ Qwest’s tariff application sought the same rate as

⁸ Even if the Commission wants to reclassify the service to Tier 1, it cannot. The EARP rules contemplate such reclassification, and it is limited to “public safety” and “privacy” issues. Obviously, providing a 41-month old bill to a customer is not an issue of “public safety” or “privacy.” It is also reasonable to suggest that this service is - or should be - deregulated in Ohio, as it is in other states.

⁹ OCC February 8, 2006 Motion, at pp. 1 – 2. It is not clear whether the companies identified by the OCC are able to provide bills back 41 months or less. The OCC is either unaware of the companies’ abilities or conveniently chose to ignore them.

AT&T Ohio. While some tariffed charges are greater than AT&T Ohio's \$5.00 charge, others appear to be less, but may not be.¹⁰

All of the tariffs cited by the OCC were filed with and approved by the Commission. In addition, and as some of the tariffs have been in effect for years, it is clearly inappropriate for the Commission to now find that AT&T Ohio's \$5.00 charge is not "market-based" or unreasonable, even ignoring the lack of any review of the supporting cost study.¹¹

OCC's Motions

Both of the OCC's pleadings incorrectly assume that telephone companies are somehow required to provide 41 months of billing information just as a matter of course or because of the IRS FET refund. There is no such mandate by the IRS, the FCC, or this Commission.

The OCC argues "[u]nless AT&T never previously provided customers copies of their bills, this is not a new service." OCC January 30th Motion, p. 2 As stated above, AT&T spent millions of dollars on a massive undertaking to retrieve, compile, and make available appropriate bills (i.e., 41 months' worth) for its customers' use in response to the IRS FET refund program. While it is true that the Company did previously provide,

¹⁰ Some carriers charge a price per page, as compared to AT&T Ohio's tariff which has a price per bill. Customers that will request duplicate bills are most likely to be high volume long distance customers. Their bills, therefore, are likely to have more pages than average (due to itemized call detail). Accordingly, such customers could incur high prices per bill due to per-page pricing.

¹¹ McLeod's tariff has been in effect since July 11, 2002; Windstream's since September 21, 1995; Century's since May 14, 1999; and LDMI's since October 10, 2006.

for free, incidental and infrequent requests for copies of recent customer bills, it was not able, until the completion of its IRS FET refund undertaking, to provide bill copies going back 41 months. Accordingly, it would be inappropriate to compare incidental and infrequent requests for recent bills to requests for bills given the IRS FET refund program. Such a comparison would be akin to ignoring the technological, cost, and tariff differences between Basic 9-1-1, Enhanced 9-1-1, and Wireless 9-1-1. AT&T Ohio's duplicate bill copy service is a new service.¹²

The OCC's allegation that AT&T Ohio is attempting "to take advantage of a revenue opportunity because more customers will need copies of their bills due to the potential of a tax refund" is unwarranted. OCC January 30th Motion, p. 2. In fact, quite the opposite is true. There is no mandate that requires AT&T to provide historic billing information to its customers. The IRS had the foresight to address the likelihood of a taxpayer retaining historical billing information. According to the IRS, many people will not want "to dig through up to 41 months of old phone bills or 'lack the records' they need to figure the actual amount of tax paid. For that reason, the government created a standard amount."¹³

Nevertheless, AT&T voluntarily initiated a project to provide its customers access to archived bills quickly and easily via the Internet. This service, which required the retrieval and compilation of massive numbers of archived customer records, was a

¹² While the Company's effort to compile and make available archived billing records dating back 41 months is indeed useful for individuals requiring such records for FET purposes, it is the intention of the Company to retain this service on a long-term basis to provide customers access to historical billing records for whatever purposes they may have, i.e., roommate disputes, divorce proceedings, bankruptcies, etc.

¹³ IRS website, p. 2.

significant undertaking for the Company. Most importantly, AT&T decided to provide on-line access to these archived records to its customers, free of charge, as a customer benefit. As there have been hundreds of thousands of “hits” on the Company’s website retrieving – for free – customer billing information, the Company has, in fact, forgone a revenue opportunity, not taken advantage of one.¹⁴

The Company’s website includes information about the free, on-line service. Bill page messages on customer bills alert customers to the availability of such information on the AT&T website. In addition, customer service representatives are advising customers of the free on-line service when customers contact the customer service centers to request their bills. Customers who have an existing on-line billing account can access their previous billing statements directly from their on-line account. Customers who do not have an on-line account can utilize the simple, yet confidential, process developed to assist customers without on-line accounts. This electronic process is quick, easy, and private, and eliminates the need for a customer to work directly with a customer service representative to obtain their billing records.

The OCC later opines that “where the federal government has created the need for copies of past bills, it would truly be unjust and unreasonable for AT&T Ohio ... to receive a windfall for customers’ needs for information about their bills, and for the invalidation of this tax to be thwarted by AT&T Ohio’s charge that ...could cost a

¹⁴ Customers calling the Company’s offices are informed of and encouraged to use the free on-line availability of the historical billing information, and most are choosing that option.

consumer more than the refund being sought.” OCC January 30th Motion, p. 2. The OCC is wrong on several fronts.

