

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of AT&T Ohio)	
For Approval of an Alternative Form of)	Case No. 06-1013-TP-BLS
Regulation of Basic Local Exchange)	
and Other Tier 1 Services Pursuant to)	Case No. 07-259-TP-BLS
Chapter 4901:1-4, Ohio Administrative Code.)	

AT&T OHIO'S REPLY

AT&T Ohio, by its attorneys, hereby replies to OCC's October 8, 2008 memorandum contra the Company's motion for a protective order. In opposing AT&T Ohio's reasonable request for a protective order in these cases, OCC does not address a fundamental question: What legitimate purpose would be served by allowing OCC to pursue discovery at this time? Moreover, OCC ignores the fact that discovery ended in these two cases long ago. The discovery window did not automatically reopen with the filing of OCC's "show cause" motions or the Attorney Examiner's Entry addressing those motions and calling for the filing of responsive pleadings.

The Commission has a general rule that allows discovery to commence once a proceeding has been commenced. Ohio Admin. Code § 4901:1-1-17(A). OCC's reliance on that rule is misplaced for two reasons. First, as AT&T Ohio has shown, the Commission has not commenced a proceeding here in which discovery can be had. Second, even if it has commenced a proceeding, the Commission specified timeframes for discovery in connection with the applications filed in these cases that have long since expired. The Commission did not open a new discovery window or take any action to even suggest that discovery is appropriate at this time. OCC's argument ignores the time-honored legal maxim, used consistently in statutory

construction, that the specific prevails over the general.¹ Specific discovery windows were opened, then closed, in these cases. The Commission has not commenced a proceeding in which discovery can be reopened.

It should be clear that discovery would serve no legitimate purpose at this time. To require AT&T Ohio to respond to OCC's untimely discovery request would result in an undue burden and expense to the Company. AT&T Ohio's motion for a protective order should be granted.

Respectfully submitted,

AT&T Ohio

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¹ R. C. § 1.51 provides as follows: " If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail."

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class mail, postage prepaid, or by e-mail, where noted, on the parties listed below on this 20th day of October, 2008.

/s/Jon F. Kelly

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Summary: Reply to OCC's memorandum contra electronically filed by Mrs. Verneda J. Engram on behalf of AT&T Ohio