

**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	)	

**REPLY COMMENTS OF THE OHIO TELECOM ASSOCIATION**

THE OHIO TELECOM ASSOCIATION, for and on behalf of its members (“OTA”), hereby submits its Reply Comments in accordance with the Commission’s Entry of July 31, 2008 (the “Entry”), which proposed and requested comments on a revised Rule 4901:1-5-10 (the “Revised Termination Rule”).

As described in its Initial Comments filed August 21, 2008, the OTA endorses and supports the Revised Termination Rule. The Revised Termination Rule correctly places all providers of local exchange service (including ILECs, CLECs, and VoIP providers), as well as providers of equivalent service (including wireless carriers) on the same footing, and correctly avoids placing unnecessary and uneconomic costs on OTA members. In doing so, the Revised Termination Rule – which represents the only appropriate and lawful treatment of disconnection issues – serves the public interest and fulfills the directives of the General Assembly.

Reply to OCC’s Comments

The only Comments in this docket that object to the Revised Termination Rule are those submitted collectively by the Office of the Ohio Consumers’ Counsel and other consumer groups (“OCC’s Comments”).<sup>1</sup> OCC’s Comments advance the notion that Rule 10(B), as originally adopted in this docket, should not be merely retained, but extended. The OCC’s Comments

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<sup>1</sup> Comments of The Office of The Ohio Consumers’ Counsel, The Appalachian Peoples Action Coalition, The City of Cleveland, Communities United For Action, Edgemont Neighborhood Coalition, The Empowerment Center of Greater Cleveland, Consumers For Fair Utility Rates, Cleveland Housing Network and The Neighborhood Environmental Coalition.

ignore the recent history of the telecommunications industry and continue to propose – in the name of consumer protection – dramatically unfair and extremely expensive regulation to address the issues of a very small group of customers. The suggestions of OCC’s Comments should be rejected, and the Revised Termination Rule should be adopted.

Much of OCC’s Comments are devoted to reciting the history of Ohio’s disconnect rules in general and of Rule 10(B) in particular. OCC’s Comments at 8-13. Yet, in doing so, OCC’s Comments miss the point of that history: while the Commission and the industry have debated rules and adopted various disconnection policies, technology has continued to evolve and new providers have continued to emerge. As OTA observed in its Initial Comments, OTA members now face competition from at least two competing and functionally equivalent services: wireless telecommunications and various forms of VoIP service. Under current circumstances and as recognized in this docket, this Commission does not (and arguably cannot lawfully) regulate the disconnection policies or practices of these competitors.<sup>2</sup> Under unambiguous Ohio law, this Commission must therefore not unduly disadvantage providers of competing and functionally equivalent services. Revised Code §4927.02(A)( 7)(emphasis added). The Revised Termination Rule accomplishes just that result and must, in light of the very history cited in OCC’s Comments, be adopted as the only lawful and compliant disconnection policy.

OCC’s Comments also argue at length concerning the mechanics of previous disconnection rules, which prohibited disconnection of regulated services for nonpayment of unregulated services. OCC’s Comments suggest that the “major flaw” of the Revised Termination Rule is its failure to continue this distinction. OCC’s Comments at 16. Further, OCC’s Comments assert that these historical practices must be retained as “the last vestige of

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<sup>2</sup> See Opinion and Order, February 7, 2008 at 5-8.

consumer protections available to customers of service bundles.” OCC’s Comments at 17. In this, OCC’s Comments are simply wrong.

First, any fair assessment of these issues must first define the group allegedly “at risk:” it is, without question, *extremely* small. The only customers who will identify any difference between the Revised Termination Rule and any of its predecessors are those customers who (a) cannot pay, or do not wish to pay, all of their telephone bill, (b) fail to call their provider to address the problem, and (c) instead, make an unannounced partial payment to the provider.<sup>3</sup> Thus, the only “customers of service bundles” impacted by the Revised Termination Rule are those confined within this select group.

Second, it is a *self-selected* group. A service bundle is no more than that – a bundle of services that are offered as a package. If a customer subscribing to such a bundle finds that he or she cannot pay for all of the services, or concludes that he or she does not want to pay for all of the services, he or she can – with one phone call to the provider – drop those in jeopardy. Thus, any customer who wishes to avoid the disconnect problems cited by OCC can do so with one simple phone call.<sup>4</sup>

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<sup>3</sup> As stated by OTA in its Reply Memorandum filed April 17, 2008:

On average, 99.5% of customers pay their bills. Though subscription and nonpayment rates vary among the Companies, the following principles are constant:

- Among residential customers as a whole, perhaps 5% - 7% receive disconnect notices in a given month, while only 1.5% - 2.5% are temporarily disconnected and only .5% - 1.5% are permanently disconnected. Of course, only a small percentage of residential customers – at most 6% – actually maintain multi-line accounts, and so they represent an even smaller number of disconnects.
- Nonresidential customers are even more diligent payers. No more than 1.5% receive disconnection notices, while the number actually disconnected for nonpayment is well below .5%. Notably, too, nonresidential customers are far less likely to pay partially than are residential customers.

As a result, the Service Termination Rule, which modifies the treatment of non-basic regulated services, along with partial-pay or non-pay on multi-line accounts, will directly involve only a trivial number of customers, nearly all of them nonresidential.

*Reply Memorandum Of The Ohio Telecom Association In Support Of Application For An Order Granting Waiver Of Ohio Administrative Code Section 4901:1-5-10*, filed April 17, 2008, at 2-3.

<sup>4</sup> Of course, this principle applies equally to Lifeline customers who may now buy bundles from AT&T. *In the Matter of AT&T Ohio*, Case No. 02-3067-TP-ALT, Entry (April 25, 2007) Such customers certainly have the ability to cancel services found to be unnecessary or too expensive.

By contrast, the so-called “last vestige of consumer protections” reflected in Rule 10(B) (and in the suggested enlargement of it proposed by OCC’s Comments) would require tremendous capital outlay, resource allocation and regulatory overhead, all at the expense of providers and their customers who *do* pay their bills. Such a result is neither lawful nor reasonable.

Finally, of source, continuation of a system that applies to only one class of competitors, at great cost to that class and that class alone, is flat-out unlawful in Ohio. The General Assembly determined years ago that the Commission may not “unduly favor or advantage any provider [or] unduly disadvantage providers of competing and functionally equivalent services.” Given the appearance of many such providers, and given the Commission’s limited ability to regulate their disconnection policies, the Revised Termination Rule is now the only lawful result. Neither the existing Rule 10(B) nor complex enhancement of proposed in OCC’s Comments it can lawfully exist in Ohio.

#### Conclusion

For all the foregoing reasons, the Ohio Telecom Association respectfully requests that the Commission approve and adopt the Revised Termination Rule appended to the Entry.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the forgoing has been served upon all parties on the attached service list, by electronic service, this 5<sup>th</sup> day of September, 2008.

/s/ Thomas E. Lodge  
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