

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

In the Matter of the Commission's Review)
of the Minimum Telephone Service)
Standards as Set Forth in Chapter 4901:1-5) Case No. 05-1102-TP-ORD
of the Ohio Administrative Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) On March 20, 2008, the Ohio Telecom Association (OTA) filed a motion seeking a permanent blanket 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 disconnected for nonpayment of

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 nonprimary lines where the customer's stand-alone BLES account consists of multiple lines and/or multiple services.

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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) On April 7, 2008, the Office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra OTA's motion for blanket waiver. On April 17, 2008, OTA and AT&T² filed replies to OCC's memorandum contra. AT&T intended that its reply should be considered as an individual filing for waiver of the Service Termination Rule that incorporates by reference all of the arguments submitted by the OTA.
- (3) On May 14, 2008, the Commission issued an entry that denied 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. However, by its May 14 entry, the Commission did grant 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 Basic Local Exchange Service (BLES) accounts consist of two or three BLES lines." The Commission explained the nature of this limited waiver in Finding (7) of the entry, as follows:

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

² AT&T's memorandum contra was jointly filed by AT&T Ohio, AT&T Long Distance, AT&T Communications of Ohio, Inc., and TCG Ohio (collectively, AT&T).

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 multiline 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 the delinquent customer's BLES multiline 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 multiline account. But, consistent with the new rule, the LEC will be required to treat disconnection of any other regulated local service(s) separately from the BLES portion of the multiline account.

In addition, the Commission ruled in its May 14 entry that, in order to give all affected telecommunications service providers sufficient time to prepare to implement the new Service Termination Rule, which was scheduled to become effective on June 1, 2008, the Commission will not begin enforcing the rule provision until January 1, 2009. Within the May 14 entry the Commission directed that any company that wished to file a company specific request for waiver of the new rule's features separation requirement, would be required to do so within fourteen days of the entry. On May 28, 2008, AT&T filed a request for waiver of the Service termination Rule, as modified by the Commission's May 14 entry. On June 16, 2008, OCC filed a memorandum contra AT&T's May 28 waiver request. On June 23, 2008, AT&T filed a reply to OCC's memorandum contra. The Commission will rule on these pleadings in a separate entry to be issued in the near future.

- (4) Section 4903.10, Revised Code, states that within 30 days after the Commission has issued any order any party who has entered an appearance in the proceeding may apply for rehearing with respect to any matters determined in the proceeding.

- (5) Two entities have sought rehearing of the May 14 entry. On June 13, 2008, AT&T and OCC timely filed applications for rehearing of the Commission's May 14 entry. On June 23, 2008, OTA, AT&T, and Cincinnati Bell Telephone Company LLC (CBT) filed memoranda contra OCC's rehearing application and OCC filed a memorandum contra AT&T's rehearing application. On June 25, 2008, OCC filed a motion to strike a portion of OTA's memorandum contra OCC's rehearing application, on grounds that the portion in question is not, in fact, a memorandum contra but rather amounts to a memorandum in support of AT&T's rehearing application. On July 2, 2008, OTA filed a motion to withdraw the language which was the subject of OCC's motion to strike. That motion is granted and therefore OCC's motion to strike is moot.
- (6) In its rehearing application, AT&T attacks not only the May 14 entry, but the Commission's adoption, at an earlier stage of this proceeding, of the new Service Termination Rule itself, i.e., Rule 10(B). According to AT&T, the new rule is both arbitrary and unreasonable because of its "technical, economic, and policy shortcomings" (AT&T Rehearing Application at 3). AT&T argues that the new Service Termination Rule does not impact all competitors in the same manner; rather, it adversely impacts those LECs that provide stand-alone BLES (*Id.* at 2). AT&T states that it is seeking rehearing of the Commission's May 14 entry because, given the competitive environment in which AT&T operates, it is unjust and unreasonable to require AT&T to incur expenses caused by regulatory rules that should be decreasing or even eliminated (*Id.* at 1). In AT&T's view, the new rule represents a change to the Commission's disconnection policy that has been proposed on previous occasions over the past 12 years but that, until now, has always previously been rejected by the Commission (*Id.*). AT&T believes the Commission failed to justify the new rule and "did not sufficiently consider who it impacts, how much it costs, or the extent of the public benefit" (*Id.* at 3). AT&T contends that the explanation for the new rule that the Commission provided in its May 14 entry, namely, to provide companies more flexibility in creating their own disconnection policies while also providing protection to customers, fails to justify its adoption of the new rule. AT&T argues that, in fact, no reason exists to require the implementation of the new rule, since doing so will entail, for AT&T, "costly and complex changes" that, at best, might provide additional protection for only a "relatively few delinquent payers"

