

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of AT&T)
Ohio For Waiver of Certain Minimum)
Telephone Service Standards Pursuant to) Case No. 09-42-TP-WVR
Chapter 4901:1-5, Ohio Administrative)
Code.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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March 13, 2009

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In order to ensure that Ohio residential telephone consumers receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of residential telephone customers, files this Application for Rehearing of the Finding and Order ("Order") that the Public Utilities Commission of Ohio ("Commission" or "PUCO") journalized on February 11, 2009 in this proceeding.¹ OCC files this Application for Rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35. In the Order, the Commission allowed AT&T Ohio to cease its longstanding distribution of white pages directories to consumers and to substitute electronic information in the place of directories.² The Order did provide that customers can receive a printed white pages directory, free of charge, upon their request by calling a toll-free number.³

¹ The Commission granted OCC's intervention in the Order, at 4.

² See Order at 6.

³ Id. at 7.

Hundreds of thousands of AT&T Ohio residential customers rely on the white pages directory to find telephone numbers and for valuable information regarding how to contact AT&T Ohio for repair, billing and other purposes, and for quick access to emergency and non-emergency information that is useful, and sometimes life-saving, in their daily lives. As discussed in Section III.A., *infra*, approximately 500,000 AT&T Ohio residential customers cannot readily access either the web-based directory or the CD-ROM directory that AT&T Ohio proposes to offer in lieu of a printed white pages directory, or both. Many more use a printed white pages directory as a matter of choice. In addition, as discussed in Section III.B., *infra*, the Order affects customers of competitive local exchange carriers (“CLECs”) who receive their directories from AT&T Ohio. The adverse affect of the Commission’s decision on such a large number of consumers should not be taken lightly.

Thus, OCC seeks rehearing of the Commission’s Order because:

1. The Order is unreasonable and unlawful because AT&T Ohio’s waiver request was based on mere conjecture instead of actual data regarding customers’ preferences for a residential white pages directory, and thus AT&T Ohio did not show good cause for a waiver as required by the Minimum Telephone Service Standards (“MTSS”).
2. The Order is unreasonable and unlawful because the Commission did not require AT&T Ohio to give customers adequate notice that they would need to request a printed residential white pages directory.
3. The Order is unreasonable and unlawful because the Commission did not specify that AT&T Ohio must deliver printed residential white pages directories within a reasonable amount of time to customers who request them.

The support for this Application for Rehearing is set forth in the accompanying Memorandum in Support. The Commission should abrogate and modify the Order as discussed in the Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio Adm. Code 4901:1-5-03(B) (“Rule 3(B)”) requires local exchange carriers (“LECs”) to provide customers with either a printed white pages directory, an electronic directory upon customer request, or free directory assistance. In adopting Rule 3(B), the Commission made clear that “unless the LEC chooses to provide free directory assistance in accordance with adopted Rule 3(B)(2), the LEC shall always provide each customer the option to receive a free printed directory. ... [I]t is not within the LEC’s discretion to force customers, in any given area, to accept an electronic directory in lieu of a printed directory.”⁴

On January 20, 2009, AT&T Ohio filed a motion for a waiver of Rule 3(B) in order to make an electronic white pages directory the primary means for customers to obtain directory information.⁵ AT&T Ohio proposed to allow customers to receive a

⁴ *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 05-1102-TP-ORD, Entry on Rehearing (July 11, 2007) at 12-13.

⁵ See AT&T Ohio Motion at 4-5.

printed directory upon request,⁶ and proposed to inform customers about the change in directory distribution through notices in the Company's yellow pages directory.⁷

On February 4, 2009, OCC filed a Motion to Intervene and a Memorandum Contra AT&T Ohio's Motion. OCC noted that consumers rely on a printed white pages directory for much essential information and urged the Commission to, at a minimum, defer the "opt in" provision so that consumers are automatically provided directories for at least two years into the future, if not longer. OCC recommended that the PUCO require the Company to inform customers about the proposed change regarding the distribution of directories and to invite public comment to the PUCO and OCC. OCC also urged the PUCO to ensure that new AT&T Ohio customers are notified of the availability of printed directories, and to ensure that customers requesting a printed directory would not be charged for delivery of a printed directory to their homes.

On February 11, 2009, the PUCO issued its Order granting AT&T Ohio a waiver, subject to several conditions. AT&T Ohio must provide a toll-free number for customers to request a printed directory.⁸ AT&T Ohio must also deliver or ship free printed directories to customers who wish to receive them in that way, without imposing or applying any shipping or delivery charges.⁹ AT&T Ohio must also distribute to every customer the Customer Guide, which includes the telephone customer rights and

⁶ Id. at 5.

⁷ Id. at 7.

