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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cavalier Telephone d/b/a Cavalier Business Communications d/b/a Cavalier Telephone & TV for a Waiver of Certain Minimum Telephone Service Standards as set Forth in Chapter 4901:1-5, Ohio Administrative Code.	)	Case No. 09-539-TP-WVR

REQUEST FOR WAIVER AND MEMORANDUM IN SUPPORT OF CAVALIER TELEPHONE D/B/A CAVALIER BUSINESS COMMUNICATIONS D/B/A CAVALIER TELEPHONE & TV

Talk America, Inc. and LDMI Telecommunications, Inc., both of which do business as Cavalier Telephone d/b/a Cavalier Business Communications d/b/a Cavalier Telephone & TV ("Cavalier"), hereby request a waiver of those provisions of the Minimum Telephone Service Standards ("MTSS") Rule 4901:1-5-07(C) ["Rule 7(C)"] limiting authorized payment agent fees to no more than $2.00 per transaction.

Cavalier provides facilities-based telephone services across 16 states. Cavalier provides service to approximately 12,000 Ohio customers. In order to continue to grow its business in today's fiercely competitive telecommunications environment, Cavalier must be responsive to the demands of the customer. Customer convenience is an integral part of that necessary competitive responsiveness. Simply put, customers demand easy and convenient methods for paying their bills for service, and one or two payment options no longer fit the needs of all customers.

In order to meet this demand, Cavalier provides its customers five different payment options: by mail, by phone, by pre-scheduled electronic transfer (autopay), by the internet, and by authorized payment agents. Customers that pay their bill by mail, autopay, or over the internet do so free of any service fee. Customers who pay with a credit or debit card by phone are assessed $1.99 for each payment. Cavalier informs its customers of their payment options through its website, in its customer welcome letter, on the customer bills, on its late payment notice, and on its interactive voice response ("IVR") message when customers call Cavalier. Both the late payment notice and the Welcome Letter indicate to the customer that service and/or processing charges may apply for different forms of payment. Customers are also advised of any applicable service charge at the time a payment is made.

Cavalier has established accounts with four authorized payment agents: Global Express, CheckFree Pay, MoneyGram and Western Union. It is important to note that while Cavalier holds these vendors out to its customers as "authorized payment agents" within the context of the MTSS, these vendors are actually providing a money transfer service to both Cavalier and Cavalier's retail customers. For payments made at Global Express customers currently are charged $1.00 - $1.50; for payments at CheckFree customers are charged $1.00 - $2.00; payments made at MoneyGram located in Wal-Mart stores have a $3.50 fee and MoneyGram at other locations the fee is $3.95; and for payments made at Western Union the fee is $6.50. These fees may vary, depending on location. The fee structure is determined by these money transfer service providers, as well as the local agent for those services. Each of these service providers provides national or global coverage, and Cavalier's arrangements with these service providers cover all of Cavalier's service territories.

Cavalier recently has had discussions with Staff of the Public Utilities Commission of Ohio ("Commission Staff"), Service Quality and Analysis Division, concerning Cavalier's use of outside vendors for the transmission of customer payments. In the course of these discussions, the Commission Staff expressed its opinion that Cavalier must seek a waiver of the requirement that the fee charged by an authorized payment agent be no greater than $2.00. By granting of this waiver request, the Commission would allow Cavalier's customers the continued choice and convenience of using MoneyGram or Western Union to transmit payments. By denying this waiver request the Commission only reduces the choices available to the customers of Cavalier. If the Commission denies this waiver, it will not prevent other consumers of telecommunications services in Ohio from paying similar fees, as explained below. This waiver is sought pursuant to OAC Rule 4901:1-5-2(B)(1) ("Rule 2").

Cavalier seeks a waiver of the $2.00 fee because money transfer vendors may charge more than the $2.00 maximum set forth in Rule 7(C). Currently, among Cavalier's money transfer vendors, MoneyGram and Western Union charge more than $2.00 for their services. The fees charged by these vendors may vary depending on the local agent of the money transfer service provider. Cavalier has no control over such fees or means of obtaining advanced notice when any of its money transfer vendors or their local agents change their fee structures. In a very real sense, these vendors are not "agents" of Cavalier, but are instead providing a service to both Cavalier and Cavalier's customers to act as a payment intermediary. This service contains an aspect of agency both towards the customer, and towards Cavalier. The terms and conditions of the transaction between the transfer service vendor and Cavalier's retail customer are determined by the vendor and the paying customer; the terms and condition of the transaction between Cavalier and the transfer service vendor are determined by Cavalier and the transfer service vendor – Cavalier has no control over the other end of the process.