(*Id.* at 9). Ultimately, what AT&T seeks through its rehearing application is to be permitted to continue to utilize the disconnection policy that was in effect, under Rule 17, prior to June 1, 2008 (*Id.* at 7). According to the company, Rule 17 has worked well over the past years, has generated no customer complaints, and has provided the necessary degree of protection for regulated local services when issues arise with regard to disconnection for non-payment. AT&T insists that there is “no supporting information” that merits a modification of Rule 17 or the implementation of new Rule 10(B) (AT&T Rehearing Application at 1, 2).

On another topic, AT&T argues that the Commission’s May 14 decision to deny, for lack of sufficient supporting documentation, AT&T’s April 17 individual waiver request is unreasonable, given the variety of supporting documentation that AT&T conveyed in a meeting with the Commission’s staff on April 17, 2008. In support of this argument, AT&T specifically claims it provided information on the estimated number of customers impacted by the new rule change, the estimated cost to implement the new rule change, and detailed information on AT&T’s process for instituting system changes of this magnitude (*Id.* at 3). As an example, AT&T states that “in discussions with staff,” AT&T identified cost estimates indicating that the programming work alone required to implement the new rule would range between one to three million dollars (*Id.* at 4). AT&T avers that the information it provided was “clearly” sufficient to support its company-specific request for waiver (*Id.*).

On yet another topic, AT&T argues that the Commission created a new, unreasonable, and unlawful requirement by announcing, in its May 14 entry, that a company in seeking a rule waiver should “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 extent possible” (*Id.* at 5, citing May 14 Entry at 10). AT&T claims that the purpose and intent of this dictate is unclear and is not supported by any legal requirement.

As a final matter, AT&T claims that it could not complete the billing changes necessary to implement the policy directives established under the May 14 entry until mid-year 2009 at the

earliest. AT&T seeks additional time until July 1, 2009, to implement the necessary billing system changes.

- (7) In its memorandum contra AT&T's Rehearing Application, OCC makes four main arguments. First, OCC contends that the Commission has already addressed in its May 14 entry all of the arguments AT&T has included in its rehearing application (OCC memorandum contra at 4). In OCC's view, AT&T has not shown on rehearing that any portion of the May 14 entry is in any respect unjust or unwarranted, nor has it raised any issues on rehearing that were not addressed in that entry (*Id.* at 12). Because the Commission has already addressed AT&T's arguments in the May 14 entry, says OCC, it should deny rehearing to AT&T.

Second, OCC argues that Section 4903.09, Revised Code, prohibits the Commission from basing its decision on information that AT&T allegedly provided to the Commission's staff but that was never docketed in this proceeding (*Id.* at 8). Because the record in this case contains none of the documentation that AT&T allegedly provided to the Commission's staff before the May 14 entry was issued, says OCC, the cited statute mandates that the Commission may not rely upon the purported documentation in reaching its decision (*Id.* at 9).

Third, on a related topic, OCC additionally argues that AT&T has filed nothing in this docket that verifies its claim that it will cost the company between one and three million dollars to make the billing system changes necessary to comply with new Rule 10(B) and/or the limited waiver granted under the May 14 entry. Further, OCC suggests that, even assuming AT&T's claim is true, three million dollars is not a significant amount for a company the size of AT&T to spend in order to comply with a Commission rule designed to protect the basic service of Ohio consumers. That amount, says OCC, would amount to only 1.5 percent of the company's net income in 2007, a year in which the company's return on equity was 11.07 percent (*Id.* at 6, 7). Moreover, says OCC, AT&T has understated the impact of the rule on residential customers who have two or three access lines (*Id.* at 5). Based on an assumption that ten percent of AT&T's residential customers have two or three access lines, OCC has estimated that more than 160,000 residential access lines would be protected by the limited waiver, because any of them could face disconnection at some point during the life of the rule (*Id.*, citing statistics set out in the 2007 Annual Report of

The Ohio Bell Telephone Company). Based on AT&T's estimate that as many as one percent of such customers are disconnected each month, says OCC, the limited waiver would protect the customers of more than 1,600 residential access lines that are disconnected each month, or 19,200 annually (*Id.* at 6).

