

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules to)
Implement Substitute Senate Bill 162.)

Case No. 10-1010-TP-ORD

AT&T ENTITIES' MEMORANDUM CONTRA

I. INTRODUCTION

The AT&T Entities¹ ("AT&T"), by their attorneys, submit this memorandum contra the Motion for Oral Argument and Request for Expedited Ruling ("Motion") filed by the Members of Ohioans Protecting Telephone Consumers ("OPTC") in the captioned proceeding.

II. OPTC'S MOTION SHOULD BE DENIED

A. Continued debate of the issues is unnecessary.

OPTC requests— in its spontaneous filing— that the Commission now allow the parties to address the Commission in the form of oral arguments so as to ensure “proper structure and substance of the rules,” to “assist” the Commission in its deliberations, and to “further delve into the issues.” Motion, pp. 1-2 and Memorandum in Support, p.1.

OPTC’s request should be denied outright for the following reasons.

¹ The AT&T Entities are The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, SBC Long Distance d/b/a AT&T Long Distance, SNET America, Inc. d/b/a AT&T Long Distance East, AT&T Corp. d/b/a AT&T Advanced Solutions, Cincinnati SMSA, L.P., and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility.

First, the language of the statute is clear. The statute explicitly prescribes the statutory requirements: the Commission is directed to implement enabling rules. They are not to establish or debate telecommunications policy. Moreover, additional debate is not necessary. While developing the new legislation, the Legislature conducted numerous discussions, debates and educational hearings with the interested parties involved in this proceeding. Sufficient opportunity was thus provided to exhaustively address the issues. The Commission was an integral part of those forums, was actively involved in writing the new legislation, and is aware of the issues and the legislative intent requiring the promulgation of new telecom rules implementing the new legislation.

OPTC's rationale for oral arguments however, ignores the fact that the Commission, from the outset, has been intimately involved in the legislative process. It assumes the Commission is uninformed and lacks the background necessary to decide the issues and adopt new rules. To the contrary, the Commission has been sufficiently engaged with the debated issues throughout the legislative process and is ready to adopt balanced and well-reasoned rules. OPTC's assumptions lack merit and are misplaced. They offer nothing new and thus do not adequately support adding such an extreme procedural curve at this late point in time.

Moreover, oral argument as a part of the Commission's rulemaking process is unconventional, if not unprecedented. In fact, oral arguments have not been utilized in many years, if ever, in previous telecom rule making proceedings which required the promulgation of more complex, policy-setting, rules. In this proceeding, the modified

telecommunications policy has already been established via the changes made in Sub. S.B. 162. In this rulemaking proceeding, the Commission is promulgating rules to implement the new law—implementing policy that has already been incorporated into the law.

In an attempt to support its request, OPTC cites to Case No. 09-553-EL-EEC as rationale and support for suggesting oral arguments in this rulemaking case. However, the Commission’s effort to better educate themselves on one, narrowly focused issue in that case is not reflective of the situation at hand in this proceeding. The electric case, as such, is irrelevant to this rulemaking proceeding and adds no merit to the rationale for holding oral arguments in this case.

B. Oral arguments are not in the public interest.

Next, OPTC claims that oral arguments are in the “public interest.” Memorandum in Support, p. 1. The Legislature took great care in ensuring that the public interest was served as the new law was being crafted. No less than eight House hearings, nine Senate hearings and numerous interested party meetings were held. The Commission and its staff actively participated in this legislative process, as did certain members of the OPTC. Former Commissioner Fergus, with several members of the Commission’s staff alongside, testified at the Legislature a number of times as did other parties in this case, including certain members of OPTC. There is no question that the public interest has been served. It appears that OPTC seeks oral arguments to further its own self-serving interest— not the public interest— in securing yet another opportunity to continue its

advocacy of what should have been included in Sub. S.B. 162. Oral arguments simply would impose further unnecessary expenses, and a waste of time and resources on the parties, as well as on the Commission. Such a waste of time and effort is not in the public interest.

The Commission does not need to hear OPTC's passionate orations expounding on their philosophical views about how the law should be interpreted yet again. The Commission is fully attuned to the interests of **all** the parties for the purpose of protecting the public's interest, which has been thoroughly vetted throughout the legislative process. Oral arguments are not necessary to ensuring the public interest has been met in this proceeding and so, OPTC's request should be denied.

