

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of AT&T Ohio)
For Waiver of Certain Minimum Telephone Service) Case No. 09-42-TP-WVR
Standards Pursuant to Chapter 4901:1-5, Ohio)
Administrative Code.)

**MOTION TO INTERVENE
AND
MEMORANDUM CONTRA AT&T OHIO'S MOTION FOR A WAIVER OF
OHIO ADMINISTRATIVE CODE SECTION 4901:1-5-03(B)
TO CEASE ITS ROUTINE DISTRIBUTION OF
WHITE PAGES DIRECTORIES TO CONSUMERS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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February 4, 2009

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The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where AT&T Ohio (also referred to as “the Company”) proposes to cease the longstanding distribution of white pages directories to consumers, as required by Ohio Adm. Code 4901:1-5-03(B) (“Rule 3(B)”)¹. Instead, AT&T Ohio would make directory information available, without charge, on its website and provide customers a printed directory, without charge, upon request.² OCC is filing on behalf of AT&T Ohio’s residential consumers. The reasons the Public Utilities Commission of Ohio (“Commission” or “PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

¹ See AT&T Ohio’s Motion for a Waiver of Ohio Administrative Code Section 4901:1-5-03(B) (January 20, 2009) (“Waiver Request”) at 5. OCC seeks intervention pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

² Waiver Request at 5-6.

In addition, OCC files a memorandum contra AT&T Ohio's proposal.³ AT&T Ohio does not propose to provide consumers with the same protections that the Commission recently put in place for a similar proposal by the Cincinnati Bell Telephone Company ("CBT").⁴ In particular, AT&T Ohio does not propose to inform new customers that they may receive a printed directory without charge. If the Commission decides to grant AT&T Ohio a waiver of Rule 3(B), the Commission should ensure that all consumers are aware of the availability of a free printed directory.

Respectfully submitted,

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³ OCC files the memorandum contra pursuant to Ohio Adm. Code 4901-1-12(B)(1).

⁴ *In the Matter of the Application of Cincinnati Bell Telephone Company LLC for Waiver of Certain Minimum Telephone Service Standards Pursuant to Chapter 4901:1-5, Ohio Administrative Code*, Case No. 08-1197-TP-WVR, Finding and Order (January 7, 2009) ("CBT Order"). AT&T Ohio does not characterize its Waiver Request as a "me too" waiver, which is a request "based **solely** on circumstances which have already been found to be sufficient for a grant of the waiver in a prior case." *In the Matter of the Commission Investigation into the Implementation of Sections 4927.01 to 4927.05, Revised Code as They Relate to Competitive Telecommunications Services*, Case No. 89-563-TP-COI, Finding and Order (October 22, 1993), 1993 WL 500056 (Ohio P.U.C.) (emphasis added).

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
AND
MEMORANDUM CONTRA AT&T OHIO’S MOTION FOR WAIVER**

I. INTRODUCTION

Rule 3(B) requires local exchange carriers (“LECs”) to annually provide customers with either a free printed white pages directory or free directory assistance. In lieu of a printed directory, LECs may give customers the option to request an electronic directory, where available, at no charge.

On January 20, 2008, AT&T Ohio filed with the PUCO a motion for a waiver of Rule 3(B). AT&T Ohio proposes to cease the longstanding distribution of white pages directories to consumers and, instead proposes to make directory information available, without charge, on its website.⁵ The Company proposes to ship printed white pages directories, “at no charge and without any shipping or handling fees,” to customers who request a printed directory by calling a toll-free number.⁶ AT&T Ohio proposes to use informational inserts in its yellow pages directory to notify customers that printed white

⁵ See Waiver Request at 5.

⁶ Id. at 6.

directories would be available upon request.⁷ AT&T Ohio's proposal apparently is not based on empirical data, but on the Company's belief "that customers have become less reliant on, and have less interest in, these directories...."⁸ AT&T Ohio does not address whether it will also provide free directory assistance over the telephone in lieu of a printed directory. In addition, the Company's proposal does not address how new AT&T Ohio customers would be notified of the availability of printed directories.