Fourth, and finally, OCC argues that AT&T has not shown good cause for, and therefore should not be given additional time to comply with either new Rule 10(B) or the limited waiver granted in the Commission's May 14 entry (*Id.* at 10). OCC points out that the May 14 entry marks the second time that the Commission delayed implementation of Rule 10(B) in recognition of the need for carriers to make billing system changes to accommodate the rule. The first time it did so was by entry issued on September 26, 2007. If AT&T's request for additional time were to be granted, notes OCC, the company would have more than seven months after the May 14 entry and almost 18 months after the rehearing in the minimum telephone service standards (MTSS) rulemaking docket to implement Rule 10(B). OCC contends that AT&T's request for another six months beyond the time already granted is unreasonable, especially given the size of the company and the resources available to it. Allowing AT&T to avoid complying with Rule 10(B) for almost two years after the rule was finalized, and more than a year after the May 14 entry, says OCC, would abrogate the essential minimum level of telephone service available to Ohio consumers (*Id.* at 10-12).

- (8) Upon consideration of all of the relevant pleadings, we find that, with two exceptions, AT&T has raised no issues on rehearing that were not already adequately considered and addressed by the Commission in its May 14 entry. In fact, the arguments raised by AT&T regarding the merits of the new Service Termination Rule were considered and thoroughly addressed by the Commission in our February 7, 2007, Opinion and Order, adopting the rule and again in our Entry on Rehearing issued July 11, 2007. Therefore, AT&T's objections to the implementation of new Rule 10(B) are improper and denied.

An issue that is properly before the Commission on rehearing concerns AT&T's request to have the Commission reverse its denial of AT&T's April 17 individual waiver request of the new rule. In this regard, AT&T has argued that the Commission's May 14 conclusion that AT&T had failed to file sufficient documentation to

support its waiver request was unreasonable given that the company had conveyed a variety of documentation during an April 17, 2008, meeting with the staff of the Commission. We find that this argument fails to present good cause for granting rehearing (AT&T Rehearing Application at 3). The Commission was correct to not base its decision on any information that was outside of the record.

The only other "new" issue on rehearing is one which AT&T raised at page 5 of its rehearing application and OCC discussed at page 7 of its memorandum contra, concerns the requirement, set forth on page 10 of the May 14 entry, that a company seeking a waiver must attempt to mitigate as best it can the circumstances of its waiver request to ensure that the intent of the rule from which waiver is sought would nonetheless be carried out to the greatest possible extent. We find that AT&T, in presenting this issue, is both wrong in contending that no legal basis exists for the Commission to have enunciated such a directive and also has failed, in making its arguments on this topic, to present good cause for granting a rehearing of the May 14 entry. We agree with OCC's arguments that the legal basis for this requirement is in Section 4905.231, Revised Code, which allows the Commission to "ascertain and prescribe" minimum telephone service standards. The Commission also has the authority, in determining whether to grant waiver requests from such standards, to attach any conditions necessary to prevent abrogation of the essential minimum level of telephone service available to Ohio consumers. As we stated in our May 14 entry, retention of dial tone is a long-held policy objective of the Commission. The Commission did intend that no service line should be disconnected for the nonpayment of discretionary features or other ancillary services. Thus, the Commission's intent with the language at page 10 of the May 14 entry was to express that a company seeking a waiver should attempt to make the waiver request narrow so that the spirit of the rule can be met to the greatest extent possible. We purposely did not dictate how that would be done, because we are open to creative solutions a company might propose to address their billing issues, while still offering customers protection from disconnection.

As a final matter, AT&T's arguments that the directive overlooks certain Federal Communication Commission (FCC) and Truth-in-Billing requirements under federal law are unsubstantiated and, as such, without merit.

In all other respects, we find that AT&T has raised no issues on rehearing that were not already adequately considered and addressed by the Commission in its May 14 entry and, therefore, we conclude that AT&T's rehearing application should be denied.

