

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's )  
Investigation into Intrastate Carrier Access ) Case No. 10-2387-TP-COI  
Reform Pursuant to S.B. 162. )

---

**AT&T'S MEMORANDUM IN REPLY TO THE OFFICE OF THE OHIO CONSUMERS'  
COUNSEL'S MEMORANDUM CONTRA**

---

The AT&T Entities<sup>1</sup> ("AT&T"), by their counsel, hereby submit their Memorandum in Reply to the Memorandum Contra filed by Ohio Consumers' Counsel ("OCC"). OCC challenges the confidentiality of the information that was required to be filed pursuant to the Commission's Entry dated February 23, 2011. On March 18, 2011, a motion for protective order was filed by the AT&T Entities for the purpose of keeping their data maintained under seal at the Commission. A number of other parties to this proceeding filed their data under seal as well. The Commission must disregard OCC's memorandum contra and find that the information filed under seal with the Commission is competitively sensitive and should remain protected as such.

OCC claims that the motions for protective order must be denied because they fail to adequately demonstrate that the information in question is deserving of protection under Ohio Adm. Code 4901-1-24(D) or R.C. Section 1331.61(D). In attempting to make its case, OCC wistfully relies on expired law and policy. First, OCC asserts that much of the data intended to be competitively sensitive is data that has, *until recently*, been filed publicly. (OCC at 3) Second,

---

<sup>1</sup> 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.

OCC argues that companies provide “no reason why information that was publicly filed *for many years* suddenly took on competitive significance in 2010.” (emphasis added) (OCC at 15) And third, OCC takes challenge to information that the AT&T Entities say is “no longer required” to be filed. (OCC at 16)

Much to OCC’s chagrin, the Commission is following new mandates. OCC, however, ignores the **change** in Ohio public policy recently adopted in Sub. S. B. 162, aspects of which are being implemented in this case. In amending the code section governing public utility annual reports, the General Assembly has specified as follows:

Except as provided in division (A)(2)(b) of this section, in the case of a telephone company, including a wireless service provider, the annual report shall be limited to information necessary for the commission to calculate the assessment provided for in section 4905.10 of the Revised Code.  
***The commission shall protect any confidential information in every company and provider report.***

R. C. 4905.14(A)(2)(a) (emphasis added) (eff. September 13, 2010).

Thus, the law **now** recognizes - - and directs the Commission to protect - - telephone company annual report information that is confidential. The fact that some of this information might have been “public” in the past is of no significance. This change is indicative of the Legislature’s sensitivity to the competitive nature of telephone company information in Ohio. OCC either is unaware of, or chooses to ignore, this significant change in the law and public policy governing confidential information.

OCC further takes issues with the fact that some of the carriers publicly filed their information. AT&T Entities should not carry the burden of those other carriers who have made

a discordant procedural decision. It is safe to assume that the circumstances surrounding those particular carriers is different than the circumstances amongst the carriers, including the AT&T Entities, that filed their data under seal. As OCC points out “the motions are startlingly similar, especially with regard to their conclusory language...” (OCC at 3) Certainly, the carriers’ take the same position and use similar language, as many of them have in the past, to make their arguments for confidentiality under the Commission’s rules. OCC’s attempt to brush aside all the carriers’ motions because some carriers did not take the same position is meritless.

It is significant that as of this date the AT&T Entities have entered into non-disclosure agreements with nine other carriers, including the organization representing the small incumbent local exchange carriers. Without question, the carriers believe that their data is proprietary and should be protected from public disclosure. The carriers in this proceeding have taken the time and resources to negotiate and enter into protective agreements. The Commission should consider this as a significant move in support of concluding that the carriers truly believe that their information should be maintained as confidential and that the release or sharing of the information to their competitors, especially in this case, is unwarranted and competitively harmful.

As OCC further notes (at 16), it has been working with carriers to enter into protective agreement in order to gain access to the information that the carriers have filed as confidential. Should the Commission find that the information is confidential neither OCC nor the Commission are harmed. All interested parties have the right to participate in this proceeding according to the Commission’s procedural framework, including the negotiation of protective agreements for access to competitive information.

The Commission should reject OCC's memorandum contra and grant the AT&T Entities' Motion for Protection Order.

Respectfully submitted,

The AT&T Entities

/s/ Mary Ryan Fenlon

Mary Ryan Fenlon (Counsel of Record)

Jon F. Kelly

AT&T Services, Inc.

150 E. Gay St., Room 4-A

Columbus, Ohio 43215

(614) 223-3302

Their Attorneys

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail on the parties listed below on this 8th day of April, 2011.

/s/ Mary Ryan Fenlon

Mary Ryan Fenlon

Ohio Consumers' Counsel

David C. Bergmann  
Terry Etter  
Office of the Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)

Cincinnati Bell

Douglas E. Hart  
Cincinnati Bell Telephone Company LLC  
441 Vine Street, Suite 4192  
Cincinnati, OH 45202  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)

Ohio Cable Telecommunications  
Association

Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43215  
[smhoward@vorys.com](mailto:smhoward@vorys.com)

Benita A. Kahn  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, OH 43215-1008  
[bakahn@vorys.com](mailto:bakahn@vorys.com)

Verizon

Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
[barthroyer@aol.com](mailto:barthroyer@aol.com)

David Haga, Assistant General Counsel  
Verizon  
1320 North Courthouse Road  
Arlington, VA 22201  
[david.haga@verizon.com](mailto:david.haga@verizon.com)

CenturyLink

Zsuzsanna E. Benedek  
CenturyLink  
240 North Third Street, Suite 300  
Harrisburg, PA 17101  
[sue.benedek@centurylink.com](mailto:sue.benedek@centurylink.com)

T-Mobile USA, Inc.

Garnet Hanly  
T-Mobile USA, Inc.  
401 Ninth Street, NW, Suite 550  
Washington, DC 20004  
[Garnet.Hanly@T-Mobile.com](mailto:Garnet.Hanly@T-Mobile.com)

Windstream

Williams Adams  
Bailey Cavalieri LLC  
10 West Broad Street, Suite 2100  
Columbus, OH 43215-3422  
[William.Adams@baileycavalieri.com](mailto:William.Adams@baileycavalieri.com)

Small Local Exchange Carriers Group  
Association

Norman J. Kenard  
Regina L. Matz  
Thomas, Long, Nielsen & Kennard  
P.O. Box 9500  
Harrisburg, PA 17108  
[rmatz@thomaslonglaw.com](mailto:rmatz@thomaslonglaw.com)

The MACC Coalition

Thomas J. O'Brien  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

Sprint Nextel

Diane C. Browning, Counsel  
State Regulatory Affairs  
Sprint Nextel  
6450 Sprint Parkway  
Mailstop KSOPHN0314-3A459  
Overland Park, KS 66251  
[diane.c.browning@sprint.com](mailto:diane.c.browning@sprint.com)

Frontier Communications

Kevin Saville, Associate General Counsel  
Frontier Communications  
2378 Wilshire Blvd.  
Mound, MN 55364  
[Kevin.Saville@FTR.com](mailto:Kevin.Saville@FTR.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/8/2011 2:06:39 PM**

**in**

**Case No(s). 10-2387-TP-COI**

Summary: Reply to OCC's Memorandum Contra the Motions for Protective Order  
electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Entities