

**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.)	

**COMMENTS
ON THE AFFIDAVIT OF CATHY PLEINES SUPPLEMENTING
AT&T OHIO’S MAY 28, 2008 REQUEST FOR WAIVER
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential telephone customers,¹ submits comments on AT&T Ohio’s attempt to supplement the record in these proceedings with the Affidavit of Cathy Pleines, filed on July 17, 2008. The Affidavit relates to AT&T Ohio’s May 28, 2008 request for a waiver of Ohio Adm. Code 4901:1-5-10(B) (“Rule 10(B)”)² as modified by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) on May 14, 2008.³ Rule 10(B) prohibits disconnection of a customer’s basic service for nonpayment of past due charges if the customer pays at least the rate for stand-alone basic local exchange service plus taxes and surcharges. In

¹ OCC has legislative authority to represent the residential utility consumers of Ohio pursuant to Chapter 4911 of the Ohio Revised Code.

² See the cover letter accompanying the Affidavit.

³ Entry (May 14, 2008) (“May 14 Entry”) at 12. The Entry also denied requests for waivers of the same rule by the Ohio Telecom Association (“OTA”) – on behalf of OTA’s member companies – and by four AT&T companies: AT&T Ohio, AT&T Long Distance, AT&T Communications of Ohio, Inc. and TCG Ohio. The May 28 waiver request apparently applies only to AT&T Ohio.

its May 28 waiver request, AT&T Ohio asked that it be allowed to apply the previous service termination rule, which applied partial payments first to past due regulated local service charges, then to any current local charges, before being applied to any toll or nonregulated charges.⁴

In the May 14 Entry, the Commission granted a limited waiver of Rule 10(B) as it applies to residential and small business customers who have two or three access lines.⁵ Under the limited waiver, incumbent local exchange carriers (“ILECs”) must provide stand-alone basic local exchange service (“basic service” or “BLES”) to residential or small business customers who are delinquent in their payments but who make a payment sufficient to cover at least the ILEC’s tariffed rate for basic service.⁶ In its waiver request, AT&T Ohio asserts that even the limited waiver “results in unreasonable and burdensome implementation requirements for AT&T Ohio.”⁷

The Commission should disregard the Affidavit because AT&T Ohio could have, and indeed should have, filed the Affidavit concurrent with the May 28 waiver request. Instead, AT&T Ohio delayed filing the Affidavit until more than seven weeks after the waiver request was filed, and less than one week before the Commission is expected to act on the waiver request.⁸ The Commission should not consider supplemental material submitted at such a late date, especially when it could have been filed much sooner.

⁴ Waiver Request at 3. The previous rule expired on June 1, 2008. See 05-1102, Entry (September 26, 2007).

⁵ May 14 Entry at 11.

⁶ Id.

⁷ Waiver Request at 4.

⁸ Consideration of the waiver request is on the agenda for the Commission’s July 23, 2008 meeting. See Commission Meeting Agenda for July 23, 2008, published July 17, 2008 (available at <http://www.puco.ohio.gov/PUCO/Legal/agenda.cfm>).

Further, the Affidavit does nothing to counter the arguments that OCC set forth in opposition to the waiver request.⁹ The Affidavit does not show that compliance with the rule is “unduly burdensome compared to the public policy objective involved,”¹⁰ especially given the size of and resources available to AT&T Ohio.¹¹ In addition, the Affidavit does not show good cause for allowing AT&T Ohio to deny its customers the protections contained in Rule 10(B). The Commission should deny AT&T Ohio’s waiver request, and order the company to make “repairs, improvements, or additions” to its equipment pursuant to R.C. 4905.38.

II. THE COMMISSION SHOULD NOT CONSIDER “SUPPLEMENTAL” INFORMATION THAT COULD HAVE, AND INDEED SHOULD HAVE, BEEN FILED WITH A WAIVER REQUEST.

The “supplemental” information contained in the Affidavit should have been submitted with the waiver request. The Commission allows waivers of the requirements of the Minimum Telephone Service Standards (“MTSS”) “[f]or good cause shown as supported by a motion and supporting memorandum...”¹² Thus, the Commission expects companies to make their case for a waiver at the time they file a waiver request.