C. Initial and reply comments clearly state the various parties' positions.

OPTC's next derisory justification for oral arguments is to point out that "the comments and reply comments appeared to be speaking past each other." Memorandum in Support, p. 1. To the contrary, the parties' positions on the issues are clear, and the various parties simply disagree on certain issues. This is hardly unusual. Opposing parties' comments frequently take on opposing viewpoints. The Commission has sufficient experience and familiarity with the issues to decipher opposing parties' initial and reply comments and to separate viewpoints and counter viewpoints. The Commission's role is to consider the various positions within the legislation's clear mandate, which is to promulgate rules to implement the new law, not to debate the policy. The Legislature already did that.

OPTC has not identified any new issues that may have previously been overlooked or addressed. Parties have had the opportunity to thoroughly cover the pertinent issues in their previously filed initial and reply comments. Again, OPTC's request is simply an attempt for it to arrange another forum in which it could voice yet another challenge to that which has already been thoroughly vetted. OPTC had its opportunity to make its impassioned pleas at the hearings it participated in during the legislative process. The request lacks merit and amounts to nothing but a distraction that should be denied.

D. OPTC need not set the agenda for the Commission.

Further, as to the specific agenda for the proposed hearing, OPTC states, "It is to be presumed that the Commission will have its own list of issues as to which it would like to hear parties' focused arguments. But OPTC can suggest a few areas, where the parties' comments seemed to be—intentionally or not— at cross-purposes." Memorandum in Support, p.3. This statement is quite presumptuous on the part of OPTC and makes it exceptionally clear that OPTC desires oral arguments for its own benefit, not necessarily the Commission's. It identifies the specific areas of greatest concern to its own members. OPTC appears to be acting as the regulatory body, identifying what is and what is not necessary in this proceeding, thus usurping the Commission's role and authority.

The Commission has not even had an opportunity to adopt rules, yet the OPTC, unsubstantially, presumes the Commission will produce an inferior product without these additional orations. The various parties have had ample and reasonable opportunity to

make their cases and argue their perspectives. OPTC is no exception. Given that the legislation is very prescriptive and limits the Commission's scope, the Commission has sufficient experience and familiarity with the issues to decipher, consider and incorporate the initial and reply comments and separate viewpoints and counter viewpoints of the various parties in the rules they have yet to adopt. OPTC's request lacks merit and must be denied.

All of the issues were thoroughly explained in each of the parties' initial comments and thoroughly objected to and further discussed by OPTC in its reply comments. Oral arguments at this juncture would merely provide an additional opportunity to continue the sparring OPTC elaborately undertakes in its lengthy reply comments. The parties' positions are clear.

Without further distraction, the Commission should be afforded the opportunity to review the initial and reply comments, and in conjunction with their involvement in legislative process, set forth the appropriate rules that implement and demonstrate the legislation's intent.

III. CONCLUSION

For all of the foregoing reasons, OPTC's motion should be rejected.

Respectfully submitted,

AT&T Entities

By: /s/ Mary Ryan Fenlon

Jon F. Kelly(Counsel of Record)

Mary Ryan Fenlon

AT&T

150 E. Gay St., Room 4-A

Columbus, Ohio 43215

614-223-3302

Its Attorneys

Certificate of Service

I hereby certify that a copy of the foregoing has been served this 19th day of October, 2010 by e-mail or by prepaid first class mail, as noted, on the parties shown below.

/s/ Mary Ryan Fenlon

Mary Ryan Fenlon

The Ohio Telecom Association

Carolyn S. Flahive
carolyn.flahive@thompsonhine.com

The Ohio Cable Telecommunications Association

Benita A. Kahn
bakahn@vorys.com

Stephen M. Howard
smhoward@vorys.com

tw telecom of ohio llc

Thomas J. O'Brien
tobrien@bricker.com

Cincinnati Bell Telephone Company LLC

Jouett K. Brenzel
jouett.brenzel@cinbell.com

Verizon

Carolyn S. Flahive
carolyn.flahive@thompsonhine.com

Charles Carrathers
chuck.carrathers@verizon.com

Ohioans Protecting Telephone Consumers

David C. Bergmann
bergmann@occ.state.oh.us

Terry L. Etter
etter@occ.state.oh.us

Ron Bridges
rbridges@aarp.org

Noel Morgan
nmorgan@lascinti.org

Ellis Jacobs
ejacobs@ablelaw.org

Joseph V. Maskovyak
jmaskovyak@ohiopoverlylaw.org

Michael R. Smalz
msmalz@ohiopoverlylaw.org

Michael A. Walters
mwalters@proseniors.com

First class mail:

Joseph P. Meissner
Legal Aid Society of Greater Cleveland
3030 Euclid, Suite 100
Cleveland, OH 44115

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/19/2010 11:03:06 AM

in

Case No(s). 10-1010-TP-ORD

Summary: Memorandum Contra OCC Motion electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Ohio