The relationship that Cavalier has with MoneyGram, Western Union, or any of its money transfer service vendors, differs from a conventional agency relationship in critical aspects, such that the Commission's rule regarding "authorized payment agents" does not really fit the current business relationship between and among Cavalier, its money transfer service agents and Cavalier's retail customers. First of all, neither Cavalier nor Cavalier's retail customers have any control over the fees for service charged by MoneyGram and Western Union and Cavalier does not receive any portion of the fee for payment. These vendors are actually providing a mutual service to both Cavalier and its retail customers who choose, in the first instance, to use the services of a MoneyGram agency or Western Union as an intermediary for their payments to Cavalier. In this context, the transaction is no different than a credit card transaction. However, the fees paid by a customer who chooses to use a credit card can fluctuate wildly according to the terms of the credit card provider and may only be determined after-the-fact, while payments to MoneyGram or Western Union have the virtue of being known by the customer prior to consummating the transaction – there is a conscious choice by the consumer to incur the vendor's charge.

Cavalier's customers have multiple no-cost payment options available, including mailing, online payment service, or having their payment processed through autopay. Customers are clearly informed of these choices. While Cavalier prefers these free and more direct methods of payments, it also understands that some customers need the convenience of payment service providers like MoneyGram or Western Union.

Neither the Commission nor Cavalier have the ability to influence the fees charged by money transfer services like MoneyGram or Western Union, any more than these service providers have the ability to dictate a particular fee to the users of their services. They too are regulated by the marketplace in this regard. Rule 7(C) does not really "fit" the relationship between Cavalier and money transfer service providers like MoneyGram and Western Union. In a conventional agency relationship, Cavalier would have some influence over the terms and conditions of the services provided by these vendors, and the vendors would be acting on behalf of Cavalier as its fiduciaries with respect to the payment transactions. In the case of MoneyGram and Western Union, Cavalier has no such power.

The fee limitation contained in Rule 7(C) has outlived any original useful purpose and now stands only to interfere with the choices available to consumers. The time is now long gone when consumers of monopoly utility services could visit the neighborhood business office of the "telephone company" and make a payment in person free of charge. When the "telephone company" began closing its local business offices, opting instead to use alternative locations to collect "walk-up" payment traffic, it may have made sense to limit the fees charged by those payment locations selected by the utility to receive payments. But just as consumers now have a wide choice in telecommunications providers, they also enjoy a much broader array of payment options than at any time in the past. However, with that array of options and attending convenience, comes a cost. Large payment service providers like Western Union are subject to market forces both in terms of the global financial services they provide, but also in terms of competition for locations such as Wal-Mart, in the case of MoneyGram.

The most compelling reason why Rule 7(C) has outlived its original purpose is the fact that much, if not a majority, of voice telecommunications usage in Ohio is no longer subject to the rule's reach. The Commission is no doubt aware of the fact that commercial mobile radio service ("CMRS") and voice over Internet protocol ("VoIP")-based telecommunications services have grown exponentially over the past several years. This fact is highlighted by the Commission's recent certification of a prepaid CMRS provider as an Eligible Telecommunications Provider for the purposes of the federal Lifeline program. This action was made necessary by the sheer demand for CMRS-based telephone service. However, the consumers of these services will be able to make payments for those Lifeline services at the location of their choice, irrespective of Rule 7(C). At a time when Lifeline customers may choose to receive telecommunications services from providers that are not subject to the MTSS, it is illogical to use Rule 7(C) to arbitrarily limit the choices of consumers who choose to take service from Cavalier. By the same token, Rule 7(C) limits the ability of Cavalier to offer the same range of choices to its customers as can the unregulated telecommunications providers. This patchwork of regulation cannot possibly be thought to serve the public interest for the simple reason that the rule can no longer serve its intended purpose. If the commission denies Cavalier's request for a waiver, it has chosen quite simply to limit the payment options available to Ohio customers who, for whatever reason, may prefer to make a payment at an agent location with full knowledge of the additional fee for doing so.

For all of the foregoing reasons, Cavalier submits that it has shown good cause under Rule 2 for the requested waiver. Therefore, Cavalier requests the Commission to grant it a waiver from Rule 4901:1-5-7(C).

Respectfully submitted on behalf of
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