⁸ Order at 6. Under the Order, AT&T Ohio may also distribute free printed directories at AT&T Ohio retail stores and may make free printed directories available in other public places that customers might likely visit on a more frequent basis (e.g., grocery stores, banks or pharmacies) if the Company chooses to do so. Id.

⁹ Id.

responsibilities required by the MTSS, and AT&T Ohio's yellow pages, which also contains a business white pages directory.¹⁰

In order to notify customers that they no longer would automatically receive a white pages directory, the PUCO required AT&T Ohio to “prominently plac[e] a full-page informational notice in the front section of the printed directory containing the Customer Guide, the business white pages, and the AT&T Real Yellow Pages....”¹¹

AT&T Ohio must also “affix[] the ‘ride-along’ card or letter to the front of the printed AT&T Real Yellow Pages during the first delivery cycle for which electronic alternatives are replacing delivery of printed residential white pages listings.”¹² In addition, AT&T Ohio must ensure that “new customers, as part of the welcome letter or otherwise, are provided with the directory options information contained on the ride-along card....”¹³

The Order is unlawful and unreasonable in three respects. First, AT&T Ohio's assertions regarding the need for the waiver were not supported by the record of this proceeding. Second, the Order lacks essential consumer protections by failing to require AT&T Ohio to conduct a comprehensive campaign to educate customers on the availability of the electronic directory, as the PUCO approved in the CBT directory waiver case.¹⁴ Third, the Order failed to specify that AT&T Ohio must deliver white pages directories within a reasonable time (seven days) after customers request them. The Commission should therefore modify the Order as discussed herein, to help ensure

¹⁰ Id.

¹¹ Id. at 6-7.

¹² Id. at 7.

¹³ Id.

¹⁴ *In the Matter of the Application of Cincinnati Bell Telephone Company LLC for Waiver of Certain Minimum Telephone Service Standards Pursuant to Chapter 4901:1-5, Ohio Administrative Code*, Case No. 08-1197-TP-WVR, Finding and Order (January 7, 2009) (“CBT Waiver Decision”) at 7.

that “customers’ interests are protected as regards obtaining information regarding the policy change contemplated by grant of the waiver, obtaining essential information regarding a telephone customer’s rights and responsibilities, and as regards a customer’s right and ability to go about requesting and obtaining free annual printed directories.”¹⁵

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC filed a motion to intervene and a Memorandum Contra in this proceeding.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard for modifying the Order is met here.

¹⁵ Id. at 6.

III. ALLEGATIONS OF ERROR

A. **The Order Is Unreasonable and Unlawful Because AT&T Ohio’s Waiver Request Was Based on Mere Conjecture Instead of Actual Data Regarding Customer Preferences for a Residential White Pages Directory, and Thus AT&T Ohio Did Not Show Good Cause for a Waiver as Required by the Minimum Telephone Service Standards.**

As OCC noted in its Memorandum Contra, AT&T Ohio’s proposal to provide printed white pages to customers only upon request is based on a mere belief that customers do not want a white pages directory.¹⁶ This belief, however, is undermined by the fact that the Company will continue to provide a **business** white pages directory.¹⁷

Because AT&T Ohio produced no factual data to support its claim, OCC urged the PUCO to deny AT&T Ohio’s Motion, and gather data concerning customers’ desire for a printed directory.¹⁸ OCC recommended that the PUCO require AT&T Ohio, over a two-year period, to extensively notify customers that they can “opt out” of receiving a white pages directory.¹⁹ During that time, customers should be invited to send comments on the directory issue to the PUCO and OCC.²⁰ After the two-year period, the PUCO – with stakeholder input – could assess whether AT&T Ohio’s proposal is justified.²¹

Despite the absence of empirical support for the waiver request, the Commission found that “AT&T Ohio has adequately demonstrated sufficient reason for granting its waiver application.”²² The Commission did not explain the basis for this determination, as required by R.C. 4903.09. Instead, the Commission merely reiterated how AT&T

¹⁶ Memorandum Contra at 9.

¹⁷ See AT&T Motion at 7.

¹⁸ Memorandum Contra at 10.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Order at 6.

