

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of the)
Minimum Telephone Service Standards as) Case No. 00-1265-TP-ORD
Set Forth in Chapter 4901:1-5 of the Ohio)
Administrative Code.)

ENTRY

The Commission finds:

- (1) A provision of the Commission's minimum telephone service standards (MTSS), namely Rule 4901:1-5-16(A), Ohio Administrative Code (O.A.C.) [MTSS Rule 16(A)], requires local service providers to make an adjustment to a subscriber's bill when service is interrupted for more than 24 consecutive hours after being reported to the company or after the outage is discovered by the company. MTSS Rule 16(B) sets forth the amount of the credit that the company must pay, based on the length of the subscriber's service interruption. However, MTSS Rule 16(C) allows local service providers to apply for a waiver of these requirements in the event of a verifiable act of God. Where such a waiver is granted, 48 hours is added to each of the time frames established in MTSS Rule 16(B) for purposes of determining credits to customers' accounts.
- (2) On Monday, July 31, 2006, AT&T Ohio (AT&T or the company) filed a pleading by which it has requested a waiver of MTSS Rule 16(A) and (B) due to alleged verifiable acts of God that the company claims began on Friday, July 28, 2006. The request pertains to severe weather beginning on that date, which manifested in torrential downpours resulting in excessive flooding. AT&T represents that the storms caused "an inordinate amount of service outages affecting thousands of AT&T Ohio customers" in what the company later identified as five particular exchanges in Lake County, Ohio, namely, the Kirtland, Leroy, Mentor, Painesville and Willoughby exchanges (AT&T Ohio's July 31, 2006 Waiver Request at 1). The company claims that the inordinate amount of rain caused damage to its outside plant as well as to its customers' equipment and wiring, and numerous road closures, all of which adversely affected AT&T Ohio's ability to timely restore its customers' service (*Id.* at 1; AT&T Ohio's September 15, 2006 Supplement to Its Request at 1).

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician D Date Processed 3.7.07

AT&T Ohio's July 31, 2006 waiver request indicates that the company was not, at that point, prepared to file a detailed list of exchanges and customers affected but rather, was still compiling such information that it promised to file later, as soon as feasible.

- (3) On September 15, 2006, AT&T Ohio filed information intended to supplement its July 31, 2006 waiver request. This includes documentation evidencing that Ohio Governor Taft, on July 29, 2006, issued a State Emergency Declaration for Lake County. It also includes Ohio Emergency Management Agency newsletters that provide additional information on the severity of the storms that hit Lake County beginning on July 28, 2006.

By its September 15, 2006 pleading, AT&T Ohio has specified the scope of its request to include a five-exchange area in Lake County, Ohio, consisting of the Kirkland, Leroy, Mentor, Painesville, and Willoughby exchanges and a nine-day waiver period extending from July 28, 2006 through August 5, 2006. AT&T Ohio claims that, throughout this requested nine-day waiver period, it responded reasonably to the extensive impact of the storms by reallocating resources appropriately, including the use of out-of-area employees and overtime for applicable network personnel. The company claims to have undertaken extraordinary measures throughout the affected exchanges to return by August 5, 2006 to service levels meeting the MTSS requirements (*Id.* at 2).

- (4) On November 6, 2006, the Ohio Consumers' Counsel (OCC) filed comments in response to AT&T's July 31, 2006 waiver request. OCC submits that although AT&T Ohio provided considerable documentation regarding the nature of the "act of God," and did provide (in a attachment containing information that AT&T considers proprietary, and has sought to protect as confidential) the total number of all affected customers situated in the involved five exchanges, it did not either specifically state the number of customers affected on an exchange-by-exchange basis or provide details concerning the extent or location of facilities damaged by the storms. As a result, says OCC, the company has failed to document its waiver request in the manner required by MTSS Rule 16(C). Moreover, says OCC, even if the Commission determines that the submitted documentation is sufficient under that rule provision, it does not, in OCC's view support a grant of waiver for the entire nine-day time frame proposed by AT&T (OCC Comments at 3). In-

stead, OCC suggests that the company should be granted, at most, a waiver for the period of July 28 through August 3, 2006.

AT&T's Exhibit 3, apparently extracted from the Ohio Department of Transportation's (ODOT) website on July 31, 2006, lists nine road closures that were occurring in Lake County on that date (during the middle of the requested waiver period). OCC submits that seven of the nine listed road repairs had start dates well in advance of the requested waiver period and, thus, had nothing to do with the weather conditions that gave rise to the waiver request. OCC concedes that two road closures listed on the exhibit "could be relevant" to the waiver request, namely, the closing of State Route 84 due to culvert repairs necessitated by the storm, and the closing of State Route 86 due to flooding and mud slides at Wyman Park (*Id.* at 6).

- (5) AT&T's request for waiver was timely filed on Monday, July 31, 2006, a date falling within two business days of the onset of the act of God claimed by AT&T, namely the Friday, July 28, 2006 starting date of the nine-day waiver period sought by the company. The Commission's staff, immediately upon receiving the waiver request and within two days of its filing, contacted and advised the company that additional information would need to be provided to the Commission before either the Commission could grant the waiver or the company could be authorized to invoke the act of God exception it had requested.
- (6) The information provided of record by AT&T includes the following:
 - (a) Documentation showing that the AT&T customers potentially affected by the company's act of God waiver request are located in five AT&T Ohio exchanges, all situated in Lake County, Ohio. The total number of access lines served by AT&T Ohio in these five exchanges is approximately 81,591 (AT&T Ohio 2005 Annual Report, Schedule 28 Plant and Service Data - detail of Billable Access Lines In Service By Exchange in Ohio).
 - (b) A detailed description of the severe weather/act of God events that brought on the waiver request.