- (9) We also find that AT&T has not shown good cause for being granted the additional six months it seeks for bringing itself into compliance with the enforcement date of new Rule 10(B). As OCC has noted, the Commission has already twice extended for the entire industry the enforcement date of that rule. Almost two years will have passed from the time we first adopted new Rule 10(b) on February 7, 2007, and the date we have indicated we would begin enforcing the rule, January 1, 2009. We think that the extensions of time already allowed by the Commission have been of sufficient length to allow AT&T, along with the rest of the industry, to both plan and to implement all necessary system changes. Nothing in AT&T's rehearing application causes us to modify our earlier assessment of what is the proper balance to be struck between the regulatory compliance needs of the industry as a whole – or AT&T individually -- and the interests of Ohio's consumers and citizens in general in seeing already-adopted minimum service standards brought into full effect on a reasonable timetable.
- (10) In its rehearing application, OCC says it seeks clarification on five aspects of the Commission's May 14 entry. In the next five findings, we will separately consider each of these five requests for clarification by OCC, along with the responses to them set out in the memoranda contra OCC's rehearing application filed by AT&T, CBT, and OTA. In each such finding, we will reach a conclusion as regards each respective OCC request for clarification
- (11) OCC says it is unclear from the May 14 entry whether the limited waiver granted by that entry applies only to incumbent local exchange carriers (ILECs) whose billing systems do not distinguish between primary lines and non-primary lines (memorandum in support of OCC rehearing application at 5). OCC claims the limited waiver "seemingly" applies to all ILECs, even if their billing systems distinguish between primary and non-primary lines for disconnection purposes. However, the OCC seeks to have the Commission clarify that the limited waiver does not apply to such ILECs, who OCC says can already comply with Rule 10(B) (*Id.*).

In its memorandum contra OCC's rehearing application, AT&T argues that the Commission should reject OCC's suggestion that the limited waiver should only apply to ILECs whose billing systems cannot distinguish between primary and non-primary lines for disconnection purposes. In support of this position, AT&T claims that it is unreasonable to enforce the Service Termination Rule on any carrier "as it is unreasonable to force any carrier to incur any incremental costs driven by unnecessary regulations in a competitive environment" (AT&T memorandum contra OCC's rehearing application at 3). AT&T contends that the Service Termination Rule imposes implementation costs that are an unnecessary hardship for all carriers (*Id.*).

Upon consideration of all the relevant pleadings, we conclude that all ILECs whose billing systems can distinguish between primary and non-primary lines for disconnection purposes and who, as such, are in a position to comply with Rule 10(B) without resort to use of the limited waiver granted under the May 14 entry must do so. However, the limited waiver is available and may be used by all ILECs whose billing systems cannot distinguish between primary and non-primary lines for disconnection purposes and who, as such, are not in a position to comply with Rule 10(B) without resort to use of the limited waiver granted under the May 14 entry. OCC's rehearing application is granted to the extent necessary to make this clarification.

- (12) OCC says it is unclear from the entry whether the limited waiver applies only to residential accounts with two or three lines that include only stand-alone service, or to multiline residential accounts that have at least one line consisting of basic service bundled with other services. OCC claims the limited waiver appears to apply only to residential and small business customers whose service consists of two or three stand-alone BLES lines. If so, says OCC, ILEC customers whose multiline residential service includes at least one access line that contains non-basic service, either a la carte or as part of a bundle, do not have the protection afforded them under either Rule 10(B) itself or under the limited waiver. Thus, says OCC, such customer's entire service may be discontinued if they do not pay the entire amount owed the ILEC. According to OCC, this runs counter to the Commission's stated purpose in adopting Rule 10(B), 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. OCC seeks to have the Commission clarify that the limited waiver applies to multiline residential customers whose service includes at least one access line that contains nonbasic services, either a 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 (memorandum in support of OCC rehearing application at 6, 7) .

Speaking in general about OCC's rehearing application, the OTA contends that OCC has misinterpreted both the nature of the problems which the Service Termination Rule presents (OTA says these problems arise "in distinguishing the services within a carrier's IT systems between the primary and additional lines") and also the way in which the limited waiver granted under the May 14 entry is intended to address those problems. According to the OTA, Commission adoption of the recommendations set forth in OCC's rehearing application would negate the impact of the limited waiver and would require carriers' billing systems to distinguish between lines on an account for disconnection purposes as the Service Termination Rule originally required (OTA's memorandum contra at 1, 2).

