

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO STRIKE
A PORTION OF THE OHIO TELECOM ASSOCIATION’S
MEMORANDUM CONTRA APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Pursuant to Ohio Adm. Code 4901-1-12, the Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential utility consumers, moves to strike a portion of the “Memorandum of the Ohio Telecom Association in Opposition to the Application for Rehearing of the Office of the Ohio Consumers’ Counsel, and in Response to the Application for Rehearing of AT&T Ohio” (“OTA Memo”) filed in this docket on June 23, 2008. Specifically, OCC moves to strike that portion of page 4 of the OTA Memo beginning with the heading “AT&T’s Application” and continuing until the end of the page. This portion of the OTA Memo relates to the key rehearing issue of whether AT&T Ohio’s April 17, 2008 request for a waiver of Ohio Adm. Code 4901:1-5-10(B) (“Rule 10(B)”) should be granted.

The portion of the OTA Memo should be stricken because it is not a memorandum contra, but is instead a memorandum in support of AT&T Ohio’s Application for Rehearing. Such a supporting memorandum is not allowed by Ohio

Adm. Code 4901-1-35 or by precedent of the Public Utilities Commission of Ohio (“Commission”). The grounds for OCC’s motion to strike are more fully set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

**I. THE COMMISSION’S RULES PERMIT ONLY MEMORANDA
CONTRA APPLICATIONS FOR REHEARING.**

The portion of the OTA Memo that is the subject of the instant Motion to Strike violates the Commission’s rules. Ohio Adm. Code 4901-1-35 provides, in pertinent part, that:

(A) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a commission order, in the form and manner and under the circumstances set forth in section 4903.10 of the Revised Code.

(B) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.

Thus, the rules do not provide for the filing of memoranda in support of another party’s application for rehearing, only of memoranda that oppose such applications.

The Commission recently affirmed this principle in Case No. 06-1344-TP-ORD (“06-1344”). In that proceeding, OCC moved to strike portions of two memoranda contra that were filed in response to an application for rehearing. OCC pointed out that,

in fact, the portions of the memoranda contra supported the arguments of another party.¹

The Commission agreed with OCC and struck those portions of the memoranda contra.

In its ruling, the Commission stated:

In reaching this decision, the Commission agrees with OCC's assertion that Rule 4901-1-35, O.A.C., is limited in scope to the filing of memorandum contra applications for rehearing. To the extent that a party believes that it is necessary to inform the Commission of its support for another party's rehearing position, the appropriate motion for leave to file a memorandum in support should be submitted for the Commission's consideration.²

The OTA Memo contains no motion for leave to file a memorandum in support.

II. THE DESIGNATED PORTION OF THE OTA MEMO SUPPORTS AT&T OHIO'S APPLICATION FOR REHEARING, IN VIOLATION OF COMMISSION RULES AND DIRECTIVES.

Page 4 of the OTA Memo, beginning with the heading "AT&T's Application," is not part of a memorandum contra. Rather, it blatantly expressed support for AT&T Ohio's application for rehearing.

The first sentence of the first paragraph under the heading states: "OTA fully supports the Application for Rehearing filed by AT&T Ohio." The last sentence of that paragraph begins: "As AT&T **correctly** asserts, re-engineering an IT system to accommodate a small percentage of customers who make partial payments is not a prudent business decision."³ Although OTA did not cite to any specific portion of AT&T Ohio's application for rehearing, a large portion of AT&T Ohio's argument on rehearing addressed the number of customers affected, the cost involved and the allegedly need for

¹ 06-1344, OCC Motion to Strike (October 5, 2007), Memorandum in Support at 2-3.

² Id., Entry on Rehearing (October 17, 2007) at 3.

³ Emphasis added.

reconfiguring AT&T Ohio's billing system.⁴ OTA concluded its argument under that heading by urging the Commission to grant AT&T Ohio's application. This portion of the OTA Memo violates Ohio Adm. Code 4901-1-35 and Commission precedent, stated above, and therefore should be stricken.

The impropriety of OTA's "response" to AT&T Ohio's rehearing application is further highlighted by the fact that OTA did not file an application for rehearing of its own, even though OTA initiated this proceeding. OTA filed an application for waiver of Rule 10(B) on March 20, 2008.⁵ AT&T Ohio's waiver request was included in an April 17, 2008 reply to OCC's memorandum contra OTA's waiver application.⁶ The Commission denied both OTA's waiver application and AT&T Ohio's waiver request in an Entry issued on May 14, 2008. As OTA recognizes, however, it did not seek rehearing of the May 14 Entry.⁷ The reason given by OTA is irrelevant;⁸ the fact is, OTA did not seek rehearing of a Commission decision on OTA's own waiver request. The Commission should strike OTA's arguments in support of AT&T Ohio's application for rehearing.

OTA's arguments under the above-mentioned heading are clearly supportive of, not contra to, AT&T Ohio's application for rehearing. In addition, OTA did not file a motion for leave to file a memorandum in support, as the Commission directed in the 06-

⁴ See AT&T Ohio's Application for Rehearing (June 13, 2008) at 4-8.

⁵ Application of the Ohio Telecom Association for an Order Granting Waiver of Ohio Administrative Code Section 4901:1-5-10 (March 20, 2008).

⁶ AT&T's Reply (April 17, 2008) at 7. The reply was made on behalf of four AT&T companies, including AT&T Ohio.

⁷ OTA Memo at 4.

⁸ Id.

1344 case. Thus, the Commission should strike page 4 of the OTA Memo, beginning with the heading “AT&T’s Application” and continuing until the end of the page.

III. CONCLUSION

For the reasons set forth herein, the designated portion of the OTA Memo is in fact a memorandum in support of AT&T Ohio’s application for rehearing and should be stricken.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike a Portion of the Ohio Telecom Association's Memorandum Contra Application for Rehearing by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons listed below, on this 25th day of June 2008.

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Summary: Motion Motion to Strike a Portion of the Ohio Telecom Association's Memorandum Contra Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.