

**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

**MEMORANDUM CONTRA AND REPLY TO
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
MOTION TO INTERVENE AND COMMENTS**

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") filed on June 29, 2009 with the Public Utilities Commission of Ohio ("PUCO" or "Commission") an Application for a waiver of certain Minimum Telephone Service Standards ("MTSS") as set forth in Chapter 4901:1-5 of the Ohio Administrative Code ("OAC"). Specifically, Cavalier seeks a waiver of Rule 4901:1-5-07(C) ["Rule 7(C)"] limiting authorized payment agent fees to no more than \$2.00 per transaction.

On July 14, 2009 the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Intervene and Comments on Cavalier's Motion for Waiver ("OCC Motion"). While Cavalier does not take a position with respect to OCC's Motion to Intervene, Cavalier is compelled to respond to the OCC's comments concerning Cavalier's waiver request. The OCC's comments serve to highlight the problems created for consumers by Rule 7(C) and underscore why the Commission should grant Cavalier's request for a waiver.

Cavalier does not disagree with the OCC's argument that customers without bank accounts or credit cards may be more likely to rely upon in-person payment centers. OCC at p. 2. The "dilemma" posed by OCC, that consumers who rely upon making payments through either MoneyGram or Western Union are the consumers who least able to afford the payment processing fee, too, is certainly plausible, although there is no data to support that contention. OCC at p. 3. However, it is the position of the OCC that these same consumers that "out of necessity" must rely on MoneyGram or Western Union, should be denied that option through the "protections" of Rule 7(C). *Id.* The inescapable corollary to the OCC's argument is that disconnection of service for non-payment, or making a late payment, is preferable to a "poor choice" on the part of Cavalier's customers. If this corollary is not true, and it is not *essential* that a customer use either MoneyGram or Western Union to pay their bills, but rather a matter of customer choice, then the OCC's position is simply that consumers of circuit switched telecommunications services should not have such choice. This would be true despite the fact that such payment methods are permissible for every other type of utility service, including CMRS and cable-based telecommunications services. Thus, the OCC position neatly frames the Hobson's choice that Rule 7(C) creates— either to deny access to a critical method of payment, or gratuitously interfere with completely discretionary consumer behavior.

As a fallback position, the OCC argues that Cavalier should be required to notify its customers through its website and welcome letter that their charges for telephone service may increase substantially due to these companies' payment processing fees. OCC at p. 12. Here again, the OCC's poorly thought-out position underscores the difficulties for consumers caused by Rule 7(C). First, these fees do not affect a customer's charges for telephone service – this suggestion is simply false. Cavalier does not receive a penny from these payment service

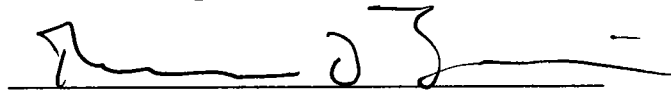
providers. Consumers are paying a third-party intermediary for a service performed on the consumer's behalf, pure and simple. Cavalier informs its customers on both its website and in its welcome letters that payment processors may charge an additional fee. To provide more detail than this would only create a potential for confusion, as Cavalier does not control the charges imposed by these service providers on a national basis, and in certain instances, the national service providers do not control the fees charged by their local agencies. It is highly likely that any specific information that Cavalier could post on its website would be wrong simply because Cavalier cannot accurately ascertain what the charges will be.

This same point holds true for OCC's suggestion that Cavalier be required to "encourage" customers without bank accounts to use lower-cost alternatives – citing money orders as an example. *Id.* While it is unclear what kind of "encouragement" the OCC has in mind, its example shows the difficulties of casting telephone companies in the role of consumer counselors. The OCC's highly informal canvass of available outlets for money orders may show one thing, but other outlets, say commercial banks for instance, may charge much higher fees – even more than the payment fees at MoneyGram or Western Union. This problem shows the complexity of attempting to "steer" a consumer in any particular payment direction. That type of suggestion is simply not within the purview of the telephone company. Most importantly, however, is the fact that Cavalier provides many payment choices, including off-site vendor locations, for the benefits of its customers, not because it is required to do so by the MTSS. Apparently lost on the OCC is that if the Commission were to impose requirements recommended by the OCC on Cavalier, the burden would be such that Cavalier would have no alternative but to simply cease doing business with MoneyGram and Western Union in Ohio. This is a return to the Hobson's choice outlined above – customers will either be denied an

services. The Commission should heed the advice of the OCC: to keep in mind those consumers who have little or no choice but to use payment processing companies for paying bills; however, Cavalier urges the Commission to decline the OCC's invitation to deny those consumers even that limited choice.

WHEREFORE, Cavalier requests the Commission grant the requested waiver of MTSS Rule 4901:1-5-07(C).

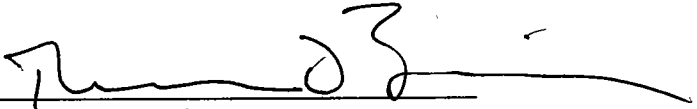
Respectfully submitted on behalf of,
**Cavalier Telephone d/b/a Cavalier Business Communications d/b/a
Cavalier Telephone & TV**

A handwritten signature in black ink, appearing to read 'T. O'Brien', is written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing MEMO CONTRA was served by electronic mail this 17th day of July 2009.


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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/17/2009 4:36:32 PM

in

Case No(s). 09-0586-TP-WVR

Summary: Memorandum Contra and Reply to The Office of the Consumers' Counsel Motion to Intervene and Comments electronically filed by Teresa Orahod on behalf of Cavalier Telephone