

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

MCImetro Access)
Transmission Services LLC)
d/b/a Verizon Access Transmission)
Services,)
)
Complainant,)
)
v.)
)
The Ohio Bell Telephone Company d/b/a)
AT&T Ohio,)
)
Respondent.)

Case No. 09-303-TP-CSS

ANSWER

Respondent The Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”), by its attorneys, and in response to the Complaint of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (“MCI”), states as follows:

In response to the opening paragraph of MCI’s Complaint, which is unnumbered, AT&T Ohio denies that it has breached its Interconnection Agreement (“ICA” or “Agreement”) with MCI, denies that it has overcharged MCI for services it provided under the Agreement, and denies that MCI is entitled to a refund. AT&T Ohio also denies that MCI is entitled to treble damages or that the Commission may award damages in this case, which would give MCI an undeserved windfall.

PRELIMINARY STATEMENT

1. AT&T Ohio admits that it is party to an ICA with MCI. To the extent that MCI attempts to characterize the ICA, AT&T Ohio states that the contract and any amendments

thereto speak for themselves. AT&T Ohio denies the remaining allegations of paragraph 1 of the Complaint.

2. AT&T Ohio denies MCI's allegation that there was an "agreed-upon single rate of \$0.001016 per minute for completing both local traffic and Internet-bound traffic." AT&T Ohio also denies MCI's claim that the "single rate" applied to traffic terminated by AT&T Ohio for MCI. AT&T Ohio admits the remaining allegations of paragraph 2 of the Complaint.

3. As to the first sentence of paragraph 3 of the Complaint, AT&T Ohio denies MCI's allegation that there was an "agreed-upon single rate" for completing local and Internet-bound traffic. As to the second sentence of paragraph 3, AT&T Ohio admits that it charged MCI the rates set forth in the 2004 and 2005 Amendments to the ICA for Section 251(b)(5) traffic and Internet-bound traffic as those were the rates that MCI agreed to pay and that MCI did pay without dispute until June 2006. As to the third sentence of paragraph 3, AT&T Ohio neither admits nor denies this allegation as it is without knowledge or information sufficient to form an opinion as to the truth of the allegation, and therefore leaves the Complainant to its proofs. As to the fourth sentence of paragraph 3, AT&T Ohio admits that MCI disputed and paid under protest certain charges for the completion of local and Internet-bound traffic, but denies that MCI made a timely protest or followed the proper dispute resolution procedures as set forth in the ICA.

4. AT&T Ohio denies that it has breached its ICA with MCI and denies that it has overcharged MCI under the Agreement. AT&T Ohio denies that MCI is entitled to a refund and interest, denies that it violated Ohio Revised Code § 4905.22, denies that MCI is entitled to treble damages, and denies that MCI is entitled to any relief.

PARTIES

5. AT&T Ohio neither admits nor denies this allegation as it is without knowledge or information sufficient to form an opinion as to the truth of the allegation, and therefore leaves the Complainant to its proofs.

6. AT&T Ohio admits this allegation.

JURISDICTION

7. AT&T Ohio denies that § 4905.22 of the Ohio Revised Code or Section 251(d)(3) of the Telecommunications Act of 1996 (“1996 Act”) confer the Commission with jurisdiction over MCI’s Complaint. AT&T Ohio admits that § 4905.26 of the Ohio Revised Code confers jurisdiction over MCI’s Complaint.

8. AT&T Ohio admits this allegation.

FACTUAL BACKGROUND

9. AT&T Ohio admits this allegation.

10. AT&T Ohio states that paragraph 10 of the Complaint characterizes AT&T Ohio and MCI’s ICA and that document speaks for itself. To the extent that further answer is required, AT&T Ohio denies this allegation.

11. AT&T Ohio admits that it and MCI executed an amendment to their ICA on April 1, 2005 (the “2005 Amendment”). AT&T Ohio states that paragraph 11 of the Complaint characterizes AT&T Ohio and MCI’s ICA, denies that MCI’s characterization is complete or accurate, and states that the document speaks for itself. To the extent that further answer is required, AT&T Ohio denies the remaining allegations of paragraph 11 of the Complaint.

12. AT&T Ohio states that paragraph 12 of the Complaint characterizes AT&T Ohio and MCI’s ICA and the 2005 Amendment, denies that MCI’s characterization is complete or

accurate, and states that those documents speak for themselves. To the extent that further answer is required, AT&T Ohio denies the remaining allegations of paragraph 12 of the Complaint.

13. AT&T Ohio states that paragraph 13 of the Complaint characterizes AT&T Ohio and MCI's ICA and the 2005 Amendment, denies that MCI's characterization is complete or accurate, and states that those documents speak for themselves. To the extent that further answer is required, AT&T Ohio denies the remaining allegations of paragraph 13 of the Complaint.

14. AT&T Ohio states that paragraph 14 of the Complaint characterizes AT&T Ohio and MCI's ICA and the 2005 Amendment (the latter misidentified as Exhibit D rather than Exhibit C to the Complaint), denies that MCI's characterization is complete or accurate, and states that those documents speak for themselves. To the extent that further answer is required, AT&T Ohio denies the remaining allegations of paragraph 14 of the Complaint.

