

**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)	Case No. 05-1102-TP-ORD
Administrative Code.)	

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In order to ensure that Ohio residential telephone consumers receive adequate service at reasonable rates the Office of the Ohio Consumers' Counsel ("OCC") files this application for rehearing of the Public Utilities Commission of Ohio's ("Commission's" or "PUCO's") May 14, 2008 Entry ("May 14 Entry") in these proceedings. OCC files this application for rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

In the May 14 Entry, the Commission denied an Application filed by the Ohio Telecom Association ("OTA") on March 20, 2008. OTA filed on behalf of all its members to seek a permanent waiver of the PUCO's rule¹ that prohibits disconnection of a customer's basic service for nonpayment of past due charges if the customer's payment is sufficient to cover the rate for stand-alone basic local exchange service plus associated taxes surcharges.² The May 14 Entry also denied the waiver request specific to AT&T Ohio, AT&T Long Distance, AT&T Communications of Ohio, Inc. and TCG Ohio

¹ Ohio Adm. Code 4901:1-5-10(B) ("Rule 10(B)")

² See Application at 1.

(collectively, “AT&T”) contained in AT&T’s reply memorandum filed on April 17, 2008.³ OCC agrees with those PUCO actions.

The PUCO, however, also granted a “limited waiver” of Rule 10(B) that requires incumbent local exchange carriers (“ILECs”) to continue to provide to customers who are delinquent in their payments the stand-alone basic local exchange service (“basic service” or “BLES”) portion of the customers’ basic service 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.”⁴ In addition, the Commission decided that “[i]n 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.”⁵

OCC seeks rehearing of those portions of the May 14 Entry. The Commission’s decision is unreasonable or unlawful in the following respects:

1. It is unclear from the May 14 Entry whether the limited waiver applies only to incumbent local carriers whose billing systems do not distinguish between primary lines and non-primary lines.
2. From the perspective of residential service, it is unclear from the May 14 Entry whether the limited waiver applies only to residential accounts with two or three lines that include only stand-alone basic service, or to multi-line residential accounts that have at least one line consisting of basic service bundled with other services.
3. It is unclear from the May 14 Entry whether the limited waiver will expire when Rule 10(B) enforcement begins on January 1, 2009.

³ See AT&T Reply Memorandum at 7.

⁴ May 14 Entry at 11.

⁵ Id. at 12 (emphasis added).

4. By delaying enforcement of Rule 10(B) until January 1, 2009 and allowing the former service termination rule to expire, the Commission has placed some customers of incumbent telephone companies and competitive local exchange carriers ("CLECs") in greater jeopardy of losing their service.
5. It is unclear from the May 14 Entry whether an incumbent carrier can disconnect all service to a multi-line residential customer who does not make a payment sufficient to cover the incumbent carrier's stand-alone basic service rate for each access line to which the customer subscribes.

The grounds for this application for rehearing are set forth in the accompanying Memorandum in Support. The Commission should modify the May 14 Entry as discussed in the Memorandum in Support.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the May 14 Entry, the Commission correctly denied both the blanket waiver of Rule 10(B) sought by OTA and the waiver that AT&T inappropriately sought in its reply to OCC's memorandum contra. The Commission, however, sua sponte granted a "limited waiver" of Rule 10(B) for all ILECs in Ohio whose billing systems do not distinguish between primary and non-primary lines for disconnection of multi-line accounts:

[T]he 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.⁶

In another sua sponte action, the Commission delayed enforcement – but not the effective date – of Rule 10(B) for a seemingly broader group of telephone companies: “[i]n 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.”⁷

The Commission’s actions in the May 14 Entry raise many questions that the Commission should answer in order to clarify the application of the May 14 Entry:

- ▶ Does the limited waiver apply only to ILECs whose billing systems do not distinguish between primary lines and non-primary lines?
- ▶ Does the limited waiver apply only to residential accounts with two or three stand-alone basic service lines, or to multi-line residential accounts that have at least one line consisting of basic service bundled with other services?
- ▶ Will the limited waiver expire when Rule 10(B) enforcement begins on January 1, 2009, or will it coexist with Rule 10(B)?
- ▶ If the limited waiver applies to multi-line residential and small business customers of ILECs but Rule 10(B) will not be enforced until January 1, 2009, how will single-line residential customers of ILECs be protected from disconnection if they make a payment sufficient to cover the ILEC’s tariffed stand-alone basic service rate, and associated taxes and surcharges?
- ▶ If the limited waiver applies to ILECs but Rule 10(B) will not be enforced against all telecommunications service providers, including CLECs, until

⁶ Id. at 11.

⁷ Id. at 12 (emphasis added).

January 1, 2009, how will residential customers of those CLECs that have a tariffed rate for stand-alone basic service be protected from disconnection if they make a payment sufficient to cover the CLEC's tariffed stand-alone basic service rate, and associated taxes and surcharges?

