13

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code.	))))	Case No. 00-1265-TP-ORD
In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth In Chapter 4901:1-5 of the Ohio Administrative Code.	))))	Case No. 05-1102-TP-ORD

ENTRY

The Commission finds:

(1) On March 20, 2008, the Ohio Telecom Association (OTA) filed a motion seeking, for each of its affected member local exchange companies (LECs), a permanent waiver from the obligations of Rule 4901:1-5-10(B), Ohio Administrative Code (O.A.C.), which it has labeled as "the Service Termination Rule." That rule provision states:

> Basic local exchange service (BLES),[1] when offered to residential and small business customers as a stand-alone service not part of a service package, cannot be disconnected for the nonpayment of past due charges if the customer's payment is sufficient to cover the local exchange carrier's (LEC) tariffed rate for stand-alone BLES service and all associated taxes and government-mandated surcharges (i.e., universal service fund and 9-1-1 service charges). BLES, when offered to residential and small business customers as part of a service package of bundled regulated services and/or bundled regulated and unregulated services, cannot be discon-

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1 It is important to note that BLES, as defined in Rule 4901:1-5-01(C), O.A.C., refers to end user access to, and usage of telephone company-provided services that enable a customer to originate or receive voice communications within a local service area **over the primary line serving the customer's premises.** Thus, one of the concerns that OTA's waiver request in this case is intended to address involves those situations in which an OTA member company is attempting to allow for differing disconnection treatment of primary and non-primary lines where the customer's stand-alone BLES account consists of multiple lines and/or multiple services.

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> nected for nonpayment of past due charges when the LEC also offers BLES as a stand-alone option and the customer's payment is sufficient to cover the LEC's tariffed rate for stand-alone BLES and all associated taxes and government-mandated surcharges. In cases in which payment is only sufficient to cover the tariffed rate of stand-alone BLES and all associated taxes and government-mandated surcharges, the LEC may disconnect any regulated and/or unregulated service(s) other than BLES, not covered by the customer's payment. If the LEC does not offer BLES on a stand-alone basis, then insufficient payment of the package price may result in disconnection of all services included in the package.

(2) In support of its waiver request, OTA submits that the implementation of the Service Termination Rule would be extremely onerous, if not impossible, and would require its affected members companies to make extensive architectural changes to their billing systems. According to the OTA, implementation would require OTA member companies to adjust their current customers' billing and collection processes, currently done on an account basis, in order to allow for differing billing and collection treatment of multiple lines and services on an account. The OTA claims that implementing the rule, particularly considering the small percentage of customers who could be affected by it, would prove cost prohibitive due to excessive billing and collection system changes required.

OTA seeks to have the Commission issue an order that would authorize, until the Commission undertakes its next five-year review of the minimum telephone service standards (MTSS), continuation of the status quo, as it exists under current Rule 4901:1-5-17(A), O.A.C. (Rule 17(A)). That rule provision reads, in pertinent part:

> Local service may only be disconnected for subscriber nonpayment of charges for local services regulated by the Commission. For purposes of this rule, local service is defined as every regulated service provided by the local service provider other than toll service and 900 and 976-like services.

OTA claims that authorizing continuation of Rule 17(A) is appropriate while its members proceed with implementing all of the other required changes found in 4901:1-5-10, O.A.C., which becomes effective on June 1, 2008.

(3) Further explaining its position, OTA notes that, under Rule 17(A), the failure to pay the local service charges on an account could result in a disconnection of all local services on the account no matter how many lines the account contains. The new Service Termination Rule, by contrast, requires, according to OTA, the isolation of the primary BLES line in multi-line accounts, for disconnection purposes, and contemplates different disconnection treatment for any non-primary lines billed to the account. In addition, states OTA, any regulated services on a primary BLES line cannot be treated for disconnection purposes in the manner as the primary BLES line. OTA claims that the disconnection process contemplated by the Service Disconnection Rule cannot be accomplished with the billing systems currently employed by affected OTA member companies.

