**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |
| --- | --- |
| GRANITE TELECOMMUNICATIONS, LLC,Complainant,v.OHIO Bell Telephone Company D/B/A AT&T OHIO  Defendant. | Case No. 17-1713-TP-CSS |
|  |  |

**MOTION FOR LEAVE TO FILE**

**AMENDED COMPLAINT OF GRANITE TELECOMMUNICATIONS, LLC**

Pursuant to Ohio Admin. Code Section 4901-1-06, Granite Telecommunications, LLC, (“Granite”) by and through its undersigned counsel, respectfully submits this Motion for Leave to File Amended Complaint against Ohio Bell Telephone Company d/b/a AT&T Ohio (“Amended Complaint”)[[1]](#footnote-1) seeking resolution of a dispute between Complainant and Defendant arising out of the Defendant’s unjust, unreasonable and discriminatory pricing practices in the provision of wholesale voice services, which harm competition and consumers in Ohio and across the nation.

# **BACKGROUND**

1. On August 1, 2017, Granite Telecommunications, LLC (“Granite”) filed a complaint (“Complaint”) against Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T”) in the above-referenced proceeding. In its Complaint, Granite explained that AT&T has been exploiting its status as a monopoly provider of wholesale voice services in multiple locations in Ohio to eliminate Granite as a competitive threat in the provision of communications platforms to businesses that operate in Ohio and whose business AT&T would like to obtain for itself. *See* Complaint ¶¶ 5-23. Granite explained that this conduct violates the prohibitions against unjust, unreasonable, unreasonably discriminatory, and unreasonably preferential charges and practices set forth in Ohio Public Utilities Code Sections 4905.02, 4905.04, 4905.26, 4905.31, 4905.32, and 4927.21 and Sections 201 and 202 of the Communications Act of 1934, as amended. *See id*. ¶¶ 24-43.
2. On August 21, 2017, AT&T filed an Answer to Complaint, Motion to Dismiss Complaint, and a Memorandum in Support of its Motion to Dismiss Complaint. Granite is filing a Memorandum Contra AT&T’s Motion to Dismiss (“Granite Memorandum”) on the same day it is filing this Motion.
3. In its Memorandum, Granite explains that AT&T’s arguments in support of its Motion to Dismiss Complaint are without merit. Among other things, Granite explains that AT&T is incorrect in asserting that the terms of O.R.C. § 4927.03(C) deprive the Commission of jurisdiction to rule on claims that Granite brought under O.R.C. §§ 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35. *See* Granite Memorandum at 9-11. But Granite also explains that, if the Commission determines that it does not have the authority to consider Granite’s claims alleging violations of §§ 4905.04, 4905.22, 4905.26, 4905.31, 4905.32, 4905.33, and 4905.35, the Commission may still apply those provisions in considering the Granite Complaint under O.R.C. § 4927.21. *See id*. at 11.
4. In addition, Granite explains in its Memorandum that it has both an interconnection agreement with AT&T, which is governed by Sections 251 and 252 of the Communications Act, as well as a Local Wholesale Complete (“LWC”) Agreement, which is not governed by Sections 251 and 252 or any other federal or FCC rule or policy. *See id*. at 12. Granite clarifies that its Complaint is based on its LWC Agreement with AT&T, not its interconnection with AT&T. *See id.* Nevertheless, the Fourth Claim in Granite’s Complaint alleges violations of Section 251(c)(4) and Ohio Administrate Code 4901:1-7(E), which implements Section 251(c)(4). *See* Complaint ¶¶ 34-37.
5. Finally, Granite explains in its Memorandum that AT&T is incorrect in asserting that Granite failed to allege the facts necessary to assert a violation of O.R.C. §§ 4905.33 and 4905.35. *See* Granite Memorandum at 24-27.

# **ARGUMENT**

1. Granite’s original Complaint demonstrated reasonable grounds for its claims. Nevertheless, Granite seeks leave to amend its Complaint in order address a number of AT&T objections to its original Complaint by clarifying the specific bases and theories upon which its Complaint is founded.
2. The Amended Complaint contains four primary changes to Granite’s original Complaint in this proceeding. First, Granite has added a claim alleging that AT&T’s existing and proposed rates and practices under the existing and proposed LWC Agreements are unjust, unreasonable, and unjustly discriminatory under O.R.C. § 4927.03(C). *See* Amended Complaint ¶¶ 41-42.
3. Second, Granite has added language clarifying that, while Granite and AT&T have an interconnection agreement in Ohio and an LWC Agreement, Granite’s complaint pertains only to the LWC Agreement. *See* *id.* ¶ 14. As such, Granite’s claims are not based on a violation of Sections 251 and 252 of the Communications Act or Commission rules implementing that those provisions. *See id*. ¶ 14 n.3. Consistent with that approach, Granite has removed from the Amended Complaint the Fourth Claim in the original Complaint because that claim alleged a violation of Section 251(c)(4) and Ohio Administrate Code 4901:1-7(E), which implements Section 251(c)(4).
4. Third, Granite has provided a more detailed explanation of the manner in which AT&T’s prices and practices violate the prohibitions against discrimination and preferences in O.R.C. §§ 4905.33 and 4905.35. *See id*. ¶¶ 20, 36-39.
5. Fourth, Granite added a prayer for relief asking that the Commission mandate changes to the wholesale prices that AT&T charges Granite under the existing and future LWC Agreements, as needed, to ensure that those rates are just, reasonable, not unjustly or unreasonably discriminatory or preferential. *See id.* at 22.
6. There is ample basis under Ohio law to permit these amendments. Ohio Admin. Code section 4901-01-06 provides that this Commission, its legal director or the attorney examiner may, upon their own motion or upon motion of any party, for good cause shown, authorize the amendment of any complaint or other pleading. Commission precedent and Ohio public policy suggest that, upon a demonstration of good cause, leave to amend will be liberally granted. *See, e.g.*, *Rooms, Inc. et al. v. Ameritech Ohio, Inc.*,No. 95-316-TP-CSS, [1995 Ohio PUC LEXIS 388](https://advance.lexis.com/api/document/collection/administrative-materials/id/3SF5-R0T0-000G-83DT-00000-00?cite=1995%20Ohio%20PUC%20LEXIS%20388&context=1000516), Opinion at \*3 (Ohio P.U.C. May 12, 1995) (motion to strike amended pleading denied even though leave to amend had not expressly been sought.); *Stancourt v. Worthington City Sch. Dist. Bd. of Educ.*,164 Ohio App. 3d 184, 204, 841 N.E.2d 812, 831 (2005) (Ohio law favors the disposition of cases on their merits, and a hearing officer should dismiss a case with prejudice only where the conduct of a party is negligent, irresponsible, contumacious or dilatory so as to provide substantial grounds for dismissal with prejudice.).
7. Granite’s proposed amendments meet the good cause standard for approval. Refining and clarifying the claims in the Complaint will help ensure that the appropriate legal principles apply to the dispute between Granite and AT&T. It is therefore more likely that this proceeding will produce a just result. Such clarification will also make it more efficient for the parties and the Commission to review Granite’s claims because attention and resources will not be expended unnecessarily on clarifying Granite’s claims and the relevant legal standards.
8. Moreover, allowing Granite to amend its Complaint at this stage in the proceeding will not harm AT&T or the Commission. To begin with, Granite has eliminated the Fourth Claim in Granite’s original Complaint (alleging violation of Section 251(c)(4) and Ohio Administrate Code 4901:1-7(E)), thus obviating the need for AT&T to address that issue. Moreover, the Amended Complaint will render moot AT&T’s motion to dismiss, conserving the resources of the parties and this Commission, and permitting this matter to proceed to an expeditious determination of the merits. *See* *Complaint of Sprint Communications Company, L.P. v. Ameritech Ohio*, No. 96-142-TP-CSS, [1996 Ohio PUC LEXIS 179](https://advance.lexis.com/api/document/collection/administrative-materials/id/3SF5-PXY0-000G-82FT-00000-00?cite=1996%20Ohio%20PUC%20LEXIS%20179&context=1000516), at \*2 (Motion to dismiss rendered moot by Amended Complaint); *Kemper v. German Body Shop*, No. 09CVH-15514, [2009 Ohio Misc. LEXIS 9170, at \*5 (Franklin Cty. C.P. 2009)](https://advance.lexis.com/api/document/collection/cases/id/5HPG-FNV1-F04J-80MM-00000-00?cite=2009%20Ohio%20Misc.%20LEXIS%209170&context=1000516) (Amended complaint rendered motion to dismiss first complaint moot). Finally, Granite has sought to amend its Complaint at an early stage in this proceeding. By filing this Motion on the same day as Granite’s Memorandum, the Commission may rule on the Motion before the deadline for AT&T’s response to Granite’s Memorandum. This minimizes the resources that AT&T must expend in addressing the original Complaint.

# **PRAYER FOR RELIEF**

WHEREFORE, Granite respectfully requests that the Commission grant Granite’s request for leave to file the Amended Complaint.

Respectfully Submitted,

|  |  |
| --- | --- |
|  | /s/ Michael D. Dortch sMichael D. Dortch (0043897)Richard R. Parsons (0082270)Justin M. Dortch (0090048)KRAVITZ, BROWN & DORTCH, LLC65 East State Street, Suite 200Columbus, Ohio 43215Tel: 614-464-2000Fax: 614-464-2002E-mail: mdortch@kravitzllc.com*Counsel for Granite Telecommunications, LLC* |
|  |  |
|  |  |

**CERTIFICATE OF SERVICE**

The PUCO’s e-filing system will serve notice of this filing upon all parties of record registered with the PUCO’s e-filing system.

Further, I hereby certify that a true and accurate copy of the foregoing was served upon the following counsel for AT&T on Thursday, September 07, 2017, by electronic mail:

Mark R. Ortlieb J. Tyson Covey

AT&T Services, Inc. Mayer Brown LLP

mo2753@att.com jcovey@mayerbrown.com

 /s/ Michael D. Dortch

 Michael D. Dortch

1. The Amended Complaint is attached hereto as an Appendix. [↑](#footnote-ref-1)