

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**AT&T OHIO’S MEMORANDUM CONTRA OCC’S APPLICATION FOR
REHEARING**

AT&T Ohio hereby submits its Memorandum Contra the Application for Rehearing filed by the Office of the Ohio Consumers’ Counsel (“OCC”) on March 13, 2009. OCC seeks rehearing of the Commission’s February 11, 2009 Finding and Order (“Order”), granting AT&T Ohio a waiver of Rule 4901:5-03(B) and allowing it to cease automatic delivery of printed residential telephone directories to its customers. The Commission, in recognizing the changing dynamics of the telecommunications marketplace, is allowing AT&T Ohio to implement a more environmentally-friendly method of providing customers with directory options, while still addressing the needs of those few customers that still want to receive a printed residential white pages directory.

The Commission’s Order is not unlawful or unreasonable. OCC’s arguments for rehearing are repetitive, present nothing additional, and have been

previously rejected by the Commission.¹ Accordingly, the Commission should deny OCC's Application for Rehearing.

OCC's first issue centers on its belief that more factual input is needed to support approving the waiver. However, there is no such requirement in the Commission's rules allowing waivers of the MTSS requirements. O.A.C. 4901:1-5-02(B)(1). The rule simply requires that *good cause* be demonstrated. AT&T Ohio showed good cause by demonstrating that the changing dynamics of the current telecommunications marketplace, the increased reliance on electronic informational retrieval alternatives, and the growing endorsement of environmentally-friendly alternatives that alleviate natural resource waste and depletion have impacted the use of, and need for, the mass distribution of printed residential white pages directories and have set the stage for deploying electronic alternatives. Nevertheless, OCC refuses to acknowledge the benefits of an electronic directory alternative to a printed version, and instead, maintains that the waiver is unreasonable and concocts a baseless claim that, as a result of the waiver, customers without computers will not be able to access residential white pages directory listings.

OCC correctly notes that AT&T Ohio's waiver includes a provision that customers be able to obtain a residential white pages directory by calling a toll free number to receive the directory free of charge. But then, OCC ignores this condition as it

¹ See Application of Cincinnati Bell, Case No. 08-1197-TP-WVR, Opinion and Order dated January 7, 2009, and Entry on Rehearing dated March 10, 2009.

attempts to make a case that customers without computers will not be able to access this information. More specifically, OCC claims:

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.

OCC App. at p. 2.

The Commission addressed this issue head-on in the Cincinnati Bell waiver case and specifically found:

The Commission made its determination to grant CBT a waiver as a matter of policy, not on a factual basis. The decision to grant CBT a waiver in this instance follows a long line of Commission precedent where we have recognized advances in technology and competition in the telecommunications market and used such advances to modify Commission regulations.

CBT Entry on Rehearing at p. 4.

Assuming the Connect Ohio information that OCC raised is even accurate, OCC simply ignores the fact that customers--all customers--including those without computers, can readily and easily obtain a residential white pages directory, free of charge, by simply calling a toll free number to request one.

OCC also conveniently ignores that, as AT&T Ohio pointed out in its motion for a waiver, there are more numbers that are **not** printed in the directory than are in the directory. (Motion p. 2, footnote 2) Federal Communications Commission data shows that there were over 9 million wireless subscribers and less than 6 million landline telephone access lines in Ohio in December 2007. And, as widely reported in the media,

wireless services continue to displace wireline service, so even fewer numbers will be printed in the directories in future years.

OCC also attempts to bolster its arguments that printed residential white pages listings should be automatically delivered by citing the need for information regarding telephone service and emergency information. However, this argument is irrelevant given the fact that AT&T will continue to provide this information in printed format with the business white pages and AT&T Real Yellow Pages--a fact OCC also ignores.

OCC's logic is further flawed by its statement that aligned the use of the residential white pages to use of the business white pages that the Company will continue to provide. At no time did the Company seek a waiver of the business white pages directory. In fact, the business directory continues to be frequently referenced to serve the needs of consumers for business listings, a need that is separate and distinct from the need for and uses of the residential white pages.

OCC's second claim is that the Order fails to provide adequate notice to inform customers of the changes the waiver allows and on how to obtain a free residential white pages directory. Again, this claim has been thoroughly and appropriately addressed by the Commission, and OCC offers nothing additional to substantiate this claim. OCC does attempt to compare the Cincinnati Bell directory waiver notice requirements to the notice requirements approved in the AT&T Ohio Order. What OCC

overlooks are notice differences between the two waivers. OCC simply seeks to add incremental and unnecessary notice requirements.

The Commission approved AT&T Ohio's directory waiver separate from Cincinnati Bell's directory waiver. AT&T Ohio's waiver was not a boiler-plate "me-too" waiver. While in part, the two waivers are similar, there are differences. The Commission reviewed the notice provisions, which are different, and decided that both companies' proposed notice requirements were reasonable and appropriate.

OCC suggests the Commission overlay a requirement for bill page messaging and bill inserts to continually notify AT&T Ohio customers as to how to obtain a free residential white page directory. However, AT&T Ohio's approved customer notice plan is superior to bill page messaging and bill inserts. AT&T Ohio's customer notice will include an information sheet printed on heavy weight cardstock that will be bound within the business white pages directory. As this cardstock information sheet will be permanently bound within the business white pages directory, it will be readily available to customers whenever they use the business white pages directory. It will serve as a constant reminder as to how to acquire a printed residential white pages directory should they desire one. Bill page messages or bill inserts may have been thrown away and forgotten when a customer decides they would like to request a white pages directory, while the permanent information sheet bound within the business white pages directory will remain readily available. The significance of AT&T Ohio's approach to notifying customers with its focus on ensuring easy and continuous access to

the information a customer needs in order to acquire a printed directory is missed by OCC. Accordingly, OCC's claim should be rejected.

Finally, OCC seeks to impose a timeframe for AT&T Ohio to deliver white page directories requested by customer. Again, this issue was reviewed by the Commission in the Order and rejected. Further, the Commission rejected OCC's similar proposal in the Entry on Rehearing in Cincinnati Bell's directory waiver, stating OCC's proposal was without merit. Accordingly, the Commission should once again reject OCC's request.

Conclusion

Demand for, and use of, residential white pages directories has severely decreased over time due to several reasons. ILECs' access line losses continue, while wireless subscribership continues to increase. In 2007, there were over 9 million wireless subscribers in Ohio, but less than 5 million access lines. Extremely few wireless subscribers' numbers are printed in the directories, but many residential access line customers proactively choose to not have their numbers published, exacerbating the disparity.

Recognizing such changes in the telecommunications marketplace, AT&T Ohio sought a waiver of the requirement to distribute – in mass – residential white pages directories. AT&T Ohio proposed to have the flexibility of making an electronic directory an acceptable option for delivering residential white pages directories. Access to this environmentally-friendly electronic directory will be free. AT&T Ohio also recognized that some customers may prefer to have a printed directory, and those that do simply need to request one, and it will be provided free of charge. The Customer Guide, which contains the Customer Bill of Rights and other information required by O.A.C. 4901:1-5-03(C), will be available in the electronic directory and in the business white pages directories, which will continue to be delivered to customers. Appropriate customer notice will be provided.

OCC raises no new issues. The Commission has already rejected OCC's arguments three times. Certainly, OCC's repeated claims in its request for rehearing should be rejected yet again.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra OCC's Application for Rehearing was provided electronically, this 23rd day of March 2009, to:

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Summary: Memorandum Contra OCC's Application for Rehearing electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Ohio