

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

tw telecom of ohio llc,	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 08-1215-TP-CSS
	)	
AT&T Ohio,	)	
	)	
Respondent.	)	

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AT&T OHIO'S RESPONSE TO REQUEST FOR EXPEDITED RULING

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AT&T Ohio<sup>1</sup>, by its attorneys, and pursuant to Ohio Admin. Code § 4901:1-7-28(C), responds to the "Request for Expedited Ruling" included in the complaint filed in the captioned case on November 12, 2008.

The complaint does not qualify for an expedited ruling, and one should not be issued, under the applicable rule. In pertinent part, that rule provides as follows:

(A) This rule establishes procedures pursuant to which a telephone company who files a complaint against another telephone company pursuant to section 4905.26 of the Revised Code, may request an expedited ruling *when the dispute directly affects the ability of a telephone company to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element under an interconnection agreement*. The attorney examiner has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. Unless otherwise determined during the course of the proceeding, the provisions and procedures set forth in section 4905.26 of the Revised Code, and Chapters 4901-1 and 4901-9, of the Administrative Code, shall apply.

(B) Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed under section 4905.26 of the Revised Code. The complaint shall be entitled "complaint and request for expedited ruling." *A complaint seeking an expedited ruling shall also state the specific circumstances that make the*

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<sup>1</sup> The Ohio Bell Telephone Company uses the name AT&T Ohio.

*dispute eligible for an expedited ruling.* The complainant shall simultaneously serve a copy of the complaint and request for expedited ruling on the respondent and the chief of the telecommunications section of the legal department by hand delivery or facsimile on the same day as it is filed with the commission.

Ohio Admin. Code § 4901:1-7-28 (emphasis added).

The dispute set forth in the complaint centers on the appropriate rate to be charged for transit traffic. It is a rate and billing dispute, not a provision of service complaint, and is grounded in the interpretation of the Commission's rules and the parties' interconnection agreement, as amended. The Complainant does not allege that the dispute "directly affects the ability of a telephone company to provide uninterrupted service to its customers" or that it "precludes the provisioning of any service, functionality, or network element under an interconnection agreement." Both of these criteria suggest that there must be some emergency that is *customer-affecting* in order to qualify for an expedited ruling. The complaint here presents no such circumstances, and the Complainant does not provide factual evidence of such a fact, or even an unsubstantiated allegation that it does.

The complaint also does not state "the specific circumstances that make the dispute eligible for an expedited ruling," as required by Ohio Admin. Code § 4901:1-7-28(B). The complaint contains very specific *legal* allegations, but none of them go to the criteria required to justify an expedited ruling under the rule. There is simply no emergency that must be addressed in an expedited manner.<sup>2</sup>

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<sup>2</sup> In addition, the Complaint and Request for Expedited Ruling does not indicate that it was served on the Chief of the Telecommunications Section as required by the rule.

As alleged in the complaint, the parties have been discussing and negotiating this dispute for many months. Nothing about the dispute impairs the Complainant's ability to provide service to its customers or calls for an expedited ruling or an accelerated process at the Commission. It may be that there are no factual issues in dispute; if not, the parties may be able to stipulate as to the facts. It seems, at this juncture, that the case boils down to an interpretation of a Commission rule and, depending on that interpretation, its propriety under applicable federal law and precedents. Therefore, it is possible that the case can be presented to the Commission without the need for hearing but with adequate opportunity for both parties to brief the issues. These facts, however, do not qualify or call for an expedited ruling under the applicable rule just because the Complainant desires expedition.

For all of the foregoing reasons, the Complainant's request for an expedited ruling should be denied and the complaint should be processed in the normal course.

Respectfully submitted,

AT&T Ohio

By:                   /s/ Jon F. Kelly                  

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on November 19, 2008 by e-mail as shown below on the following parties:

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/s/ Jon F. Kelly

Jon F. Kelly

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**Case No(s). 08-1215-TP-CSS**

Summary: Response to request for expedited ruling electronically filed by Jon F Kelly on behalf of AT&T Ohio