Contrary to OCC's contention that the limited waiver should apply to multiline residential customers whose service includes at least one access line that contains non-basic services, either a la carte or as part of a bundle, OTA suggests that the limited waiver must apply to all customers with multiline accounts, whether they subscribe to stand-alone or bundled services, because many companies cannot distinguish secondary lines from the primary line for collection purposes without major, costly system changes. Under the OTA's interpretation, OTA members would apply the limited waiver to customers subscribing to multiline stand-alone service accounts as well as to multiline accounts with bundled services (*Id.* at 3).

AT&T agrees with OCC that the May 14th entry is unclear with respect to the application of the limited waiver to the disconnection of bundled services. AT&T recommends, contrary to OCC's suggestion that multiline customers subscribing to a bundle of services need only pay the ILEC's stand-alone basic service rate for

one line in order to retain stand-alone basic service, that the Commission should extend to multiline accounts with bundled services the same criteria as it established in the limited waiver for customers subscribing to multiline stand-alone service accounts. That is, says AT&T, the customer must tender payment sufficient to cover the required charges for each line on the account in order to retain basic service. To find any differently, says AT&T, would negate the impact of the limited waiver and would require the billing system to distinguish between lines on an account for disconnection purpose (AT&T memorandum contra OCC rehearing application at 4).

Upon consideration of all the relevant pleadings, we agree with the arguments of OTA and AT&T. Because the purpose of the limited waiver is to allow companies whose systems cannot distinguish secondary lines from the primary line for collection purposes to forgo major, costly, system changes that would be needed to bring about this capability, the limited waiver is intended to, and does, apply to all customers with multiline accounts, whether they subscribe to stand-alone or bundled services. Under the limited waiver, such customers, in order to retain basic service, must tender payment sufficient to cover the BLES charges for each line on the account. OCC's rehearing application is granted to the extent necessary to make this clarification.

- (13) OCC says it is unclear from the entry whether the limited waiver will expire when Rule 10(B) enforcement begins on January 1, 2009. OCC claims the limited waiver would seem to be merely a temporary solution that would prevail until ILECs reprogram their billing systems. OCC seeks to have the Commission clarify that the limited waiver expires on January 1, 2009. This would ensure, says OCC, that customers realize the full benefit of Rule 10(B) (memorandum in support of OCC rehearing application at 7, 8).

Contrary to OCC's contention that the limited waiver should expire when Rule 10(B) enforcement begins on January 1, 2009, OTA suggests that the limited waiver should continue until the Commission would order otherwise (OTA memorandum contra OCC rehearing application at 3). In support of this position, OTA argues that the limited waiver exists so that companies would not need to bear the expense associated with treating multiline customers differently than single-line customers. Because the expense will continue to exist after January 1, 2009, the limited

waiver will remain necessary and should continue to prevail (*Id.*) Similarly, AT&T also, urges the Commission to reject OCC's suggestion to have the limited waiver expire when, on January 1, 2009, enforcement of the Service Termination Rule begins with respect to multiline residential and small business accounts. Such an approach, says AT&T, would defeat the whole purpose of the Commission's attempt, through the limited waiver, to lessen the impact of Rule 10(B). AT&T says that the main point of the waiver has not been to allow for additional time needed in order to implement a rule change, but rather to address the fact that some carriers cannot distinguish for disconnection purposes between the primary line versus multiple lines on an account (*Id.*). In AT&T's view, the Commission never intended the limited waiver as an interim fix, but rather as a permanent fix to the extensive and expensive problems with implementing Rule 10(B). Besides, OCC has failed to provide any rationale for completely lifting the limited waiver, says AT&T.