- (c) Numerous newspaper clippings and ODOT-generated road reports that described damages that occurred as a result of the storm.
 - (d) Copies of pertinent emergency declarations by appropriate government officials.
 - (e) Beginning and ending dates of the events and of the requested waiver period.
 - (e) Some limited descriptions of the extent and location of damaged facilities.
- (7) In considering AT&T's waiver request, the Commission first notes that an act of God waiver request should be made only in exceptional circumstances and such requests should be narrowly construed. Such requests should not be general in nature. Requests should be specific and include appropriate documentation of the claimed weather event. Companies seeking an act of God waiver are not to file "blanket" waiver requests seeking a waiver for all or most of the exchanges they serve unless sufficient documentation specific to each exchange covered by the request is also provided. Exchanges included in any request without sufficient accompanying documentation will be denied by the Commission.

The Commission also reiterates that weather events such as heavy rain, high wind, and lightning are not unusual for Ohio and local service providers should, in fact, expect that such weather events will occur; however, the severity, extent, and nature of such weather events or combination of events must be evaluated on a case-by-case basis taking into account the totality of the circumstances surrounding the request.

- (8) Upon review of the record as a whole, we find that overall, AT&T's submitted documentation supports only a grant of a more limited waiver period than that which the company has asked for. For all but two of the days included in the company-proposed nine-day waiver period AT&T has failed to produce sufficient documentation to persuade us that the waiver it has sought in this case is justified. Nevertheless, we find that AT&T has, in this case, sufficiently demonstrated that severe weather adversely affected in unique and unforeseen ways the company's ability to restore service and respond to trouble reports in all five of the involved exchanges on

certain days included in its waiver request, namely during the period of July 28, 2006 through July 31, 2006.

- (9) Based on the information and documentation provided by AT&T in this case, the Commission determines that the company's act of God waiver request should be approved for the dates of July 28, 2006 through July 31, 2006 in each of the Kirtland, Leroy, Mentor, Painesville and Willoughby exchanges. As a result, with regard to service outages occurring in each of these five exchanges on these four specific dates, 48 hours should be added to each of the time-frames established in MTSS Rule 16(B) for purposes of determining credits to customers' accounts.
- (10) As a final matter, we intend to rule on the motions for protective order filed by AT&T on September 15, 2006. AT&T is seeking to maintain the confidentiality of certain information provided within the supplemental information it filed in support of its waiver request on September 15, 2006. The confidential information for which protective status is sought is contained in two of the attachments (i.e., Exhibit Nos. 5 and 6) to the supplemental filing. The first of these, labeled as Exhibit No. 5, consists of a graphic depiction of the daily service-affecting and out-of-service reports that AT&T received and cleared over the time period from June 1, 2006 through August 24, 2006. The second, labeled as Exhibit No. 6, sets out a description of the number of persons deployed by the company and the work hours they served, in responding to the impact of the weather conditions on which the waiver request is based. AT&T Ohio considers all of this material to be confidential sensitive business information and, in practice, has always treated this and similar information as confidential. According to the company, in the ordinary course of business, this type of information is stamped confidential, is treated as proprietary and confidential by AT&T employees, and is not disclosed to anyone.

The information for which protective status is sought represents recent historical, or contemporaneous, details about the operations of the company that may be considered competitively sensitive and has never previously been made available to the general public or filed with any other public agency. Under the circumstances presented, we find it appropriate to grant AT&T's motion for protective order and, thereby, to extend protective status to the information covered by that motion for a limited period of 18 months. Accordingly, unless and until specifically ordered other-

wise, public disclosure of the confidential version of AT&T Ohio's September 15, 2006 supplemental informational filing, which was filed under seal on that date, shall occur for the first time on March 15, 2008, i.e., the date 18 months from the pleading's original filing. In the event that AT&T should desire to seek continued protective treatment for this information beyond this 18-month period, it must make an application for such continued protection in compliance with Rule 4901-1-24(F), O.A.C.

It is, therefore,


ORDERED, That, in accordance with the above findings, AT&T's request for waiver of MTSS Rules 4901:1-5-16(A) and (B), O.A.C., is approved for the dates of July 28, 2006, through July 31, 2006, in each of the Kirtland, Leroy, Mentor, Painesville and Willoughby exchanges. As a result, with regard to service outages occurring in each of these five exchanges on these four specific dates, 48 hours should be added to each of the time frames established in MTSS Rule 16(B) for purposes of determining credits to customers' accounts. It is, further,

ORDERED, That AT&T's motion for protective order filed on September 15, 2006 is granted in accordance with the Finding 10 above. It is further,

ORDERED, That all other aspects of AT&T's waiver request are denied. It is, further,

ORDERED, That a copy of this entry shall be served upon AT&T, its counsel, OCC, and all other interested persons of record.

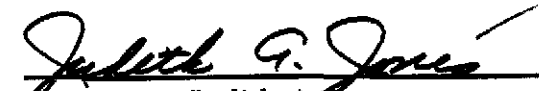
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



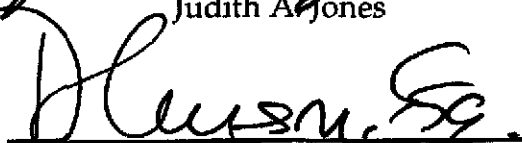
Ronda Hartman Fergus



Judith A. Jones



Valerie A. Lemmie



Donald L. Mason

DEF:geb

Entered in the Journal

MAR 07 2007



Renee J. Jenkins

Renee J. Jenkins
Secretary