- ▶ Under the limited waiver, if a multi-line residential customer does not submit payment sufficient to cover the ILEC's stand-alone basic service rate for each access line to which the customer subscribes, can the ILEC disconnect service to all of the customer's access lines?

In order to ensure that telephone consumers in Ohio receive all the protections of the MTSS, the Commission should modify the May 14 Entry so that:

- ▶ The limited waiver does not apply to ILECs whose billing systems distinguish between primary and non-primary lines for disconnection purposes.
- ▶ The limited waiver applies to multi-line residential accounts that have at least one line consisting of basic service bundled with other services.
- ▶ The limited waiver will expire when Rule 10(B) enforcement regarding multi-line residential and small business accounts begins on January 1, 2009.
- ▶ The limited waiver applies only to multi-line residential and small business customers of ILECs. Rule 10(B) is in effect for single-line residential customers of ILECs and for all residential customers of CLECs.
- ▶ A multi-line residential customer will retain service on each line for which the customer has submitted payment sufficient to cover the ILEC's stand-alone basic service rate.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed comments and reply comments in this proceeding.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard for abrogating and modifying the Order is met here.

III. ARGUMENT

Rule 10(B) covers three aspects of customer payments for basic service. First, the rule states that basic service, “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 a 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).” Thus, a customer’s stand-alone basic service cannot be disconnected if the customer pays at least the local exchange carrier’s tariffed rate for stand-alone basic service, plus taxes and surcharges.

Second, a customer's basic service that is "part of a service package of bundled regulated services and/or bundled regulated and unregulated services, cannot be disconnected 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." Under this provision, a customer who subscribes to a bundle of services that includes basic service will retain stand-alone basic service if the customer pays at least the local exchange carrier's tariffed rate for stand-alone basic service, plus taxes and surcharges. If the carrier does not offer stand-alone basic service, the customer may be required to pay the entire amount for the bundled service in order to avoid disconnection.

Third, "[i]n 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." Thus, a carrier may disconnect any bundled services other than basic service if the customer pays only the carrier's tariffed basic service rate, plus taxes and surcharges.

A. It Is Unclear from the May 14 Entry Whether the Limited Waiver Applies Only to Incumbent Local Carriers Whose Billing Systems Do Not Distinguish Between Primary Lines and Non-Primary Lines.

In granting the limited waiver, the Commission noted that "[s]ome 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."⁸ Nevertheless, the limited waiver

⁸ May 14 Entry at 11.

seemingly applies to all ILECs, if their billing systems distinguish between primary and non-primary lines for disconnection purposes.

The Commission should resolve this issue by making clear that the limited waiver does not apply to those ILECs whose billing systems distinguish between primary and non-primary lines for disconnection purposes. Such ILECs can already comply with Rule 10(B), and thus do not need to avoid the obligations contained in Rule 10(B).

B. From the Perspective of Residential Service, It Is Unclear from the May 14 Entry Whether the Limited Waiver Applies Only to Residential Accounts with Two or Three Lines That Include Only Stand-Alone Basic Service, or to Multi-Line Residential Accounts That Have at Least One Line Consisting of Basic Service Bundled with Other Services.

The Commission granted the limited waiver of Rule 10(B) “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.”⁹ Thus, it appears that the limited waiver applies only to residential and small business customers whose service consists of two or three stand-alone BLES lines.

This is significant, given that the previous disconnection rule expired on June 1, 2008 and the Commission suspended enforcement of Rule 10(B) until January 1, 2009. Under the Commission’s actions in the May 14 Entry, ILEC customers whose multi-line residential service includes at least one access line that contains non-basic services, either à la carte or as part of a bundle, do not have the protection afforded them under Rule 10(B) or the limited waiver. Thus, such customers’ entire service may be disconnected if they do not pay the entire amount owed the ILEC. This runs counter to the Commission’s purpose in adopting Rule 10(B), “to create a payment allocation process

⁹ Id at 11 (emphasis added).

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.”¹⁰

The Commission should clarify that the limited waiver applies to multi-line residential customers whose service includes at least one access line that contains non-basic services, either á la carte or as part of a bundle. Thus, such customers can avoid complete disconnection of service by paying the ILEC’s stand-alone basic service rate, and upon such payment will retain stand-alone basic service.

C. It Is Unclear from the May 14 Entry Whether the Limited Waiver Will Expire when Rule 10(B) Enforcement Begins on January 1, 2009.

As discussed above, the limited waiver concerns a single issue – application of Rule 10(B) to residential and small business customers of ILECs’ multi-line service – while Rule 10(B) affects partial payments made by all residential and small customers. The Commission granted ILECs the limited waiver, but also delayed enforcement of Rule 10(B) until January 1, 2009 in order to give “all affected telecommunications carriers” time to prepare to implement Rule 10(B). The Commission, however, did not specify that the limited waiver expires when Rule 10(B) enforcement begins on January 1, 2009, even though the limited waiver would seem to be merely a temporary solution until ILECs reprogram their billing systems.