First, the fact that the federal government allegedly “created a need for copies of past bills” does not somehow shift the financial burden and responsibility in providing such bills to telephone companies. The financial burden and responsibility is on the person or entity filing the tax return that chooses to pursue an exact refund. As stated above, there is no mandate the telephone companies provide bill copies. In fact, it may be that telephone companies do not even have such records at all, but purged them years ago, a point conveniently ignored by the OCC.

Second, AT&T Ohio’s \$5.00 charge is not a “windfall” as evidenced by its supporting cost study that the Commission neglected to even request prior to, or even after, suspending the tariff. The cost study includes only some incremental costs related to a service representative’s labor for responding to a customer’s call, as well as paper, postage and handling. As stated above, the cost study does not include the programming costs for retrieving and compiling the historical billing information that began 6 months ago. As such, the OCC’s claim that AT&T Ohio’s \$5.00 charge is a “windfall” is without merit.

Third, an assumption that AT&T Ohio’s charges for providing copies of bills “could cost a consumer more than the refund being sought” is wholly irrelevant. AT&T Ohio, as any other utility, is appropriately allowed – if not required by Commission rule –

to recover its costs for providing a service. Moreover, it would be unreasonable for AT&T Ohio to propose a pricing schedule based upon a customer's ability to pay or based upon a customer's potential FET refund. OCC's arguments are ill-conceived and must be summarily rejected.

Further, it is reasonable to assume that the IRS standard refund amount will exceed the FET most residential customers paid during the period. For example, the IRS allows a single taxpayer to claim a \$30.00 refund without the taxpayer retaining any copies of his or her phone bills. The \$30.00 refund reflects a customer who has incurred approximately \$24.00 per month in long distance charges for 41 months ($41 \times \$24 \times 3\% = \29.52). Local service continues to be subject to the tax and is not part of the refund. A family of four would be entitled to a \$60.00 refund. A \$60.00 refund reflects a taxpayer with almost \$50.00 per month in long distance charges for 41 months. Most residential customers, therefore, will not need paper copies of their telephone bills as it is unlikely that their long distance calling actually exceeded the amount used to calculate the standard refund amount.

First, only extremely heavy users of telephone toll services may have paid more than the standard refund amounts for the FET. In those cases, the refunds the customers will claim will exceed the standard refunds. As such, these customers will not be paying \$205 to claim a \$30.00 to \$60.00 refund. Second, customers can order three or four bill copies to determine if the refund they will be able to claim is more than the standard refund. At that point, they can decide whether it makes economic sense to order

additional months of paper bill copies or whether they should obtain their bill copies at no charge, on-line, from AT&T's website. Third, as indicated on the IRS website, individuals do not have to have bills and records covering the entire 41-month period. They simply need to have records adequate to support the refund amount they are requesting.¹⁵

The OCC irrationally argues that AT&T Ohio's provision to allow customers to obtain copies of their bills free of charge over the Internet "should be included in AT&T Ohio's tariff." OCC January 30th Motion, p. 3. There is no basis, let alone any requirement, to place such a provision in the Company's tariff. Moreover, it is likely that customer access to the Company's website is much more common than customer access to the Company's tariff.

Further, the OCC's arguments that "AT&T Ohio's proposed charge has the immediate potential to create widespread confusion and inequity..." and that "AT&T Ohio's charge for copying [bills] will inhibit some customers from verifying their bills" (OCC January 30th Motion, p. 5) are misplaced. Given the large number of customers accessing the website and downloading bill images, it is clear that there is no confusion, inhibition, or inequity. The customers calling to request bill copies are informed by AT&T Ohio's service representatives that copies are available for free via the Company's website. Customers have made clear, unconstrained choices.

¹⁵ IRS website, p. 3.

Even more incongruous is the OCC's argument that "[i]t should be recalled that AT&T Ohio had possession of these customer bills before they were transferred to the IRS. Customers should not be required to pay AT&T Ohio again in order to see their correct refunds." OCC January 30th Motion, p. 5 The fact that the federal government required certain telephone companies to collect the FET certainly does not convey some implicit burden upon such companies to maintain in perpetuity such billing information for the potential future benefit of customers. It is also the case that the customer bills were never "transferred to the IRS."

There is no requirement that AT&T Ohio maintain billing information in perpetuity, no matter how vociferously the OCC argues to the contrary. Customers, if they so choose, are able to retain their records for as long as they deem appropriate. If customers decided not to maintain their records and the Company, in response to the IRS FET refund program, expended significant resources to retrieve and compile billing information, it is only reasonable that such costs be recovered. In fact, the IRS stated that "[T]elephone companies have already provided their customers with copies of their bills during the original billing periods and may **charge** for replacement copies of past bills, if they are available."¹⁶ The OCC's arguments must be rejected.