In the Affidavit, Ms. Pleines states that her role is “as an AT&T employee that understands the changes that would need to be made to AT&T’s billing system in order to comply with the Commission’s mandate.”¹³ She describes the process AT&T Ohio claims would be needed to implement Rule 10(B), including timelines and cost estimates.

⁹ See OCC’s Memorandum Contra, filed June 16, 2008.

¹⁰ Entry at 12.

¹¹ See OCC Memorandum Contra at 12-14.

¹² Ohio Adm. Code 4901:1-5-02(B)(1).

¹³ Affidavit at 2.

This information sounds very much like the information AT&T Ohio provided to the PUCO Staff in a meeting held on April 17, 2008. In its application for rehearing of the May 14 Entry, AT&T Ohio stated:

AT&T Ohio conveyed a variety of supporting documentation to Staff during its meeting with them on April 17, 2008. More specifically, AT&T Ohio provided information on the estimated number of customers impacted by the service termination rule change, the estimated cost to implement the rule change, and detailed information on AT&T's process for instituting systems changes of this magnitude. In fact, the discussion on the change management process was conducted by an AT&T Information Technology (IT) subject matter expert who participated in the meeting via conference bridge. He detailed the complex processes that must be followed whenever a billing system change is planned and implemented, and described the various systems impacted by the changes required by the new service termination rule.¹⁴

The information that AT&T Ohio claims to have provided to the PUCO Staff at that meeting has not been docketed in this proceeding.¹⁵

AT&T Ohio provides no reason why the information contained in Ms. Pleines' Affidavit could not have been submitted with the waiver request on May 28, 2008 – more than a month after AT&T Ohio's meeting with PUCO Staff. AT&T Ohio also gives no reason why it delayed submitting the Affidavit until more than seven weeks had passed since the waiver request was filed, and until less than seven days before the Commission is scheduled to act on the waiver request.

In fact, there appears to be no reason why AT&T Ohio could not have provided an affidavit containing this information before now. As noted above, AT&T Ohio stated that it made available a "subject matter expert" to provide the PUCO Staff with information in April 2008. That person (or Ms. Pleines or another person who has

¹⁴ AT&T Ohio's Application for Rehearing (June 13, 2008) at 3-4.

¹⁵ See OCC's Memorandum Contra AT&T Ohio's Application for Rehearing (June 23, 2008) at 8-9.

“knowledge of the processes and costs associated with implementing changes to AT&T’s computer systems”¹⁶) should have been available to provide an affidavit that could have been filed with the May 28 waiver request.¹⁷ AT&T Ohio apparently chose not to file an affidavit with its waiver request; the company should not be allowed to “supplement” its waiver request at such a late date.

The Commission should not tolerate such belated submissions by companies seeking waiver requests. The delayed filing of documentation in support of a waiver request impedes the Commission’s consideration of the request and puts interested stakeholders at an unfair disadvantage.¹⁸ The PUCO should disregard the Affidavit.

III. THE INFORMATION CONTAINED IN THE AFFIDAVIT DOES NOT SHOW THAT COMPLYING WITH RULE 10(B) WOULD BE UNDULY BURDENSOME FOR AT&T OHIO COMPARED TO THE PUBLIC POLICY OBJECTIVE INVOLVED.

Even if the Commission does consider the information contained in the Affidavit, the Affidavit does not make the showing required by the Commission, i.e., that complying with Rule 10(B) would be unduly burdensome on AT&T Ohio compared to the public policy objective involved. Although Ms. Pleines gives “a high end estimate” of the cost involved,¹⁹ as well as an estimate of the work hours involved,²⁰ she does not state that compliance with Rule 10(B) would be a particular burden on AT&T Ohio. Her

¹⁶ Affidavit at 2.

¹⁷ Although the Commission ultimately determined that it could not rely on the information AT&T Ohio presented to the PUCO Staff at the April 2008 meeting (Entry on Rehearing (July 9, 2008) at 8), AT&T Ohio knew or should have known that the Commission is “correct to not base its decision on any information that was outside of the record.” *Id.*

¹⁸ See, e.g., 05-1102, Entry on Rehearing (July 11, 2007) at 39 (the PUCO’s process regarding a grace period for calculating customer credits “appropriately balances the needs of public review and administrative efficiency.”).

¹⁹ Affidavit at 6.