OCC has several concerns about the Company's proposal. Rather than making the availability of printed directories the default option for customers, the proposal would require customers to "opt in" to receive AT&T Ohio's printed directory. Thus, customers who have come to rely on a printed directory, which for many would be decades of use of the white pages, might not realize that they must ask for one. To protect consumers through a gradual transition, the Commission should, at a minimum, provide for AT&T Ohio to defer the "opt in" provision so that consumers are automatically provided directories for at least two years into the future, if not longer. During the transition period, the Company should provide notice and information to customers about the potential upcoming change regarding the distribution of directories and should invite public comment to the PUCO and OCC.

If the Commission grants AT&T Ohio's Waiver Request in some form, the Commission should ensure that alternative methods of directory information maintain the consumer protections found in the Minimum Telephone Service Standards ("MTSS"). The Company should be required to ship printed directories so that they arrive to the requesting customer within seven days of the request. The Company should also be

⁷ Id. at 6-7.

⁸ Id. at 2.

required to notify customers of the change in policy through a variety of means, instead of only through its yellow pages directory. And, any customer notice should state whether AT&T Ohio will provide directory assistance over the telephone free of charge.

II. MOTION TO INTERVENE

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 consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding that would give AT&T Ohio the authority to provide electronic directory information in lieu of a printed directory. Thus, OCC satisfies this element of the intervention standard in R.C. 4903.221.

R.C. 4903.221(B) requires the Commission 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 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 representing AT&T Ohio’s residential consumers in order to ensure that they receive all the protections of the MTSS, including with regard to the availability of the white pages directory. This interest is different from that of any other party and especially different than that of AT&T Ohio, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that consumers should have adequate access to all the information found in white pages directories. OCC's position is therefore directly related to the merits of this case that 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 proceeding. 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.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case where AT&T Ohio is seeking the ability to alter the means by which consumers obtain the information that the Commission requires to be contained in white pages 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) that OCC already has 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 in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

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 Further, OCC was granted intervention in the CBT white pages directory case,¹⁰ the subject matter of which was similar to the subject of this proceeding.

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 consumers, the Commission should grant OCC’s Motion to Intervene.

III. THE APPLICABLE LAW AND STANDARD OF REVIEW FOR MTSS WAIVERS

Rule 3(B) requires LECs to annually supply their customers with directory information through one of the following means:

- (1) A printed directory(ies) that must include, at a minimum, all published telephone numbers in current use within the ILEC local calling area. Upon a customer’s request, each LEC shall provide, free of charge, an applicable directory(ies) for all exchanges which are

⁹ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

¹⁰ CBT Order at 7.

within the ILEC local calling area, including any exchanges that are within the local calling area as a result of extended area service. The printed directory shall be provided free of charge to customers. LECs may give customers the option to request an electronic directory, where available, in lieu of a printed directory, but if they make this option available, LECs must, in this instance, provide the electronic directory at no charge.

(2) Free directory assistance for all published telephone numbers in current use within the ILEC local calling area. In addition, the LEC shall include on its web site the printed information required by paragraph (C) of rule 4901:1-5-03 of the Administrative Code. An annual notice shall also inform customers that, in lieu of a printed directory, they will be provided free directory assistance for all telephone numbers in current use within their local calling area.

Ohio Adm. Code 4901:1-5-03(C) ("Rule 3(C)") states:

At a minimum, LECs shall include the following information prominently in the front of the directory:

(1) Instructions for calling: emergency 9-1-1 services, the local police, the state highway patrol, the county sheriff and fire departments, the Ohio relay service, operator service, and directory assistance.

(2) A list of all of the area codes included in the directory.

(3) A list of all of the LECs utilizing the directory, including each provider's toll-free business and customer service number.

(4) Instructions on placing long distance calls.

(5) A verbatim printing of the telephone customer rights and responsibilities as set forth in the appendix to this rule. This same information must also appear on the company's web site.

(6) A toll-free number to request additional information.

(7) A description of program-based or income-eligible telephone assistance programs.

(8) Information on what customers can do in the event they receive obscene or harassing calls, including information about call trace and annoyance call bureau services, where available.