OTA claims that its affected members have investigated the number of accounts in which this multi-line situation occurs and "found the numbers to be quite small" (OTA Waiver Application at 2). It also claims that a relatively small portion of customers are impacted by the requirements of the Service Termination Rule. OTA submits that the information technology (IT) costs to separate optional features and services from the primary line for disconnection purposes "are significant" (Id. at 3). However, OTA claims that estimating the amount of work or costs involved cannot be done "without further and extensive research" (*Id.*). In the long run, says OTA, the costs to change the IT systems will be shared broadly, rather than be borne only by the small subset of customers who may be impacted by the rule change, namely those who make a partial payment without first establishing payment arrangements with a company.

Summarizing its arguments, OTA states:

> Without question, the cost of implementing the Service Termination Rule is prohibitive and unnecessary given the relatively few customers that would be impacted by the rule's disconnection changes. The programming costs, first to determine how/if the BLES lime could be

> isolated and then to make the necessary program changes, reach an amount that is clearly inconsistent with prudent business practice. Clearly, the continuation of the current disconnection policy as stated in the existing rule ... [i.e., Rule 17(A)] is appropriate.

(4) On April 7, 2008, The Office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra OTA's motion for waiver of the Service Termination Rule. OCC opposes the waiver request and urges the Commission to deny it for a number of reasons. First, OCC claims that granting the waiver would undermine the consumer protections of the MTSS by allowing OTA's member companies to disconnect a customer's entire local service – including BLES – for nonpayment of any regulated local service. OCC notes that, already within this case, the Commission considered and rejected a proposal similar to the OTA's current waiver request. Within its March 9, 2007 Application for Rehearing in this case, Embarq claimed that implementation of the Service Termination Rule would be economically burdensome, and would cause the company to incur IT systems conversion costs estimated at approximately $50,000.[2] Embarq, on rehearing, asked the Commission to reinstate Rule 17(A),[3] as OTA has done here. OCC notes that the Commission rejected Embarq's proposal and specifically stated:

> [T]he Commission's intention is to create a payment allocation process that would permit residential and small business customers to avoid local service disconnection by availing themselves of stand-alone BLES, where it is offered, so long as the customer pays for that service alone, including ... any taxes and government mandated fees associated with that service.[4]

Second, arguing that the waiver process is not a substitute for the rulemaking process, OCC states that the OTA is seeking an industry-wide permanent waiver that, as such, would circumvent the General Assembly's rulemaking process by essentially making a rule in the name of a waiver.

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2 *In the Matter of the Review of the Commission's Minimum Telephone Service Standards Found in Chapter 4901:-15, Ohio Administrative Code*, Case No. 05-1102-TP-ORD (05-1102) Embarq Application for Rehearing (March 9, 2007), at 3-4.

3 *Id*. at 5.

4 05-1102, Entry on Rehearing (July 11, 2007) at 43.

Third, OCC contends that the change proposed by the OTA, namely, to keep the status quo in place by replacing the Service Termination Rule with Rule 17(A) alone, does not adequately protect and would cause harm to consumers. OCC points out that Rule 17(A) says nothing about the allocation of partial payments. OCC notes that current Rule 4901:1-5-17(C), O.A.C., (Rule 17(C)) sets forth language regarding the application of partial payments that, in combination with Rule 17(A), has helped further the Commission's goal of assuring that consumers at least would be able to maintain basic service. Rule 17 (C) states:

> Partial payments applied towards any past due amount on a bill or the balance due on a disconnection notice must be apportioned to past due regulated local service charges, then to any current local charges, before being applied by a telecommunications provider to any toll or nonregulated charges unless the subscriber pays the entire amount due or more. In that case any amount paid over the amount past due shall be applied first to current local charges.