Ohio proposed to implement a waiver, and added some conditions that AT&T Ohio must follow.²³ The Order is thus unlawful.²⁴

In addition, AT&T Ohio has not shown “good cause” for a waiver of Rule 3(B), as required by Ohio Adm. Code 4901:1-5-02(B)(1). Nothing in the record supports AT&T Ohio’s assertions regarding customer usage of white pages directories.²⁵ In particular, the record does not support AT&T Ohio’s claim that providing an electronic directory in lieu of a printed white pages directory only upon customer request, as required by Rule 3(B)(1), “is no longer reasonable.”²⁶

Indeed, it was unreasonable for the PUCO to grant the waiver. Approximately 25% of Ohio homes do not have a computer,²⁷ and thus approximately 410,000 AT&T Ohio customers cannot use either the Internet-based directory or the CD-ROM directory that AT&T Ohio proposes to offer in lieu of a printed directory.²⁸ Further, another five percent of Ohio homes lack Internet access, although they have a computer.²⁹ Thus, an additional 82,000 AT&T Ohio customers cannot use an Internet-based directory.³⁰ For these 490,000 consumers, and many more, a printed residential white pages directory

²³ Id. at 6-7.

²⁴ In the CBT case, the PUCO granted CBT a waiver “as a policy matter, not on a factual basis.” Case No. 08-1197-TP-WVR, Entry on Rehearing (March 10, 2009) (“CBT Rehearing”) at 4. Nevertheless, changes in policy arrived at in contested cases must have a factual basis and must be explained, per R.C. 4903.09.

²⁵ See AT&T Ohio Motion at 2-4

²⁶ Id. at 4.

²⁷ Source: Connect Ohio. See http://connectohio.org/_documents/Res_OH_09182008_FINAL.pdf, slide 4 (citing data as of March 2008).

²⁸ AT&T Ohio has approximately 1,641,000 residential customers. See Schedule 28 of AT&T Ohio’s 2007 annual report submitted to the PUCO. Twenty-five percent of 1,641,000 equals 410,250.

²⁹ According to Connect Ohio, as of March 2008 approximately 30% of Ohio homes do not have Internet access (either broadband or dial-up). See note 27, *supra*. Obviously, the 25% of Ohio homes that do not have a computer also do not have Internet access. Thus, there are approximately five percent of Ohio homes that have a computer but do not have Internet access.

³⁰ Five percent of 1,641,000 equals 82,500.

provides a valuable resource to find telephone numbers and to access other essential information.

There is no support in the record to grant the relief AT&T Ohio sought and thus the Order is unlawful and unreasonable. The Commission should modify the Order and institute the two-year “opt out” campaign as OCC recommended.

B. The Order Is Unreasonable and Unlawful Because the Commission Did Not Require AT&T Ohio to Give Customers Adequate Notice That They Would Need to Request a Printed Residential White Pages Directory.

Adequate notice of a change in access to white pages information helps ensure that “customers’ interests are protected as regards obtaining information regarding the policy change contemplated by grant of the waiver, obtaining essential information regarding a telephone customer’s rights and responsibilities, and as regards a customer’s right and ability to go about requesting and obtaining free annual printed directories.”³¹

CBT offered numerous means for educating consumers about the need to request a printed white pages directory:

CBT will conduct an extensive informational campaign for its customers to educate them on the availability of the electronic directory. CBT will use bill inserts and billing messages to promote its new, easy to use, “green” edition of the directory. CBT will also send e-mail messages to its Internet service customers and text messages to its wireless affiliate’s customers. Information will be posted on the Cincinnati Bell website and in retail stores. Customers will be made well aware of how to access and use the on-line electronic directory.³²

The PUCO, nevertheless, placed an additional condition on CBT’s informational effort:

³¹ CBT Waiver Decision at 6.

³² Case No. 08-1197-TP-WVR, Application (October 31, 2008) (“CBT Application”) at 5. See also CBT Waiver Decision at 4.

The extensive informational campaign described in CBT's waiver application, by which the company will educate customers on the availability of the electronic directory, must include notice to customers that they will no longer automatically be provided annually with a printed directory and also provide clear and explicit directions that those customers who wish to obtain a free printed directory should follow in order to obtain one.³³

The Order in this proceeding fails to protect the interests of AT&T Ohio's customers. Rather than giving customers ample notice that they will no longer automatically receive a printed white pages directory, the Order relies solely on a one-page informational notice inside AT&T Ohio's yellow pages directory and a "ride-along" notice affixed to the first yellow pages directory that AT&T Ohio issues without an accompanying printed residential white pages directory.³⁴ This constitutes inadequate notice for at least three reasons.

First, the AT&T Ohio yellow pages directory is merely one of many yellow pages directories that customers receive. There is no guarantee that customers retain the AT&T Ohio's yellow pages directory. Even if they do, they might not look at it for weeks or possibly months, if at all. Affixing the "ride-along" notice to the front cover of the yellow pages directory also does not ensure that AT&T Ohio's customers will ever see the notice, let alone read it.

The problem is exacerbated by the fact that AT&T Ohio is the sole provider of residential white pages directories to the customers of many CLECs.³⁵ Even if the

³³ CBT Waiver Decision at 7.

³⁴ Order at 7.