Upon consideration of all the relevant pleadings, we agree with the arguments of OTA and AT&T. Because the purpose of the limited waiver is to allow companies whose systems cannot distinguish secondary lines from the primary line for collection purposes to forgo major, costly, system changes that would be needed to bring about this capability, the limited waiver is intended to, and shall apply even after the enforcement date for Rule 10(B) comes to pass, on an indefinite basis, unless and until such time as the Commission finds reason to withdraw or otherwise modify or terminate the granted waiver. A rule waiver, by definition, is intended to excuse a company's noncompliance with the rule from which a waiver is granted, so long as the conditions under which the limited waiver is granted are met. The Commission's decision to grant a limited waiver to those companies whose billing systems cannot distinguish between primary and non-primary lines is a separate action and serves a separate purpose from its decision to extend the enforcement date of Rule 10(B). The separate purpose of the latter is to extend the industry compliance date faced by all companies who, to the extent they are not granted a waiver or limited waiver, need to comply with Rule 10(B) by that enforcement date. OCC's rehearing application is granted to the extent necessary to make this clarification.

- (14) OCC says that 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 ILECs and competitive local exchange carriers (CLECs) in greater jeopardy of losing their service. OCC claims that the Commission's May 14 entry created a regulatory void for at least two types of customers: ILEC customers of single-line residential service that includes a la carte features, and all residential customers of those CLECs that have a tariffed basic service rate. The Commission, says OCC, 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 multiline customers. Instead, it stated that it would not enforce the entirety of Rule 10(B). Because the previous payment allocation rule expired on June 1, 2008, says OCC, there is now no payment allocation rule in effect for ILEC customers of single-line residential service that includes a la carte features, and all residential customers of those CLECs that have a tariffed basic service rate. This situation, says OCC, places these residential customers in jeopardy of losing even basic local service for which they can make payment unless they pay the full amount owed to their carrier for all services. In furtherance of the explicit consumer protection policies of both the General Assembly and of the Commission, on rehearing OCC seeks to have the Commission clarify that the limited waiver applies only to multiline residential and small business customers of ILECs, and to have the Commission clearly state that Rule 10(B) is in effect for single-line residential customers and for all residential customers of CLECs.

In its memorandum contra OCC's rehearing application, CBT opposes OCC's request to have the Commission modify the May 14 entry so as to state that the Service Termination Rule is in effect for single-line residential customers of ILECs and for all residential customers of CLECs (CBT memorandum contra at 1). CBT notes that the May 14 entry indicates that the Commission delayed enforcement of the rule in order to give all carriers sufficient time to implement the extensive billing system changes necessary to comply with the new disconnection rule. The enforcement extension is necessary, says CBT, for carriers such as CBT who use a single product code to bill for service bundles that include BLES as well as regulated optional feature at a single tariffed price (*Id.* at 2). CBT has determined, for reasons that are articulated in greater detail in its pleading, that the most economical and expedient method for bringing itself into compliance with both the Commission's new Service Termination Rule and the federal Truth-In-Billing rule, is to create new billing codes to represent only BLES

charges. CBT estimates that it will cost approximately \$590,000 and will take hundreds of hours to complete the required system changes associated with this project. For these reasons, the extension until January 1, 2009, is warranted for all types of accounts, says CBT (*Id.* at 3). Additionally, CBT requests clarification that the existing disconnection procedures remain in place for all customers and that these procedures will be considered to be in compliance with the Commission's rules through January 1, 2009.

With regard to OCC's arguments that there is now no payment allocation rule in effect for certain types of customers because the previous payment allocation rule expired on June 1, 2008, OTA supports OCC's request for clarification. Specifically, OTA seeks to have the Commission find that the Rule 17(A) remains in effect (*Id.* at 2).

AT&T in its memorandum contra has responded to OCC's request, in its rehearing application, to have the Commission make explicit both that the limited waiver applies only to multiline residential and small business customers of ILECs and also that Rule 10(B) is in effect for single-line residential customers of ILECs and for all residential customers of CLECs. AT&T appears not to agree with the assertion that Rule 10(B) is in effect at the present time for single-line residential customers of ILECs (*Id.* at 5). AT&T asserts that it is not reasonable to assume that the limited waiver can be put in place on an interim basis nor can it be put in place for just a subset of customers. AT&T claims that it does not and cannot reasonably be expected to have multiple terminations of service procedures in place (*Id.*). AT&T states that it is currently operating with the understanding that Rule 17 is in effect until such time that Rule 10(B) will be enforced – January 1, 2009. In the interim period AT&T will still carry out the protections granted under Rule 17 (*Id.*). Nevertheless, it recommends that the Commission should confirm that Rule 17 remains in effect until the earlier of a LEC's implementation of the Service Termination Rule or until the enforcement date.