Without former Rule 17(C), says OCC, the language of former Rule 17(A) standing alone would allow incumbent LECs (ILECs) to disconnect a customer from **all** local service for nonpayment of **any** local service amount (emphasis by OCC). OCC argues that this would be unfair to customers and place them and their families at risk of losing local service since it would grant the LEC complete discretion regarding partial payment allocation. Because the Commission has clearly stated that the intention of the Service Termination Rule is to "create a payment allocation process that would permit residential and small business customers to avoid local service disconnection"[5] following the OTA's recommendation to replace the Service Termination Rule with former Rule 17(A) alone would, in OCC's view, contravene the public interest (OCC Memorandum Contra at 7).

It should, perhaps, be noted here that the OTA, in responding in its reply memorandum to these very arguments by OCC, has now amended its waiver request in such a way as to indicate its agreement that maintaining the status quo, as regards disconnection,

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5 *Id.*

must entail retaining both Rule 17(A) and Rule 17(C). Thus, the OTA, in its reply memorandum, submits that it is now seeking to have the Commission issue an order granting all affected OTA member companies a permanent waiver from the obligations of complying with the Service Termination Rule, while requiring their continued compliance with Rule 17(A) and 17(C).[6]

Fourth, and finally, OCC contends that the OTA has not submitted documentation sufficient to support the waiver it seeks for even one LEC, let alone for the industry as a whole. The OTA has not backed up its bald assertions that the costs of implementing the involved rule provision would be prohibitive, says OCC, nor has it provided specifics showing the financial impact of compliance on any specific company. A showing of actual hardship is necessary to sufficiently support a waiver request, says OCC, rather than mere bald assertions such as those provided by the OTA to support of its waiver request in this instance.

OCC maintains that, to support the grant of a blanket waiver of any MTSS provision for several ILECs, the ILECs should be required to demonstrate that they are similarly situated, i.e. that the cost of compliance would be nearly equally burdensome for each company. OCC says that the wide disparity in the size and financial situations of the OTA members makes such showing difficult in this case. Not all of the OTA member companies require the same alterations to their billing systems, thus their costs of compliance vary by company.

(5) On April 17, 2008, the OTA filed a reply memorandum to OCC's memorandum contra. The OTA submits that the OCC's memorandum contra is misguided and then proceeds to reiterate many of the same arguments set forth in the OTA's waiver request. As noted above, in its reply memorandum, the OTA did modify its waiver request in one respect: it is now seeking to have the Commission issue an order granting all affected OTA member companies a permanent waiver from the obligations of complying with the Service Termination Rule, while requiring their continued compliance with both Rule 17(A) and 17(C).

In its reply memorandum, the OTA states that, for the Commission to evaluate the OTA's waiver request properly, it must consider:

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6 05-1102, OTA Reply Memorandum at 6.

(a) the number of accounts to which the rule applies; (b) the costs of implementing the rule; and (c) the benefit, if any, in implementing the rule. The OTA claims that the Service Termination Rule will apply to only a relative handful of accounts and that its required treatment of non-basic regulated services, along with partial-pay or non-pay on multi-line accounts will directly involve only a trivial number of customers. The OTA claims that the estimated dollar costs for affecting the software changes necessary to implement the Service Termination Rule range among OTA member companies from tens of thousands to a quarter-million to a half-million or more and, *in one case to much more than a million* (emphasis by the OTA). The recovery of these costs, stresses the OTA, will have the most impact on the telecommunications bills of the vast majority of paying Ohio customers, even though the Service Termination Rule runs to the benefit of *non-paying* Ohio customers (emphasis by the OTA). The OTA submits that customers already have options to avoid disconnection and that companies "have every incentive to retain customers" (OTA Reply Memorandum at 3). For example, customers today can make payment arrangements or can voluntarily remove lines and/or services if they suffer financial hardships that make it difficult or impossible to pay. Given the small number of involved accounts, given the high cost of implementing the rule, given the rule's "inconsequential benefit to the public," and given the success of existing practices, the OTA maintains that "it simply makes more sense to maintain the current disconnection process" (OTA Reply Memorandum at 4).

