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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) Case No. 05-1102-TP-ORD
of the Ohio Administrative Code.)

ENTRY

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.) (Rule 10[B] or the "Service Termination Rule"). That rule provision states:

Basic local exchange service (BLES), 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 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.

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- (2) On May 14, 2008, the Commission issued an entry which denied the OTA's request for a blanket waiver, noting that the waiver process is not a substitute for a rulemaking process. However, the Commission did grant a 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."

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. Finally, the Commission invited any company to file a company-specific waiver request with supporting documentation.

- (3) On May 28, 2008, AT&T Ohio (AT&T) filed a request for waiver of new Rule 10(B) as modified by the Commission's May 14 entry. AT&T seeks to have the Commission allow AT&T to continue under the former MTSS Rule 17 provisions pertaining to service termination. AT&T argues that it is unable to comply with the requirements of the new rule without taking what it calls "unreasonable and costly steps not commensurate with the public policy objective of the Commission's rules" (AT&T's waiver request at 13). At its heart, AT&T's argument is that, in a competitive environment, the adopted rule and its onerous requirements do not impact all competitors evenly, forcing unnecessary costs on only certain companies. AT&T explains that, since only AT&T and the other incumbent local exchange carriers (ILECs) are required to provide stand-alone BLES, they are adversely affected by the new service termination rule, while their competitors, i.e., other LECs and unregulated telecommunications carriers, are not bound by this rule. AT&T points out that, through its alternative regulation of basic local exchange dockets, the Commission has declared over 90 percent of AT&T's access lines subject to competition. Yet, according to AT&T's estimates, it would have to make programming changes costing between \$1 million and \$3 million to be absorbed by its paying customers, while other regulated and unregulated competitors would be free of any such requirement. This, AT&T argues, amounts to burdensome regulation which is not competitively neutral, in contravention of state policy.

- (4) OCC filed a memorandum contra AT&T's waiver request on June 16, 2008. First, says OCC, AT&T's waiver request contravenes the statutory policy of Ohio, under Section 4927.03(A), Revised Code, to "ensure the availability of adequate basic local exchange service to citizens throughout the state" (OCC's memorandum contra AT&T's waiver request at 6). Second, OCC contends that AT&T's waiver request is based on arguments that are irrelevant to the consideration of the waiver request or that the Commission has already rejected in the MTSS rulemaking by which it adopted the rule from which AT&T is seeking waiver (*Id.*). Third, says OCC, the manner in which the rule from which AT&T seeks waiver will impact the protection of residential and small business customers is broader than AT&T claims (*Id.* at 10). OCC asserts that the rule will actually protect all of AT&T's approximately 2.1 million residential and small business customers because any of them could face disconnection at some point during the life of the rule. Fourth, says OCC, AT&T has not supported its claim regarding the cost it would incur to comply with the rule and, in any event, the cost estimate does not show that AT&T would suffer an unreasonable hardship given the company's size (*Id.*). Fifth and finally, says OCC, AT&T's waiver request is not in the form required by the MTSS and should be dismissed (*Id.* at 14). Rule 4901:1-5-02(B)(1), O.A.C., [MTSS Rule 2(B)(1)], which became effective on January 1, 2008, requires that MTSS waiver requests must be made by filing a motion and supporting documentation. In the case at hand, AT&T filed a "request for waiver" with no formal motion or supporting memorandum.
- (5) In its June 23, 2008, reply to OCC's memorandum contra AT&T's waiver request, AT&T posits that companies should have the flexibility to develop their own disconnection of service processes that can be successfully and economically carried out. Yet, AT&T says, at this point in this proceeding it seeks a waiver that would allow it to continue to be subject to former Rule 17(A) and (C), the MTSS rule provisions on service termination that have been in effect for the past 12 years (AT&T's Reply at 1). In making its waiver request, AT&T claims that it is "seeking a fair and balanced rule that addresses disconnection of service without imposing undue costs on AT&T" (*Id.* at 2). AT&T maintains that former Rule 17 has worked well over the past years, and has provided the necessary degree of protection for regulated local services when issues arise over disconnection of service for nonpayment. AT&T

believes that in this case it has demonstrated that compliance with the new service termination rule is unduly burdensome compared to the public policy involved.