Upon consideration of all the relevant pleadings, we agree that the following clarification needs to be made. During the interim period between May 14, 2008, and the January 1, 2009, enforcement date of Rule 10(B), all LECs are directed to continue operating under the same service termination policies as existed under our

rules prior to the June 1, 2008, effective date of Rule 10(B). As we indicated in the May 14 entry, enforcement of Rule 10(B) will not begin until January 1, 2009, in order to give all carriers sufficient time to implement the extensive billing system changes necessary to comply with the new rule. Until Rule 10(B) is enforced, it will not be necessary or expected for any carrier to comply with that rule, although it will be necessary for all carriers to continue operating under the same service termination policies as existed under our rules prior to the June 1, 2008 effective date of Rule 10(B). Nor will the limited waiver of that rule, granted under our May 14 entry, be applicable to any situation until the first day when Rule 10(B) is enforced, i.e., on January 1, 2009, because that is the first date upon which a waiver will be required in order to excuse any noncompliance with Rule 10(B). OCC's rehearing application is granted to the extent necessary to make this clarification.

- (15) OCC says it is unclear from the entry whether an ILEC can disconnect all service to a multiline residential customer who does not make a payment sufficient to cover the ILEC's stand-alone basic service rate for each access line to which the customer subscribes. OCC claims the entry does not adequately address the situation where a multiline customer pays enough to cover the ILEC's tariffed basic service rate for only one, or less than all, of his multiple BLES lines. In such a situation, contends OCC, it remains unclear whether the ILEC can still demand that the customer pay the tariffed basic service rate for each line in order for the customer to avoid disconnection of all lines. OCC seeks to have the Commission clarify that the limited waiver applies in such a way that a multiline 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 (memorandum in support of OCC rehearing application at 9).

OTA says that OCC is incorrect in its assumption that a multiline 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. OTA argues that the intent of the limited waiver, given that many companies cannot distinguish secondary lines from primary lines within their systems, is to treat multiline customers the same as single-line customers. Accordingly, says OTA, the limited waiver must operate to require a single-line customer to submit payment to cover the ILEC's stand-alone basis service rate, and to require a multiline customer

to submit payment sufficient to cover the sum of all multiline stand-alone basic service rates (OTA memorandum contra OCC rehearing application at 3, 4). Similarly, AT&T urges the Commission to reject OCC's suggestion that, under the limited waiver, a multiline 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, on grounds that the Commission should reject any requirement for billing systems to distinguish between primary and nonprimary lines for disconnection purposes (AT&T memorandum contra OCC rehearing application at 6).

Upon consideration of all the relevant pleadings, we agree with the arguments of OTA and AT&T. The purpose of the limited waiver is to allow companies whose systems cannot distinguish secondary lines from the primary line for collection purposes to forgo major, costly, system changes that would be needed in order to treat (as OCC would prefer) the stand-alone BLES portion of a customer's multi-line account on an individual line basis, rather than on an account basis. The Commission's stated intent in granting in the May 14 entry the limited waiver was to allow any ILEC who meets the requirements of the limited waiver to continue, under the waiver, to handle disconnections of the stand-alone BLES portion of the multi-line account in the same way as it always has until now, namely, on an account basis. OCC's rehearing application is granted to the extent necessary to make this clarification.

It is, therefore,

ORDERED, That, in accordance with Finding (8), AT&T's application for rehearing is denied. It is, further,

ORDERED, That, in accordance with Finding (9), AT&T's request for additional time within which to bring itself into compliance with the enforcement date of new Rule 10(B) is denied. It is, further,

ORDERED, That OCC's rehearing application is granted for the limited purpose of allowing the Commission to make the clarifications it has set forth in Findings (11) through (15) of this entry. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon AT&T, CBT, OTA, OCC, and upon all other parties of interest in the rehearing applications and request for waiver filed in this case after the May 14 entry.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus

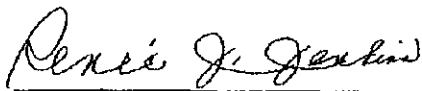

Valerie A. Lemmie

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Entered in the Journal

JUL 09 2008



Renee J. Jenkins
Secretary