

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Cincinnati Bell Telephone Company LLC)	
for Waiver of Certain Minimum)	Case No. 08-1124-TP-WVR
Telephone Service Standards)	
Pursuant to Chapter 4901:1-5, Ohio)	
Administrative Code.)	

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned proceeding where the PUCO will consider the request of Cincinnati Bell Telephone Company LLC ("CBT") to avoid paying credits to customers who experienced a service outage. This Motion is filed pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The reasons for granting OCC's motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission’s Minimum Telephone Service Standards (“MTSS”) require local exchange carriers (“LECs”) to provide credits for customers if service outages are not repaired in the time required by the MTSS, or if LECs miss commitments or appointments to repair customers’ service. Under Ohio Adm. Code 4901:1-5-08(C)(1) (“Rule 8(C)(1)”), LECs must credit one full month of a customer’s regulated local service charges if the customer’s service is out more than 72 hours, including weekends and holidays. Ohio Adm. Code 4901:1-5-08(C)(2) (“Rule 8(C)(2)”) requires LECs to credit at least one-half of a customer’s monthly regulated service charges if the LEC fails to meet a repair commitment or repair appointment with the customer.

Under the MTSS, a LEC may ask for permission to add 48 hours to the timeframes for calculating the customer credits under Rules 8(C)(1) and 8(C)(2) if either of two conditions exist: the LEC experiences “at least a 300% increase in the number of out-of-service reports as compared to the average number of out-of-service reports for the

affected month(s) of the three previous years,”¹ or there was a “declaration of a state of emergency by the governor or a duly authorized county official for the county in which the exchange is located.”² Only exchanges that had at least ten daily out-of-service reports are eligible for a “grace period.”³

On September 26, 2008, CBT filed the above-captioned application for waiver. Because Governor Strickland declared a state of emergency for Ohio due to the windstorm that occurred in the state on September 14,⁴ CBT seeks a “grace period” for calculating credits that customers may be entitled to under Rules 8(C)(1) and 8(C)(2) for outages that occurred between September 14 and 19, 2008.⁵ CBT seeks the “grace period” for all 12 of its exchanges.⁶

A “grace period” could have the effect of reducing, or even eliminating, credits for which CBT customers, who had to endure service outages during the September 14-19 timeframe, would be eligible. The Commission should grant OCC’s Motion to Intervene so that OCC can fully participate in this proceeding and protect the interests of CBT’s residential customers.

¹ Ohio Adm. Code 4901:1-5-08(D)(1)(a).

² Ohio Adm. Code 4901:1-5-08(D)(1)(b).

³ Ohio Adm. Code 4901:1-5-08(D)(2).

⁴ Application at 1.

⁵ Id. at 1.

⁶ Id. CBT’s exchanges are Bethany, Bethel, Cincinnati, Clermont, Harrison, Hamilton, Little Miami, Newtonsville, Reily, Seven Mile, Shandon, and Williamsburg.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent the interests of the residential telephone customers in the state of Ohio, pursuant to R.C. Chapter 4911.

OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

R.C. 4903.221 allows for intervention by persons who may be adversely affected by PUCO proceedings. Because CBT is seeking the ability to avoid or reduce credits that may be due residential customers under Rules 8(C)(1) and/or 8(C)(2) for the September 14-19 timeframe, the interests of residential telephone customers may be "adversely affected" by this case, especially if the consumers are unrepresented. Thus, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is to ensure that CBT's residential customers receive the credits that may be due them under Rules 8(C)(1) and/or 8(C)(2). Therefore, it is essential that the interest of residential customers be represented.

Second, OCC's legal positions include that residential customers should receive credits due them under the MTSS unless LECs meet the standards for waivers set by the

Commission's rules, as interpreted in Commission case law. This legal position directly relates to the merits of the case.

Third, OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the PUCO's effective treatment of the Application. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of the case.

Fourth, OCC will significantly contribute to the full development and equitable resolution of the issues herein, based on its expertise in regulatory and telephone matters.

OCC also satisfies the intervention criteria in the PUCO's rules, which are subordinate to the Ohio Revised Code criteria that OCC satisfies. To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a real and substantial interest in this case where the outcome could reduce or eliminate MTSS credits that are due residential customers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC has already addressed, and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion because OCC has been uniquely designated as the statutory representative of the interests of Ohio's residential utility consumers.⁷ That interest is different from, and not represented

⁷ R.C. Chapter 4911.

by, any other entity in Ohio. In addition, OCC has participated in numerous other cases involving requests for MTSS waivers.⁸

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁹

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of CBT's residential consumers, the Commission should grant OCC's Motion to Intervene.

III. CONCLUSION

CBT is seeking to reduce or eliminate MTSS credits for which some of CBT's residential customers who had to endure service outages during the September 14-19, 2008 timeframe may be eligible. Thus, this proceeding can adversely affect residential customers of CBT. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of CBT's residential customers who have an interest in the outcome of this case.

⁸ Previous waiver requests were filed in the PUCO's MTSS generic rulemaking dockets (05-1102-TP-ORD ("05-1102") and 00-1265-TP-ORD), and thus OCC's intervention was not necessary. Most recently, OCC participated in cases involving "grace period" requests filed by Verizon North Inc. on April 2, 2008 and on March 18, 2008 in 05-1102 (these were also filed in Case No. 07-511-TP-UNC, in which OCC was granted intervention by the Finding and Order adopted on May 2, 2007, at 5).

⁹ *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 18-20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Intervene by the Office of the Ohio Consumers' Counsel was sent by First Class United States Mail, postage prepaid, to the persons listed below on this 2nd day of October 2008.

/s/ Terry L. Etter _____
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel