

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.)

FINDING AND ORDER

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").
- (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) with respect to residential and business customers whose stand-alone basic local exchange service (BLES) accounts consist of two or three BLES lines.

In addition, the Commission ruled in its May 14 2008, 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 would 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, 2008, entry. AT&T sought to have the Commission allow AT&T to continue under the former minimum telephone service standards (MTSS) Rule 17 provisions pertaining to service termination. The office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra AT&T's waiver request on June 16, 2008.

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- (4) By entry issued July 31, 2008, the Commission concluded that Rule 10 should be reopened for the limited purpose of revisiting provision (B). In reopening Rule 10, we noted that AT&T had raised legitimate issues regarding competitive parity, given extensive and costly programming changes that would apply uniquely to AT&T, and not to some of its competitors because, as explained by AT&T, Rule 10(B) applies only to the incumbent local exchange carriers (ILECs) since they are the only telecommunications providers required to provide stand-alone BLES. Competitive local exchange carriers (CLECs) 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 bundle of services is not made. We also noted that 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. We acknowledged 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 while also 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. Thus, after further thought, the Commission found 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.

In order to focus comments on reopened Rule 10(B), the Commission staff set forth a proposal that ILECs be treated the same as CLECs for purposes of disconnection. In other words, staff proposed 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 included changes to MTSS Rule 10(A), (B), and (C), all as set forth in the appendix to the July 31, 2008, entry. Initial and reply comments were due on August 22 and September 5, 2008. In the meantime, the

Commission noted that we would not enforce new Rule 10(B) until the Commission makes a determination in this rulemaking. Likewise, the Commission would hold AT&T's request for waiver in abeyance pending final resolution of this issue.

- (5) Comments concerning the reopened Rule 10(B) and the staff proposal were filed by AT&T, CenturyTel of Ohio, Inc. (CenturyTel), Cincinnati Bell Telephone Company LLC (CBT), Windstream Ohio, Inc. and Windstream Western Reserve, Inc. (Windstream), the Ohio Cable Telecommunications Association (OCTA), OTA, United Telephone Company of Ohio dba Embarq (Embarq), and collectively by OCC, 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 (collectively Consumer Groups).
- (6) The telecommunication providers (i.e., AT&T, CenturyTel, CBT, Windstream, and Embarq), OTA, and OCTA all supported the proposed modifications to the service termination rule for the reasons set forth in the July 31, 2008, entry. OTA pointed out that the revised service termination rule correctly places all providers of local exchange service on the same footing and correctly avoids placing unnecessary and uneconomic costs on OTA members (OTA initial comments at 1). OTA also explained that it diligently canvassed its members but that OTA's members failed to come up with a valid and lawful alternative to the revised service termination rule (*Id.* at 4-5). Embarq noted that revised Rule 10 supports the Governor's call for a return to "Common Sense Business Regulation" (Embarq initial comments at 2). AT&T strongly supported the proposed change to Rule 10 (AT&T initial comments at 1). Also, AT&T noted that revised Rule 10 represents a satisfactory resolution of and addresses AT&T's billing system concerns raised in its motion for waiver. Accordingly, upon adoption of the revised rule, AT&T represented that it would withdraw its waiver request (*Id.* at 4).

In addition to supporting the elimination of Rule 10(B), CBT sought clarification on three issues regarding what constitutes a package price. First, CBT claimed that the Commission should clarify that a package may consist of regulated and/or unregulated services. CBT stated this position was explicit in the version of Rule 10(B)

being changed however, with the deletion of this language in the staff proposal, this is no longer apparent. CBT believed it was still the Commission's intent that a package could be any combination of services, regulated or unregulated, and seeks such confirmation (CBT initial comments at 2). Next, CBT claimed that the rule does not address situations where the rates charged for a combination of services are dependent upon subscribing to all of the components, but the prices are separately stated on the bill. CBT submits that they should not be treated any differently from a package where the price is stated as a single amount because the rates charged were only available to the customer if they subscribed to both services (*Id.*). Last, CBT stated that the rule does not, but should, address customers who purchase *a la carte* features (e.g., call waiting) in combination with other services that include BLES, or who use services on a per usage basis (e.g., directory assistance) in combination with other services that include BLES. There is no logical reason to treat these customers differently than customers who subscribe to a group of services at a single flat-rate price according to CBT (*Id.*).

OTA, OCTA, AT&T, and CBT filed reply comments in opposition to the Consumer Groups' initial comments. OTA pointed out that the only customers who will identify any difference between the revised service 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. OTA continues that, on average, 99.5 percent of customers pay their bills every month leaving only half a percent that are permanently disconnected. Moreover, according to OTA, any customer desiring to avoid the disconnect problems cited by OCC can do so with a simple phone call (OTA reply comments at 3). CBT concurred with OTA's comments stating that any customer, including lifeline customers, who cannot afford all of the services in a bundle always has the option to discontinue optional features and subscribe to only BLES. Rule 10(B) and the modifications proposed by OCC do nothing to help customers retain service that customers cannot do themselves CBT claims (CBT reply comments at 2). AT&T reiterated its support for the revised service termination rule stating that the revised rule resolves most of the company's concerns particularly the concerns of competitive neutrality and the extreme costly burden the rule

would have placed on AT&T in revising its billing system (AT&T reply comments at 4).

- (7) Consumer Groups take issue with the argument that Rule 10(B) applied only to ILECs. Consumer Groups claim that at least eight CLECs have tariffed stand-alone basic service and thus would be subject to Rule 10(B). Regarding the competing state policies found in Section 4927.02, Revised Code, Consumer Groups noted that the Commission has already, on numerous occasions, fully considered the competitive issues, and balanced them with the proper level of protection for consumers (Consumer Groups initial comments at 15). Consumer Groups claimed that the major flaw in the staff's proposal is that it does not differentiate between regulated and unregulated services. This would, in Consumer Groups' view, undo twenty years of Commission efforts to ensure that consumers cannot lose their local telephone service for nonpayment of non-regulated services (*Id.* at 16). In addition, Consumer Groups submitted that the staff's proposal would make it more difficult for lifeline customers who subscribe to service bundles to maintain telephone service (*Id.* at 18).

In the reply comments, Consumer Groups argued that the staff's proposal contravenes state policy by taking away from customers the option to maintain basic service through partial payments. Further, Consumer Groups claimed that it is neither just nor reasonable to disconnect a customer's local service if the customer has paid at least the equivalent of the carrier's tariffed basic service rate (Consumer Groups reply comments at 3). Based on financial information from the Ohio large ILECs 2007 annual reports, Consumer Groups submitted that the ILECs could easily absorb the costs of making any changes necessary for complying with Rule 10(B) (*Id.* at 5). Finally, Consumer Groups claimed that CBT's proposed language modifications intended to ensure clarity are anti-consumer and are illogical (*Id.* at 8). Therefore, Consumer Groups recommended rejecting the staff's proposal and retaining Rule 10(B) either as adopted in the 2007 rehearing entry or as recommended in the Consumer Groups' comments (*Id.* at 10).

- (8) After thorough consideration of the arguments offered in response to the staff-proposed rule revision accompanying the July 31, 2008, entry in this proceeding, the Commission determines that the staff proposal should be adopted and that MTSS Rule 10 be modified as set forth in the appendix to this finding and order. In arguing

against the staff proposal, Consumer Groups argue that the staff proposal contravenes state policy by taking away from customers the option to maintain basic service through partial payments. State policy, as established in Section 4927.02, Revised Code, in part, instructs the Commission to ensure the availability of adequate basic local exchange service to the citizens of Ohio; 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 of services subject to Commission regulation; and to not unduly disadvantage providers of competing services. As noted in the July 31, 2008 entry, only the ILECs are required to offer basic local exchange service and, therefore, as adopted, MTSS Rule 10 uniquely applies only to the ILECs. CLECs 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. Under these circumstances, in the emerging competitive environment where ILECs are facing local exchange service competition from CLECs, wireless providers, and other unregulated providers of telecommunications services, we find that, on balance, eliminating the partial payment rule that applies solely to the ILECs with its attendant programming changes and expenditures is consistent with the policies of the state.

At the same time, we are sensitive, particularly in these challenging economic times, to customers who find themselves in a situation in which they cannot afford the package of services to which they subscribe. The ILECs represent that it is a relatively small number of customers that are ever actually disconnected for nonpayment. They further represent that they strive to work with customers to maintain service. The ILECs explain that customers have many options available to address billing difficulties, such as cancelling their bundle of services, cancelling all of their services except for BLES, establishing payment arrangements or even switching to another provider. If, for some reason, a customer does not take advantage of these options and ends up disconnected, the ILEC, under the rule as originally adopted, could 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. The Commission

is concerned that this could keep some customers, who may not otherwise be able to afford the upfront payment of all unpaid regulated charges, from reconnecting to stand-alone BLES. Thus, consistent with the actions the ILECs say they already take to work with their customers to maintain service, we are adding to paragraph (C) of Rule 10 a provision which allows a customer who requests to be reconnected only to stand-alone BLES, to do so by paying an amount sufficient to cover the ILEC's rate for stand-alone BLES (including associated taxes and government mandated charges), by paying any applicable deposit and reconnection charges, and by entering into a payment arrangement. Should a customer wish to reconnect to service other than stand-alone BLES, the company may require the customer to pay the entire amount of all unpaid regulated charges, as the rule currently provides. The Commission believes this rule modification appropriately balances the policy of ensuring the availability of adequate basic local exchange service to the citizens of the state, while not unduly disadvantaging the ILECs.

- (9) Regarding CBT's requests for clarification, we agree that the rule should clarify that a package may consist of regulated and/or unregulated services. Modifications have been made to paragraph (B) of Rule 10 accordingly. CBT's second issue involves a combination of services dependent upon subscribing to all of the components but the prices are separately stated on the bill. To us it is irrelevant if CBT separately lists the prices of the services contained in a package so long as it is clear that the separately identified components are only offered in this manner as part of a package and not subject to individual purchase. CBT's final request for clarification recommends that features (e.g., call waiting), or services used on a per usage basis (e.g., directory assistance) in combination with other services that include BLES should be considered as a package for purposes of the service termination rule. We do not agree with CBT's characterization that features or per use services purchased *a la carte* equate to a package for purposes of the service termination rule.
- (10) In light of our adoption of the staff-proposed revisions to Rule 10 and AT&T's statements about withdrawing the request for waiver, we find that AT&T's May 28, 2008, waiver request is now moot and need not be ruled on.

It is, therefore,

ORDERED, That Rule 10 be revised as set forth in the appendix to this finding and order. It is, further,

ORDERED, That attached revised Rule 4901:1-5-10, O.A.C., should be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,


ORDERED, That the final rule be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for Chapter 4901:1-5, O.A.C., shall be May 31, 2011. It is, further,

ORDERED, That AT&T's May 28, 2008, waiver request is moot in accordance with finding 10. It is, further,

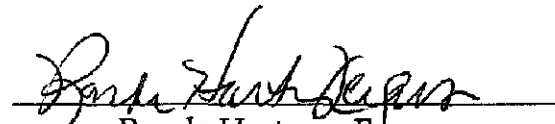
ORDERED, That all telecommunications service providers in Ohio review and amend their tariffs, if applicable, in accordance with this finding and order. It is, further,

ORDERED, That a copy of this finding and order be served upon all telecommunications service providers in the state of Ohio, OCC, and upon all interested persons of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus

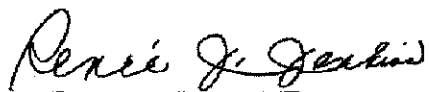

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Renee J. Jenkins
Secretary

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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.
- (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.~~ Where two or more regulated services and/or regulated and unregulated 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 services included in the package and, as such, may result in disconnection of all services included in the package.
- (C) If a customer is disconnected for nonpayment of charges for a package including basic local exchange service (BLES), the incumbent local exchange carrier (ILEC) shall, upon request, reconnect the customer to stand-alone BLES upon the customer's payment of an amount sufficient to cover the ILEC's tariffed rate for stand-alone BLES service, all associated taxes and government mandated surcharges (i.e., universal service fund and 9-1-1 service charges), and any applicable deposit and reconnection fee, and upon the customer entering into a payment arrangement for all unpaid regulated charges. If the customer is disconnected for nonpayment of BLES—past due charges, the local exchange carrier (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 other than stand-alone BLES.
- (D) Telecommunications providers shall not disconnect any customer's service for the nonpayment of a past due bill under any of the following conditions:

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- (1) Earlier than fourteen days after the customer's account is past due.
 - (2) Without mailing a written notice of disconnection postmarked at least seven days prior to the date of disconnection. Such notice may be included on the customer's next bill, provided the bill is postmarked at least seven days prior to the date of disconnection of service reflected on the bill, and provided that the disconnection language is clearly highlighted such that it stands apart from the customer's regular bill language. Notice may be by e-mail if the customer agrees to electronic bills.
 - (3) After twelve-thirty p.m., if the possibility of service reconnection on the day following the disconnection is not made available to the customer by the telecommunications provider.
 - (4) Where a customer pays the company the total amount due, (or an amount agreed upon between the company and the customer) by the close of business on the disconnection date listed on the disconnection notice.
- (E) A LEC may restrict long distance service to a customer who owes past due long distance charges to the LEC or to a provider on whose behalf the LEC is billing. The LEC shall not restrict a customer from establishing toll service with a different toll provider for whom it does not bill.
- (F) A notice of disconnection for nonpayment shall include all of the following information:
- (1) The earliest date disconnection may occur.
 - (2) Information sufficient for the customer to identify what services will be disconnected.
 - (3) The total dollar amount due to avoid disconnection which shall not exceed the past due amount for the service(s) subject to disconnection.
 - (4) The minimum dollar amount necessary to maintain basic local exchange service, if applicable.
 - (5) The address and toll-free telephone number of the office of the telecommunications provider that the customer may contact for more information on how and where to pay the customer's account.
 - (6) A statement that payments to an unauthorized payment agent may result in the untimely or improper crediting of the customer's account.
 - (7) A statement identifying if a reconnection fee and/or deposit may apply.

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(8) The following statement:

"If you have a complaint in regard to this disconnection notice that cannot be resolved after you have called (name of utility), or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.puco.ohio.gov."

(9) If the account is residential, the following statement:

"Residential customers may also contact the Ohio Consumers' Counsel for assistance with complaints and utility issues at 1-877-742-5622 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.pickocc.org.

(G) A telecommunications provider must notify, or attempt to notify through reasonable means, a customer before service is refused or disconnected when any of the following conditions exist:

- (1) When the customer violates or fails to comply with their contract with the telecommunications provider or telecommunications provider's tariff(s).
- (2) When telephone service to a customer violates any law of this state or any political subdivision thereof, or any federal law or regulation.
- (3) When the landlord of a customer, the tenant/customer, or a consumer refuses to allow the telecommunications provider access to its facilities or equipment on the customer's property or property leased by the customer.
- (4) When the customer is suspected of engaging in any fraudulent action to obtain or maintain telephone service.

(H) No notice is required prior to disconnection and a telecommunications provider may disconnect the customer for any of the following reasons:

- (1) Tampering with a telecommunications provider's property.
- (2) A use or misuse of telephone service or equipment which adversely affects telephone service to other customers.
- (3) In order to eliminate, mitigate or avoid a safety hazard to customers or their premises, to the public, or to the telecommunications provider's personnel or facilities.

(I) Regulated telecommunications services may not be refused or disconnected to any service applicant or customer for any of the following reasons:

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- (1) Failure to pay for residential service furnished to a former customer unless the former customer and the new applicant for service continue to be members of the same household.
 - (2) Failure to pay for a different class of service. Residential service may not be denied or disconnected for nonpayment of a nonresidential account.
 - (3) Failure to pay any amount which is in bona fide dispute. The telecommunications provider may not disconnect service if the customer pays either the undisputed portion of the bill or where the disputed amount is in question, the customer pays the amount paid for the same billing period in the previous year.
- (J) Unless prevented by circumstances beyond the telecommunications provider's control or unless a customer requests otherwise, each telecommunications provider shall reconnect previously disconnected service by five p.m. on the next business day upon any of the following:
- (1) Receipt by the telecommunications provider or its authorized payment agent of the full amount in arrears for which service was disconnected including any applicable deposit and reconnection fee.
 - (2) Verification by the telecommunications provider that the conditions which warranted disconnection of service have been eliminated.
 - (3) Agreement by the telecommunications provider and the customer on a deferred payment plan and a payment, if required, under the plan.
- (K) A telecommunications provider may not insist upon payment of any amount that has not been included on a notice of disconnection as a prerequisite to restoring service under this rule. The telecommunications provider shall inform the customer of the amount to avoid disconnection and/or, if applicable, the amount to retain basic local exchange service, whenever discussing a pending disconnection with a customer.
- (L) Each facilities-based LEC shall maintain access to 9-1-1 emergency services on a residential customer's line for a minimum of fourteen days if a customer's service is disconnected for nonpayment of a past due charge(s).
- (M) Any customer reconnecting service in the period of time used by the facilities-based LEC to comply with paragraph (K) of this rule shall be treated as a reconnection and not as a new customer establishing new service.
- (N) If a customer or member of the customer's household demonstrates that disconnection of service would be especially dangerous to his/her health, the LEC must consider this circumstance when offering extended payment arrangements to

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avoid disconnection. Payment arrangements shall be offered regardless of the credit class of the customer.