Perhaps most ironic is that the OCC argues that if the Company provides copies of bills on-line, then it "will obviate the need for these customers to obtain paper copies from AT&T Ohio." OCC January 30th Motion, p. 6. Following the OCC's logic, because AT&T does provide bill copies on-line for free, then the OCC should not oppose

¹⁶ IRS website, p. 4.

any charge for bill copy requests made to the business office. Yet, the OCC opposed the tariff.

In the January 30th Motion, the OCC argued that it meets the Commission's required showing that it has a real and substantial interest, and should therefore be permitted to intervene. The OCC even concedes that the Commission, in determining whether a party merits intervenor status, may consider "(3) whether the intervention 'would unduly delay the proceeding,' and (4) the person's contribution to a just and expeditious resolution of the issues." OCC January 30th Motion, p. 4.

In stark contrast to those assertions, the OCC's arguments in its February 8th Motion make it clear that its goal is simply to delay the appropriate implementation of the \$5.00 charge at least until the April 17th tax filing deadline, and even later for customers that may seek a filing extension. OCC February 8th Motion, pp. 5 – 6, including footnote 10. Such an intentional delay tactic cannot be permitted.

The OCC's February 8th Motion should be summarily rejected. It made several of the same arguments made in its January 30th Motion, which do not merit being addressed here again.

The OCC argues that "to the extent the carriers maintain customer bills in an electronic format, they should be required to inform customers of their availability. This may be more convenient for the customers, and should reduce the number of copies

requested from the telephone companies.” OCC February 8th Motion, p. 2. The OCC, let alone the Commission, lacks the requisite authority to order carriers to provide bills electronically, even if the carrier has such information. Assuming the carrier has such information, it may not have the processes and security systems in place to enable such retrieval. Here again, the OCC ignores the key question whether carriers have the historical billing information at all.

Further, the OCC opines that the “Commission should act now to protect Ohio consumers by ensuring that telephone companies’ bill copy charges do not exceed their costs and are suspended (or limited to nominal amounts) during the income tax filing season. In considering such charges, the PUCO’s guidance should include the regulatory principles of equity for consumers and gradualism in rate changes with regard to such charges.” OCC February 8th Motion, p. 4.

As stated above, the Company is appropriately allowed – if not required – to reasonably recover its costs of providing service. The OCC’s request that telephone company charges “do not exceed their costs” is an argument that, at a minimum, other services should inappropriately cross-subsidize the costs the Company incurs for providing copies of historical customer bills. Given the Commission’s pricing rules, the OCC’s argument must be rejected. For the Commission to give credence to such an argument would reverse decades of economic pricing rules embraced by the Commission. The same is true for its plea to “suspend” or “limit” the charges “during the income tax season.”

It is unclear what the OCC proposes in its “equity for consumers and gradualism in rate changes” assertion. It seems to argue for “value of service” pricing that the Commission rejected long ago. Most recently, the Commission again rejected the OCC’s argument for “value of service” pricing in the EAS docket (Case No. 06-919-TP-ORD).

The OCC urges the Commission to “identify whether the telephone companies have alternatives for making customers’ past bills more easily available and at no cost to the customer, such as via Internet access.” OCC February 8th Motion, p. 4. The Commission cannot order a utility to provide a service “at no cost.” While AT&T Ohio has decided to make such a service available free to its customers, such an action is only within the Company’s discretion, and not within the Commission’s jurisdiction.

The OCC also suggests that “the Commission may find that it is in the public interest for it to issue an order requiring all telephone companies within its jurisdiction to waive any bill copy charges imposed on residential customers ... as well as to waive bill copy charges ... for past bills.” They even urge the Commission to waive the charges for customers “who file for an extension of the tax filing date.” OCC February 8th Motion, pp. 5 – 6.

Even if the Commission ascertains that such an action is in the public interest, it must allow the Company to reasonably recover its costs. Surely the provision of BLES services, such as the access line, local usage, and 9-1-1 are “more” in the public interest than producing historical bills, and yet the Company is not required to provide BLES

services for free. Moreover, as it was appropriately tarified as a Tier 2 service, the Company is allowed to price the service – pursuant to the Commission’s rules – at market based rates.

Conclusion

The Company urges the Commission to reject all of the OCC’s arguments and expeditiously lift the suspension of the \$5.00 charge to allow the Company to reasonably recover its incremental costs. Despite the OCC’s misguided Motions and the Commission’s inappropriate suspension of the tariff, AT&T Ohio will continue to inform its customers that copies of historical bills are available at the Company’s website for free.

Respectfully submitted,

AT&T Ohio

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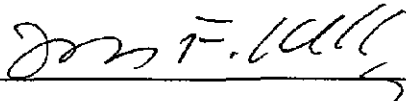
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class mail, postage prepaid, on the parties listed below on this 16th day of February, 2007.



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