15. AT&T Ohio denies the first sentence of paragraph 15 of the Complaint, because the 2005 Amendment contained no such provision, and the Amendment speaks for itself. As to the second, third and fourth sentences of paragraph 15, AT&T Ohio neither admits nor denies these allegations as it is without knowledge or information sufficient to form an opinion as to the truth of the allegations, and therefore leaves the Complainant to its proofs.

16. AT&T Ohio denies the first sentence of paragraph 16 of the Complaint. The 2005 Amendment contained no such provision, and the Amendment speaks for itself. As to the second and third sentences of paragraph 16, AT&T Ohio states that these sentences characterize the 2005 Amendment and its Implementation Letter, and those documents speak for themselves. As to the fourth sentence of paragraph 16, AT&T Ohio neither admits nor denies this allegation as it is without knowledge or information sufficient to form an opinion as to the truth of the allegation, and therefore leaves the Complainant to its proofs. AT&T Ohio denies the allegations

contained in the fifth and sixth sentences of paragraph 16 and further states that the Implementation Letter speaks for itself.

17. AT&T Ohio admits this allegation.

18. As to the first sentence of paragraph 18 of the Complaint, AT&T Ohio states that between April 1, 2005 and July 31, 2007, it properly billed MCI the rates for ISP-bound and Section 251(b)(5) set forth in the 2004 and 2005 Amendments and that MCI paid such rates without dispute until June 2006. As to the second sentence of paragraph 18, AT&T Ohio neither admits nor denies this allegation as it is without knowledge or information sufficient to form an opinion as to the truth of the allegation, and therefore leaves the Complainant to its proofs. As to the third sentence of paragraph 18, AT&T Ohio denies that it overcharged MCI during the term of the 2005 Amendment. AT&T Ohio properly billed MCI at the rates set forth in the 2004 and 2005 Amendments.

19. As to the first sentence of paragraph 19 of the Complaint, AT&T Ohio admits this allegation. As to the second sentence of paragraph 19, AT&T Ohio admits that MCI sent AT&T Ohio a written notice of the dispute that is the subject of MCI's Complaint, but states that, upon information and belief, the notice is dated March 18, 2008, rather than March 18, 2005 as alleged. AT&T Ohio admits the allegations contained in the third, fourth and fifth sentences of paragraph 19.

COUNT ONE

20. AT&T Ohio incorporates by reference its responses to paragraphs 1 through 19 above. AT&T Ohio denies that it has breached the ICA and denies that it has billed MCI charges that exceed the charges proscribed by the ICA.

21. This allegation states legal conclusions and references statutes which speak for themselves, so no response is needed by AT&T Ohio. AT&T Ohio further states that the 2003 Agreement was also amended in August 2004 in Case No. 04-1277-TP-AEC.

22. This allegation states legal conclusions and references statutes which speak for themselves, so no response is needed by AT&T Ohio.

23. AT&T Ohio admits this allegation.

24. As to the first sentence of paragraph 24 of the Complaint, AT&T Ohio states that this sentence characterizes the 2005 Amendment, and that document speak for itself. AT&T Ohio denies the allegation contained in the second sentence of paragraph 24.

25. AT&T Ohio denies this allegation.

COUNT TWO

26. AT&T Ohio incorporates by reference its responses to paragraphs 1 through 25 above.

27. AT&T Ohio admits that this allegation accurately quotes portions of Section 4905.22 of the Ohio Revised Code.

28. AT&T Ohio denies this allegation.

29. AT&T Ohio denies the allegations contained in the first, third and fourth sentences of paragraph 29 of the Complaint. As to the second sentence of paragraph 29, AT&T Ohio admits that this allegation accurately quotes portions of Section 4905.61 of the Ohio Revised Code, but denies that this statute is applicable in this proceeding. As to the third sentence of paragraph 29, AT&T Ohio denies that it has violated Section 4905.22 of the Ohio Revised Code and denies that it has charged MCI more than the rates authorized by law for Section 251(b)(5) traffic and ISP-bound traffic.

AFFIRMATIVE DEFENSES

1. MCI's claims may be barred in whole or in part by the applicable statute of limitations.
2. MCI's claims may be barred by the doctrines of waiver, laches and/or estoppel.
3. AT&T Ohio reserves the right to modify or add other affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, AT&T Ohio requests that the Commission grant it the following relief regarding MCI's Complaint:

- (a) that an order be entered in favor of AT&T Ohio on Counts I and II of the Complaint;
- (b) that the Complaint be dismissed with prejudice; and
- (c) such other and further relief as the Commission deems just and proper.

Dated: April 27, 2009

Respectfully submitted,

THE OHIO BELL TELEPHONE COMPANY
D/B/A AT&T OHIO

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Certificate of Service

I hereby certify that a copy of the foregoing has been served by U. S. Mail, first class postage prepaid, and by e-mail, as noted below, this 27th day of April, 2009 on:

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Summary: Answer electronically filed by Jon F Kelly on behalf of AT&T Ohio