The OTA argues that the Commission should reject the suggestion espoused by OCC that the OTA members waived their right to file the waiver request by failing to object earlier. The OTA claims that at the time the Service Termination Rule was considered, its implementation costs were unknown but thought to be manageable. Only upon adoption of the Service Termination Rule, and upon consultation with appropriate systems engineers, did the unreasonableness of the cost of compliance emerge. The OTA suggests that granting the requested waiver presents a ready opportunity for the Commission to accomplish the objectives espoused in Governor Strickland's recent executive order, which seeks to return to "Common Sense Business Regulation." The OTA believes that implementation of the rule is altogether unwarranted and, unless OTA's waiver request is granted, will cost the affected OTA member companies and their customers real money for no good reason.

(6) On April 17, 2008, AT&T Ohio, AT&T Long Distance, AT&T Communications of Ohio, Inc., and TCG Ohio (collectively, AT&T) jointly filed a reply to OCC's memorandum contra OTA's waiver request. AT&T's position is that OCC's memorandum contra does not withstand scrutiny and should be disregarded by the Commission. AT&T points out that the disconnection process mandated by the Service Termination Rule is a regulatory policy exclusive to Ohio: no other state in which AT&T operates has a similar disconnection process. AT&T also claims that the Service Termination Rule does not either apply or cause a change to the manner in which AT&T's competitors disconnect their customers. Implementation of the rule will, according to AT&T, require billing changes that cannot be instituted at the account level. As a result, says AT&T, the company will be required to support and maintain two separate and fundamentally different billing systems. This, in turn, introduces additional costs to AT&T's business along with the potential for considerable error that could impact all of AT&T's customers, all for the purpose of introducing a rule change that affects only an extremely small portion of customers.

AT&T claims that the application of the Service Termination Rule does not make sense and is bad public policy. The costs of implementing the rule, says AT&T, renders the rule as unjust and unreasonable. AT&T Ohio estimates that it will incur nearly $2 million in expenses and approximately 28,000 man hours in implementing the Service Termination Rule. AT&T submits that, given that the telecommunications industry is experiencing significant and ever increasing levels of competition, it is unreasonable for the Commission to require that AT&T Ohio expend this amount to implement a new regulation. AT&T posits that, considering that less than one-half of one percent of AT&T Ohio's residential customers is disconnected each month, the Service Termination Rule is unjust, unreasonable, and unwarranted. Additionally, AT&T argues that the Service Termination Rule clearly runs contrary to Governor Strickland's executive order on "Common Sense Business Regulation",[7] under which agencies are required to review and consolidate existing rules and practices. According to AT&T, common sense should dictate that the OTA's waiver should be granted.

7 AT&T cites Executive Order 2008-04S, *Implementing Common Sense Business Regulation*.

Finally, AT&T submits that, to the extent the Commission is concerned about granting a blanket waiver to the industry, then AT&T submits its reply memorandum "as its individual filing for waiver of the Service Termination Rule, incorporating by reference all of the arguments submitted by the OTA."

(7) Upon review of all of the relevant pleadings, the Commission concludes, for the reasons explained below, that the OTA has failed to provide sufficient support for granting a blanket waiver–request and that, accordingly, that request is denied. Additionally, we deny AT&T's request to have its reply to OCC's memorandum contra OTA's waiver request treated as if it were a separate waiver request filed individually. The Commission will, however, grant a limited waiver of the Service Termination Rule as discussed below in more detail.

The Commission first notes that, ironically, we adopted the new Service Termination Rule in order to allow companies more flexibility in creating their own disconnection policies, consistent with the forces of the marketplace. As OTA pointed out during our rulemaking, in response to OCC's objections to the rule change, the focus of the new rule is to provide protection to customers for their most basic service, to promote universal service, and yet move local phone companies toward parity with their competitors (OTA March 19, 2007 Memorandum Contra OCC's Application for Rehearing at 7, 8). It was our intention to create a payment allocation process that would permit ILECs to disconnect all services for which a residential or small business customer (up to three access lines) is delinquent, while allowing customers to keep a dial-tone connection to the local network, so long as the payment tendered is sufficient to cover the ILEC's rate for the stand-alone basic local service option plus taxes and government mandated fees associated with BLES.