²⁰ *Id.* at 5.

only characterization of the work involved is that reprogramming the billing system would involve “a significant amount of time....”²¹

As OCC noted in its Memorandum Contra,²² AT&T Ohio is the largest telephone company in Ohio, and is a subsidiary of what its parent company calls “the largest communications holding company in the world, by revenue.”²³ AT&T Ohio has vast financial and other resources at its disposal that would relieve the alleged burden (or relieve the actual impact, which may be less than what AT&T Ohio has vaguely alleged is a burden) on the company that compliance with Rule 10(B) might cause, especially given the public policy objective of allowing customers to maintain service.

The only apparent difficulty that Ms. Pleines raised concerns the process for reprogramming billing and other computer systems that AT&T Ohio (or its parent company) has developed. Ms. Pleines stated that changes to billing systems at AT&T go through a six-step process: “a costing phase, an evaluation phase, a design phase, actual programming, testing, and final release.”²⁴ She does not identify how far along in this process the billing changes apparently required by Rule 10(B) are, especially given the fact that this rule was adopted in February 2007 and finalized in July 2007. It seems that the changes have at least made it through the costing and evaluation phases. In any event, Ms. Pleines gives a qualified statement that AT&T Ohio **might not** be able to implement the changes until June 2009:

I understand that the project cannot be completed by the Commission’s January 1, 2009, implementation date as the only remaining release

²¹ Id. at 2.

²² Memorandum Contra at 12-13.

²³ <http://www.att.com/gen/investor-relations?pid=5711> (accessed June 6, 2008).

²⁴ Affidavit at 2.

date in 2008 is October which is about to enter into a testing phase. The next available release date for a job with such high complexity would likely be June 2009, **assuming that it cannot be managed through the February release date.**²⁵

AT&T Ohio's May 28 waiver request, however, did not seek a waiver of Rule 10(B) only until June 2009. Rather, AT&T Ohio apparently asked for a permanent waiver of the rule. The Affidavit does not support a permanent waiver. At best, the Affidavit supports a waiver only until February 2009.

Further, the Commission already rejected AT&T Ohio's request for a waiver of Rule 10(B) until June 2009. In its Entry on Rehearing regarding the May 14 Entry, the Commission stated:

[T]he 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.²⁶

For the same reasons, the Commission should deny AT&T Ohio's request for a permanent waiver of Rule 10(B).

In addition, the Commission should specifically order AT&T Ohio to make any billing system changes that may be necessary in order to implement Rule 10(B) by January 1, 2009. The Commission has the statutory authority to do so:

²⁵ Id. at 5-6 (emphasis added).

²⁶ July 9 Rehearing Entry at 9.

Whenever the public utilities commission is of the opinion, after hearing had, as provided in section 4905.26 of the Revised Code, **or upon its own initiative or complaint**, that repairs, improvements, or additions to the plant or equipment of any public utility should reasonably be made, **in order to promote the convenience or welfare of the public** or of employees, **or in order to secure adequate service or facilities**, the commission may make and serve an appropriate order directing that such repairs, improvements, or additions be made within a reasonable time and in a manner specified in such order. Every such public utility, its officers, agents, and official employees, shall obey such order.²⁷

The Commission should issue the necessary order immediately, in order to ensure that AT&T Ohio's customers receive the full benefit of Rule 10(B) on January 1, 2009.

IV. CONCLUSION

As discussed herein, the Commission should disregard AT&T Ohio's Affidavit due to the late date on which it was filed. In addition, the Affidavit fails to show good cause for granting AT&T Ohio's May 28 waiver request. The Commission should deny AT&T Ohio's waiver request, and thereby give consumers the protection intended by the PUCO's original ruling.

Respectfully submitted,

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²⁷ R.C. 4905.38 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments on the Affidavit of Cathy Pleines Supplementing AT&T Ohio's May 28, 2008 Request for Waiver by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons on the attached list, on this 21st day of July 2008.

/s/ Terry L. Etter

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/21/2008 4:54:29 PM

in

Case No(s). 00-1265-TP-ORD, 05-1102-TP-ORD

Summary: Comments Comments on the Affidavit of Cathy Pleines Supplementing AT&T Ohio's May 28, 2008 Request for Waiver by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel