

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of AT&T)
Ohio for a Waiver of Division (B) of) Case No. 20-1139-TP-WVR
Section 4901:1-6-15, Ohio Administrative)
Code.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ where the Public Utilities Commission of Ohio ("PUCO") will consider the June 8, 2020 request of AT&T Ohio² to cease providing free printed directories to its basic local service customers.

OCC is filing on behalf of the millions of residential customers of AT&T Ohio. The reasons the PUCO should grant OCC's Motion to Intervene are further set forth in the attached Memorandum in Support.

¹ RC 4911.

² AT&T Ohio, AT&T Corp., and Teleport Communications America, LLC (collectively, "AT&T"). *See* Application at 1.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ David C. Bergmann

David C. Bergmann (0009991)

Counsel of Record

Amy Botschner O'Brien (0074423)

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor

Columbus, Ohio 43215

Telephone [Bergmann]: (614) 466-9569

Telephone [Botschner O'Brien]: (614) 466-9575

David.bergmann@occ.ohio.gov

Amy.botschner.obrien@occ.ohio.gov

(willing to accept service by e-mail)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of AT&T)
Ohio for a Waiver of Division (B) of) Case No. 20-1139-TP-WVR
Section 4901:1-6-15, Ohio Administrative)
Code.)

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

On June 8, 2020, AT&T³ filed an application to cease providing free printed directories to its basic local service customers, this would require a waiver of Section 4901:1-6-15(B), Ohio Administrative Code.⁴ AT&T wants to deprive those most in need of printed directories – subscribers to basic local service (low-income, elderly, etc.) of those directories. Those customers’ need for directories is why PUCO adopted the rule in the first place.⁵

OCC has authority under R.C. Chapter 4911 to represent the interests of the residential utility customers of AT&T.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, where the ease of their access to directory information would be limited. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

³ AT&T Ohio, AT&T Corp., and Teleport Communications America, LLC (collectively, “AT&T”). *See* Application at 1.

⁴ “Upon customer request, a LEC providing BLES shall make available to BLES customers the option to have a printed directory at no additional charge.”

⁵ *See* Case No. 10-1010-TP-ORD, Opinion and Order (October 27, 2010) at 22-23.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential customers where AT&T has requested the ability to limit customers' right to have printed directories. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include, among other things, advancing the position that AT&T should not be allowed a waiver of the PUCO's rules requiring directories. OCC's position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.⁶

Fourth, OCC's intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC will obtain and develop information that

⁶ In its Application, AT&T seeks a PUCO decision "before January 1, 2021."

the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where AT&T residential customers, especially lacking access to the Internet, will lose their directories.

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), which OCC already has addressed, and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO 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 in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.⁷

⁷ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 Ohio residential customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ David C. Bergmann
David C. Bergmann (0009991)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Bergmann]: (614) 466-9569
Telephone [Botschner O'Brien]: (614) 466-9575
David.bergmann@occ.ohio.gov
Amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic transmission, this 29th day of June 2020.

/s/ David C. Bergmann

David C. Bergmann

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

John.jones@ohioattorneygeneral.gov

Mo2753@att.com

jonfkelly@sbcglobal.net

Attorney Examiner:

Jay.agranoff@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/29/2020 3:44:55 PM

in

Case No(s). 20-1139-TP-WVR

Summary: Motion Motion to Intervene by The Office of The Ohio Consumers' Counsel
electronically filed by Mrs. Tracy J Greene on behalf of David C. Bergmann