³⁵ Five CLECs – Sage Telecom, tw telecom, NuVox Communications, Nexis Communications and LDMI Telecommunications (d/b/a Cavalier) – have filed "me too" waivers of Rule 3(B) because they rely exclusively on AT&T Ohio to provide residential white pages directories to their customers. Case Nos. 09-156-TP-WVR (Sage Telecom); 09-157-TP-WVR (tw telecom); 09-158-TP-WVR (NuVox); 09-159-TP-WVR (Nexus); 09-160-TP-WVR (Cavalier). The CLECs allege that because of AT&T Ohio's waiver, they cannot provide their customers with printed residential white pages directories, as required by Rule 3(B).

CLECs' customers read the notice in AT&T Ohio's yellow pages, they might not make the connection that they need to contact AT&T Ohio in order to get a printed residential white pages directory. The Commission should address this issue, and ensure that CLECs' customers who request a printed residential white pages directory from AT&T Ohio receive the directory free of charge.

Like CBT's customers, consumers in AT&T Ohio's service territory – whether they receive telephone service from AT&T Ohio or a CLEC – should be informed in numerous ways about the need to request a printed residential white pages directory. AT&T Ohio should be required to inform its customers in other ways (e.g., bill messages, bill inserts) that they must request a printed residential white pages directory. In addition, requiring AT&T Ohio to conduct a mass marketing campaign (e.g., broadcast advertising, direct mailing of the “ride-along” notice) would help ensure that all consumers, including CLECs' customers, in AT&T Ohio's service territory are aware of the need to contact AT&T Ohio to receive a printed residential white pages directory.

Second, it is not clear that AT&T Ohio must annually notify its customers that they must request a printed residential white pages directory, as the PUCO required CBT to do.³⁶ The Commission merely stated that the informational notice must be included in the yellow pages directory “that will continue to be delivered annually to customers.”³⁷ Although the yellow pages directory may continue to be delivered annually, it is unclear from the Order that AT&T Ohio must include the informational page in the yellow pages directory **each year**. Like CBT's customers, AT&T Ohio's customers should receive annual notice of the need to request a printed residential white pages directory.

³⁶ CBT Waiver Decision at 7.

³⁷ Order at 6-7.

Third, the Order was too vague in directing AT&T Ohio to inform consumers regarding how they may request a residential white pages directory. In the CBT Waiver Decision, the PUCO required CBT to provide “**clear and explicit** directions that those customers who wish to obtain a free printed directory should follow in order to obtain one.”³⁸ AT&T Ohio, however, must only “**describe** all of the alternatives for acquiring residential directory information...”³⁹ The Order gave AT&T Ohio too much latitude regarding the information that the Company may give customers who request a printed white pages directory. Like CBT’s customers, AT&T Ohio’s customers should receive clear and explicit direction for obtaining a printed residential white pages directory.

The Order’s notice requirements are inadequate to protect the interest of consumers in AT&T Ohio’s service territory. The Commission should modify the Order, to include the consumer notice provisions discussed above.

C. The Order Is Unreasonable and Unlawful Because the Commission Did Not Specify That AT&T Ohio Must Deliver Printed Residential White Pages Directories Within a Reasonable Amount of Time to Customers Who Request Them.

The Order did not require, and AT&T Ohio’s Motion did not promise, that customers would receive a printed residential white pages directory within a reasonable amount of time after making a request.⁴⁰ OCC raised this issue,⁴¹ but the Commission did not address the issue in the Order.

Customers must be assured that they will receive a white pages directory in a timely manner. Otherwise, customers will be deterred from requesting a directory from

³⁸ CBT Waiver Decision at 7 (emphasis added).

³⁹ Order at 7 (emphasis added).

⁴⁰ This is in contrast to CBT’s promise to deliver a printed residential white pages directory to customers “promptly upon request.” CBT Application at 5. See also CBT Rehearing at 6.

⁴¹ See OCC Memorandum Contra at 14.

AT&T Ohio. The PUCO should modify the Order and require that AT&T Ohio ship white pages directories so that they are delivered to customers within seven days after their request.

IV. CONCLUSION

AT&T Ohio did not show good cause for the waiver. The Commission should thus modify the Order by instituting the two-year “opt out” campaign recommended by OCC to protect consumers. In addition, the Commission should modify the Order as discussed herein to ensure that consumers in AT&T Ohio’s service territory – whether they receive telephone service from AT&T Ohio or a CLEC – are adequately notified that they will not automatically receive a printed residential white pages directory, and are adequately informed about how to obtain a printed directory. The Commission should also modify the Order to ensure that customers receive a printed white pages directory within seven days after making a request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was provided electronically to the persons listed below on this 13th day of March 2009.

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