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DOCKETING DIVISION Public Utilities Commission of Ohio

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
AT&T Communications of Ohio, Inc.)	
for a Certificate of Public Convenience)	Case No. 96-190-TP-ACE
and Necessity to Provide Local)	
Telecommunications Services)	
in Certain Specified Areas in Ohio.)	

**MEMORANDUM CONTRA
OF
AT&T COMMUNICATIONS OF OHIO, INC.**

Pursuant to Rule 4901-1-35(B) of the Ohio Administrative Code ("O.A.C."), AT&T Communications of Ohio, Inc. ("AT&T") submits this Memorandum Contra to the September 24, 1996 Application for Rehearing of Shiver Security Systems, Unlimited Inc. ("Shiver"). AT&T submits that Shiver has not timely filed its application for rehearing and that the application for rehearing must be dismissed for lack of jurisdiction.

On Thursday, August 22, 1996, this Commission journalized its Opinion and Order in this matter which granted AT&T's application. Shiver is a party in this case.

Section 4903.10, Revised Code requires applications for rehearing to be filed by parties "within thirty (30) days after the entry of the order upon the journal of the commission." The thirtieth day after the August 22, 1996 journalization date fell on Saturday, September 21, 1996. The Commission was not open for business on that day and thus, the next regular business day on which the Commission was open for business was Monday, September 23, 1996. Shiver attempted to send its application for rehearing to the Commission by facsimile on Monday, September 23, 1996. But Rule 4901-1-02(A)(10) of the O.A.C. provides that "an application for rehearing which

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may be filed under Section 4903.10 of the Revised Code may not be delivered to the Commission for filing via facsimile.”¹ The original application for rehearing arrived at the Docketing Division via U.S. Mail on Friday, September 23, 1996. Thus, Shiver did not file its application for rehearing within the statutorily mandated time period which ended September 23, 1996.

The Commission has no jurisdiction to entertain applications for rehearing filed out of time. See Dover v. Public Util. Comm. (1933) 126 Ohio St. 438, 185 N.E. 833; Pollitz v. Public Util. Comm. (1918) 98 Ohio St. 445, 121 N.E. 902. The Commission itself has recognized that it has no jurisdiction to entertain such applications for rehearing filed out of time. See In re Toledo Edison Company, Case No. 77-379-EL-FAC, Entries, April 12, 1978 and May 25, 1978. Thus, the Commission is without jurisdiction to consider the Application for Rehearing of Shiver in this case and should issue an Entry accordingly.

In the alternative, even if the Commission deems the application for rehearing to be timely filed, AT&T submits that it should be denied. In its Application for Rehearing, Shiver sets forth five grounds in which it submits that the August 22, 1996 Opinion and Order is unjust, unreasonable and/or unlawful. Grounds 1, 2, 4 and 5² were previously raised by Shiver³ and were discussed, analyzed and rejected by the Commission at pages 8-12 of its August 22, 1996 Opinion and Order. Thus, Shiver has not raised any issue in grounds 1, 2, 4 and 5 that was not previously considered and addressed by the Commission. These grounds for rehearing must be rejected.

¹ Even if applications for rehearing were permitted to be filed via facsimile, Shiver did not comply with other aspects of the rule requiring the filing of a signed original and copies the next business day.

² Ground 1 was that the Commission modified and/or waived the requirements of Ohio Revised Code Section 4905.24 in violation of Ohio Revised Code Section 4927.03(B). Ground 2 is that the record did not support a finding that AT&T's local telephone service is proper and necessary for the public convenience at this time because it does not yet have an interconnection agreement. Ground 4 is that the Commission made findings on issues which were excluded from the hearing including, but not limited to, the absence of interconnection agreements affecting Shiver. Ground 5 is that the Commission improperly granted a certificate because AT&T's technical and financial ability to provide service is based on interconnection agreements which AT&T does not yet have in its possession.

³ Shiver's Memorandum in Support of its Application for Rehearing duplicates its July 22, 1996 Reply Brief.

In its third ground, Shiver alleges that the "Commission used improper criteria for granting a certificate and the right to operate under that certificate because it permitted affidavits to be submitted after the hearing and neither of the affiants who submitted affidavits submitted testimony at the hearing nor were they subject to cross-examination by Shiver or parties at the hearing." Shiver is mistaken.

The criteria employed by the Commission for granting AT&T a certificate is the same criteria that has been used in all other local certificate cases: the managerial, technical and financial capabilities of a new applicant. AT&T submitted the testimony of two witnesses at the June 25, 1996 hearing. Counsel for Shiver cross-examined those witnesses. Neither Shiver nor any other intervenor produced any evidence. At page 11 of its August 22, 1996 Opinion and Order, the Commission found that "there is sufficient evidence of record to conclude that AT&T is managerially, technically, and financially fit to provide the proposed services at this time." Of course, the affidavits were not filed until September 16, 1996; the Commission based its conclusion on the record as it stood at the close of the hearing, not on the post-hearing affidavits.

The September 16, 1996 affidavits of two AT&T officers were required, not "permitted". They were required by the Commission (as in all local certificate cases) to ensure that new applicants such as AT&T will (1) fully abide by all terms, conditions, guidelines, and decisions adopted by the Commission relating to the provision of local exchange service and (2) continue to have sufficient financial resources available to satisfy public utility obligations. AT&T submitted the September 16, 1996 affidavits in response to the Commission's second ordering paragraph of the August 22, 1996 Opinion and Order.

Thus, the Commission did not use improper criteria or base its decision on post-hearing affidavits. The affidavits were filed in response to a standard Commission requirement in order to protect the public interest. This ground must likewise be rejected.

WHEREFORE, AT&T respectfully requests that the Commission dismiss Shiver's application for rehearing for lack of jurisdiction, or, in the alternative, deny the application for rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra of AT&T Communications of Ohio, Inc. was served upon the following individuals either by first class mail, postage prepaid or by hand delivery, this 3rd day of October, 1996:

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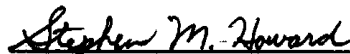
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