- (6) On July 17, 2008, AT&T filed an affidavit of Ms. Cathy Pleines, Senior Business Manager in the Information Technology (IT) organization of AT&T Services, Inc., intended as a supplement to AT&T's May 28 waiver request. Through a motion for protective order filed in conjunction with the affidavit, AT&T seeks to protect the confidentiality of certain information set forth in the Pleines affidavit that it considers to be proprietary and a trade secret.

On July 21, 2008, the office of the Ohio Consumers' Counsel (OCC) filed comments in response to the Pleines affidavit. In its comments, OCC makes two arguments. First, OCC argues that the Commission should disregard the affidavit and the information set forth in it because it could have, and indeed should have, been filed earlier with the waiver request. Second, OCC argues that, even if the Commission were to consider it, the information contained in the affidavit does not make the requisite showing that complying with Rule 10(B) would be unduly burdensome for AT&T compared to the public policy objective involved.

- (7) Before we address the merits of the request, the Commission will first address several procedural matters. First, we find no merit to OCC's request to disregard AT&T's supplemental affidavit in support of its request. Nothing prohibits such a supplemental filing, and OCC was not disadvantaged in that it responded to the filing, which comments we have considered.

We also find no merit in OCC's objections to the form of AT&T's request for waiver. In our May 14, 2008, entry, the Commission invited any company to file a company-specific "request for waiver," including documentation, within fourteen days of our entry in this docket. The Commission will not put form over substance and penalize AT&T for filing a "request for waiver" consistent with our entry, instead of a motion for waiver.

A final procedural matter concerns AT&T motion for protective order filed on July 17, 2008, to protect the confidentiality of certain information set forth in the Pleines affidavit that it considers to be proprietary and a trade secret. Upon review, the Commission finds that the information for which protective status is sought qualifies

as a trade secret whose confidentiality should be protected for a period of 18 months from the date of this entry, i.e., until January 31, 2010. In the event that AT&T should desire to seek continued protective treatment for this information beyond this 18-month period, it must make application for such continued protection in compliance with Rule 4901-1-24(F), O.A.C.

- (8) We now turn to the merits of the arguments before us. In light of the issues raised by AT&T, the Commission concludes that we should reopen Rule 10 for the limited purpose of revisiting provision (B). AT&T has raised legitimate issues regarding competitive parity, given extensive and costly programming changes that would apply uniquely to it, and not to some of its competitors. Ironically, the Commission's intent, in adopting the new service termination rule, was to move toward a disconnection policy more flexible and consistent with marketplace forces, while providing some protection for customers who have trouble paying their bills. As OCC observes, it is the policy of the state, under Section 4927.02, Revised Code, to ensure the availability of adequate basic local exchange service to the citizens of the state. On the other hand, we also recognize the policies of the state requiring the Commission to rely on market forces to support a healthy and sustainable, competitive telecommunications market; to recognize the continuing emergence of a competitive environment through flexible regulatory treatment; to consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation; and to not unduly disadvantage providers of competing services. As AT&T notes, Rule 10(B) applies only to the ILECs, since they are the only telecommunications providers required to provide stand-alone BLES. Competitive LECs and other unregulated telecommunications carriers are not subject to this same requirement and may disconnect an entire bundle of services, including BLES, if payment for the entire bundled services is not made. Thus, after further thought, the Commission finds it appropriate to reopen Rule 10(B) for the limited purpose of calling for comment on whether there are alternative means that would better balance the competing state policies found in Section 4927.02, Revised Code.

The Commission staff proposes that ILECs be treated the same as CLECs for purposes of disconnection. In other words, staff proposes that customers may be disconnected from a telecommunication provider's service(s) for the nonpayment of past due

charges. Insufficient payment of a package price, which includes BLES, may result in disconnection of all services included in the package. Specifically, the staff proposal includes changes to MTSS Rule 10(A), (B), and (C), all as set forth in the appendix to this entry.