The ILECs now argue that the costs to implement the Service Termination Rule are prohibitive and unnecessary relative to the number of customers impacted, and request that the rule be permanently waived for all ILECs. The waiver process is not a substitute for the rulemaking process. The Commission has previously held that, while it understands that waivers of certain rules may be necessary in order to allow a company to avoid an unreasonable hardship, in situations where the hardship is adequately demonstrated to arise under unique circumstances faced by the company

seeking the waiver, it has, at the same time, warned that LECs should "file for waivers only on those instances where actual hardship in implementing these rules exists, and not in situations where the company simply disagrees with a rule or does not wish to change its policies or equipment to meet the minimum standards."[8]

Second, a showing of actual hardship should be supported by detailed documentation. We are unconvinced that the OTA, or AT&T on its own, has provided documentation sufficient to support a grant of the waiver either has sought. For one thing, since AT&T's reply was filed jointly by four companies all associated with AT&T, it is completely unclear which of these four AT&T companies should be considered as having filed a separate individual application. Just as importantly, we find that none of the four AT&T companies has provided sufficient documentation to support the waiver sought, even if AT&T's pleading were to be considered and treated as a separate, individual request for waiver. Similarly, so too, has the OTA failed to even identify which of its member companies face unreasonable hardships that might warrant a grant of the waiver requested. Despite the fact that ILECs vary in size, face different financial situations, and use different billing systems, the OTA has used generalities in making its major assertions, stating, for example, only that "most companies" would have to change a number of systems in order to implement the Service Termination Rule. The Commission cannot ascertain from OTA's pleadings whether the cost of implementation is "prohibitive" on any particular company. We find that neither the OTA, nor AT&T has provided documentation sufficient to grant the requested waiver even to any one company, let alone to the whole LEC industry.

Third, even if an applicant for a rule waiver can show that its request seems appropriate in order to avoid an unreasonable hardship that can be adequately demonstrated through detailed documentation, it is also incumbent upon the party seeking the waiver to attempt to mitigate as best it can the circumstances of its waiver request to ensure the intent of the rule from which waiver is sought would nonetheless be carried out to the greatest possible extent. In adopting the Service Termination Rule, the Commission specifically stated its intention has been "to create a payment allo-

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8 *In the Matter of the Revision of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 83-869-TP-COI, Finding and Order issued October 18, 1988.

cation process that would permit residential and small business customers to avoid local service disconnection by availing themselves of stand-alone BLES where it is offered, so long as the customer pays for that service alone including ... any taxes and government mandated fees associated with that service."[9] In this case, neither the OTA nor AT&T has shown the steps either would take, short of a vague offer to respond to customer requests for payment arrangements, to ensure, if the involved waiver were to be granted, that customers who pay for BLES are offered a low-cost option to either keep BLES, or to keep something akin to BLES.

Finally, the Commission grants a limited waiver of the Service Termination Rule to the extent necessary to address the concern of the companies with respect to residential and business customers whose stand-alone BLES accounts consist of two or three BLES lines. Some companies' current billing systems do not distinguish between primary lines and nonprimary lines for these accounts, instead treating the BLES lines the same as if they were a single line/account for purposes of BLES disconnection. Because the Commission's focus is primarily on ensuring a dial tone connection and customers not losing that dial tone connection due to charges associated with other regulated and nonregulated services, the Commission will allow delinquent residential and business multi-line accounts (up to three lines) to be treated on an account basis, just as they are today, for purposes of access line disconnection. The ILEC must continue to provide the stand-alone BLES portion of a delinquent customer's BLES multi-line account, so long as the customer tenders payment sufficient to cover the ILEC's rate for each BLES line, plus taxes and government mandated fees associated with BLES. In this way, a company may continue, under the Service Termination Rule, to handle disconnections in the same way as it always has until now, on an account basis for the provision of the stand-alone BLES portion of the multi-line account. But, consistent with the new rule, the ILEC would be required to treat disconnection of any other regulated local service(s) separately from the BLES portion of the multi-line account.