Nevertheless, in order to avoid confusion among carriers and consumers, the Commission should modify the May 14 Entry by clarifying that the limited waiver

¹⁰ 05-1102, Entry on Rehearing (July 11, 2007) at 43.

expires on January 1, 2009. Such a clarification would ensure that consumers realize the full benefit of Rule 10(B).

D. By Delaying Enforcement of Rule 10(B) Until January 1, 2009 and Allowing the Former Service Termination Rule to Expire, the Commission Has Placed Some Customers of Incumbent Telephone Companies and Competitive Local Exchange Carriers in Jeopardy of Losing Their Service.

Rule 10(B) allows ILEC and CLEC customers to maintain at least their basic local service so long as they pay at least the amount of the carrier's basic service, plus taxes and surcharges. In the May 14 Entry, the Commission delayed enforcement of Rule 10(B), for all "affected telecommunications service providers," but granted the limited waiver for ILEC customers of residential and small business multi-line service. In addition, the Commission did not extend the previous payment rule, which expired on June 1, 2008.¹¹ Thus, the Commission created a regulatory void for at least two types of customers: ILEC customers of single-line residential service that includes á la carte features, and all residential customers of those CLECs that have a tariffed basic service rate.

In the May 14 Entry, the Commission made clear that the limited waiver applies to ILECs' residential and business customers "whose stand-alone BLES accounts consist of two or three BLES lines."¹² The Commission, however, did not limit its delay in the enforcement of Rule 10(B) to just that portion of the rule concerning partial payments by residential and small business multi-line customers. Instead, the Commission stated that it will not enforce the entirety of Rule 10(B).¹³ Because the previous payment allocation

¹¹ 05-1102, Entry (September 26, 2007).

¹² May 14 Entry at 11.

¹³ Id. at 12.

rule expired on June 1, 2008, there is now no payment allocation rule in effect for ILEC customers of single-line residential service that includes á la carte features, and all residential customers of those CLECs that have a tariffed basic service rate.

This situation places these residential customers in jeopardy of losing even basic service for which they can make payment unless they pay the full amount owed to their carrier for all services. It also contradicts the Commission's "long held policy objective" that "no service line should be disconnected for the non-payment of features or other ancillary services."¹⁴ Indeed, the policy of Ohio as adopted by the General Assembly is to "ensure the availability of adequate basic local exchange service to citizens throughout the state."¹⁵ The PUCO served that policy and served Ohioans by adopting the rule; the PUCO should not upend the rule for OTA.

In order to further the policy objectives of the General Assembly and the PUCO, which are to protect consumers, the Commission should modify the May 14 Entry by clarifying that the limited waiver applies only to multi-line residential and small business customers of ILECs. These were the customers at which OTA directed its waiver request. The Commission should clearly state that Rule 10(B) is in effect for single-line residential customers of ILECs and for all residential customers of CLECs.

E. It Is Unclear from the May 14 Entry Whether an Incumbent Carrier Can Disconnect All Service to a Multi-Line Residential Customer Who Does Not Make a Payment Sufficient to Cover the Incumbent Carrier's Stand-Alone Basic Service Rate for Each Access Line to Which the Customer Subscribes.

In granting the limited waiver, the Commission stated that "[t]he ILEC must continue to provide the stand-alone BLES portion of a delinquent customer's BLES

¹⁴ Id. at 12.

¹⁵ R.C. 4927.02(A)(1)

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."¹⁶ This clearly means that a customer subscribing to two or three lines will retain basic service on each of those lines if the customer pays the ILEC's tariffed basic service rate for each line.

Application of the limited waiver, however, is less settled in those instances where a multi-line customer pays less than the ILEC's tariffed basic service for each line. One situation would be where the customer subscribes to two lines, but pays enough to cover the ILEC's tariffed basic service rate for only one of those lines. In such a situation, can the ILEC still demand that the customer pay the tariffed basic service rate for the second line in order for the customer to avoid disconnection of both lines?

The Commission should modify the May 14 Entry by clarifying that a multi-line residential customer will retain service on each line for which the customer has submitted payment sufficient to cover the ILEC's stand-alone basic service rate. Thus, if a customer who subscribes to two lines pays enough to cover the ILEC's tariffed basic service rate, plus taxes and surcharges, for one line, the customer will retain basic service on that line.

IV. CONCLUSION

Although the Commission properly denied OTA's and AT&T's waiver requests, the May 14 Entry leaves unanswered many questions about the application of the limited waiver and the implementation of Rule 10(B). For that reason, the Commission should grant rehearing as OCC recommends herein.

¹⁶ Id. at 11.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons list below, on this 13th day of June 2008.

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