- (9) The Commission invites all interested persons to file comments on staff's proposal. The Commission is also interested in hearing any other suggestions for alternative disconnection proposals to Rule 10(B) or alternative solutions to the billing system issues raised by AT&T.

For example, if the Commission were to maintain the disconnection policy of a customer being able to maintain BLES service when a customer does not make sufficient payment to keep a package of service(s), are there other feasible solutions to billing system issues which would allow a customer to maintain BLES?

Comments on staff's proposal and other alternative proposals are due by August 22, 2008, and reply comments are due by September 5, 2008. Commenters are encouraged to e-file their initial and/or reply comments in accordance with the procedures established in *In the Matter of the Expansion of the Electronic Filing Pilot Project and Waiver of Procedural Rules 4901-1-02 through 4901-1-04, Ohio Administrative Code*, Case No. 06-900-AU-WVR, entry (May 7, 2008). Within two days after the filing deadline for the filing of initial and/or reply comments, all persons filing such comments must ensure that copies of their initial and/or reply comments are served on all persons filing initial comments. In order to effect service, commenters must check the docket card in this case and serve their initial and/or reply comments either via email or hardcopy to the address provided by each person who files initial comments.

- (10) In the meantime, the Commission will not enforce new Rule 10(B) until the Commission makes a determination in this rulemaking. The Commission will likewise hold AT&T's request for waiver in abeyance pending final resolution of this issue.

It is, therefore,

ORDERED, That AT&T's motion for protective order is granted in accordance with Finding (7). It is, further,

ORDERED, That OCC's request to disregard AT&T's supplemental affidavit is denied. It is, further,

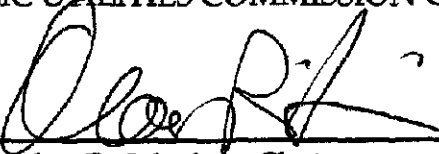
ORDERED, That Rule 10(B) be reopened for comment in accordance with finding (9). It is, further,

ORDERED, That new Rule 10(B) not be enforced until the Commission makes a determination in this docket. It is, further,

ORDERED, That AT&T's waiver request be held in abeyance pending resolution of this issue. It is, further,

ORDERED, That a copy of this entry be served upon all telecommunications service providers in the state of Ohio, AT&T, OCC, and upon all other parties of interest in the request for waiver filed by AT&T on May 28, 2008.

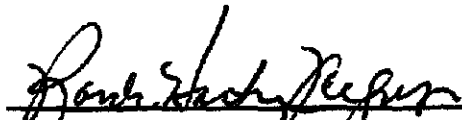
THE PUBLIC UTILITIES COMMISSION OF OHIO



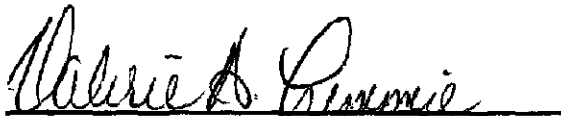
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

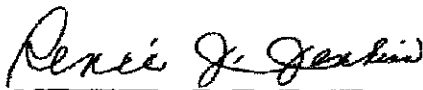


Cheryl L. Roberto

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Entered in the Journal

JUL 31 2008



Renee J. Jenkins
Secretary

APPENDIX

4901:1-5-10

Service termination.

- (A) Telecommunications providers shall disconnect customer service(s) only in accordance with this rule. Subject to the provisions of this rule, customers may be disconnected from a telecommunication provider's service(s) for the nonpayment of past due charges. Subject to the provisions of this rule, where two or more services are offered together under a package price, a failure to timely pay the entire package price may render as past due the charges for all of services included in the package and, as such, may result in disconnection of all services included in the package.
- ~~(B) Basic local exchange service (BLES), 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). 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 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.~~
- ~~(B)(C)~~ If the customer is disconnected for nonpayment of BLES past due charges, the LEC may require the customer to pay the entire amount of all unpaid regulated charges, along with any applicable deposit and reconnection charges, prior to reconnecting service of any kind to the customer.