To the extent the OTA's waiver application should be considered as a request to establish an industry-wide policy that features not be separated from the access line(s) for disconnection purposes, the Commission notes that, in adopting the Service Termination Rule,

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9 05-1102, Entry on Rehearing issued July 11, 2007, at 43.

the Commission did intend that no service line should be disconnected for the non-payment of features or other ancillary services. Retention of dial tone is a long held policy objective of the Commission. Because it is unclear what the industry, through the OTA's waiver request, is seeking in this respect, to the extent that an industry-wide waiver is sought, it is denied.

Should any company wish to file a company-specific request for waiver of the features separation requirement, it must do so within fourteen days of this entry. Such a request must demonstrate, with detailed documentation, both the unreasonable hardship the requirement imposes on the company and also how the company intends to comply with the spirit of this provision. We remind any company seeking such a waiver that the Commission is aware of and expects that compliance with rule changes will often require a company to make operational changes and to incur costs in doing so. Therefore, the threshold for grant of a waiver request is not simply a showing that time and expense is required in complying with a rule change, but rather that the company's compliance is unduly burdensome compared to the public policy objective involved. We also remind any requesting company of the potential impact any waiver of this rule may have on other rules and the Commission's need to modify those rules to restore the balance created by the original adoption of the rules.

(8) For all of the reasons explained above, the Commission finds it appropriate to deny both the OTA's request for a blanket waiver and AT&T's request to have its reply to OCC's memorandum contra OTA's waiver request treated as if it were a separate waiver request filed individually. Nevertheless, we grant a limited waiver of the Service Termination Rule as discussed above. In order to give all affected telecommunications service providers sufficient time to prepare to implement the new Service Termination Rule, which becomes effective on June 1, 2008, the Commission will not begin enforcing that new rule provision, i.e., Rule 4901:1-5-10(B), O.A.C., until January 1, 2009.

It is, therefore,

ORDERED, That, in accordance with the above findings, the OTA's motion seeking, blanket waiver from the obligations of Rule 4901:1-5-10(B), O.A.C., which it has labeled as "the Service Termination Rule, is denied. It is further,

ORDERED, That, in accordance with the above findings, AT&T's request to treat it's reply memorandum as an individual request for waiver of the Service Termination Rule is denied. It is, further,

ORDERED, That in accordance with the directives of Finding 7 of this Entry, a limited waiver of the new Service Termination Rule is granted, to the extent necessary to address the concerns of companies with respect to residential and business customers whose stand-alone BLES accounts consist of two or three BLES lines. It is, further,

ORDERED, That, In order to give all affected telecommunications service providers sufficient time to prepare to implement the new Service Termination Rule, which becomes effective on June 1, 2008, the Commission will not begin enforcing that new rule provision, i.e., Rule 4901:1-5-10(B), O.A.C., until January 1, 2009. It is, further,

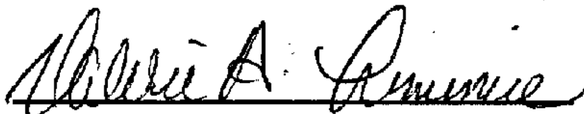
ORDERED, That a copy of this entry be served upon each party of record in these two cases.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus



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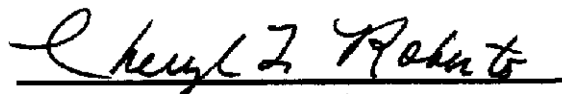

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Reneé J. Jenkins
Secretary