(9) A description of a network interface device (NID). That description shall include: all customer options for repairing inside wire; the function and probable location of a NID; and an explanation as to how

to use a NID to test for service problems. The explanation shall also detail the customer's rights and responsibilities concerning NID installation if a NID is not present on the premise and the customer's responsibility to utilize a NID to diagnose service problems or risk a service fee.

Under Ohio Adm. Code 4901:1-5-02(B)(1), the Commission may waive these requirements "[f]or good cause shown...." Under Ohio Adm. Code 4901:1-5-02(B)(2), the Commission may, "[a]s it deems necessary in any proceeding, prescribe different standards for the provision of any telecommunications services the commission regulates."

IV. MEMORANDUM CONTRA

In adopting Rule 3(B), the Commission made clear that "unless the LEC chooses to provide free directory assistance in accordance with adopted Rule 3(B)(2), the LEC shall always provide each customer the option to receive a free printed directory. ... [I]t is not within the LEC's discretion to force customers, in any given area, to accept an electronic directory in lieu of a printed directory."¹¹ Thus, the Commission retained printed directories as the primary means for LECs to distribute directory information, with the use of electronic directories in lieu of printed directories being at the **customer's** discretion under Rule 3(B)(1).

AT&T Ohio's proposal would turn Rule 3(B)(1) on its head. Rather than automatically receiving a printed directory, customers would have to request a printed directory in lieu of using the electronic directory on AT&T Ohio's website. The Commission should not allow AT&T Ohio to force customers to accept its electronic

¹¹ *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 05-1102-TP-ORD, Entry on Rehearing (July 11, 2007) at 12-13.

directory. The Commission should not approve the Waiver Request at this time. But, in the event the Commission is inclined to approve the Waiver Request, it should require adequate time for customers to adapt to not automatically receiving a printed directory and should ensure that consumers are adequately informed regarding the need to “opt in” to receiving a printed directory.

A. The Commission Should Deny the Waiver Request in Order to Review Whether AT&T Ohio’s Proposal Is Justified.

The Company did not propose a specific timetable for implementing its shift from printed to electronic directories. The Commission, however, should not allow AT&T Ohio to implement its proposal without giving consumers an adequate opportunity to adapt to the changing environment.

For decades consumers have come to rely on a white pages directory for more than just telephone numbers. The white pages directory contains valuable information – required by Rule 3(C) – regarding how to contact the LEC for repair, billing and other purposes, and provides customers with quick access to emergency and non-emergency information that is useful, and sometimes life-saving, in their daily lives. AT&T Ohio proposes to make this information available only through the Company’s website and its printed yellow pages.¹² The Company’s proposal is an inadequate substitute, however.

It is often much more convenient even for customers who have on-line access to find the information required by Rule 3(C) through a printed directory than it is for them to search online for the Company’s website or to track down a recent bill. But, the AT&T Ohio yellow pages directory is only one of many yellow pages directories that customers may receive each year. Customers should not have to search through multiple

¹² Waiver Request at 5-6.

yellow pages directories in order to find the one directory that includes the essential information contained in Rule 3(C). Further, many customers still do not even own a computer or have on-line access,¹³ and many of those who own a computer would not have access to the Company's website – and thus the information in Rule 3(C) – during a power outage or a disruption of their online communications. By requiring customers to “opt in” to receiving a printed directory, AT&T Ohio would limit customers' access to the information contained in Rule 3(C).

Another flaw in the Company's proposal is its basis on a mere belief that customers do not want a white pages directory. AT&T Ohio asserts that “[b]ased on the diminishing use of the printed residential white pages directories by customers and the growing reliance on and desire to use technological applications to retrieve directory information, change is in order.”¹⁴ AT&T Ohio, however, produced no data to support its claim. Further, the Company has not attempted to affirmatively notify customers of their ability to opt out of receiving a printed directory. The Company does not include such notices in its white pages directory or in bill notices. Thus, AT&T Ohio apparently does not have information to support its belief.

Instead, AT&T Ohio merely claims that “[b]y nature, it is not likely that customers will take affirmative action to stop the delivery of the paper directory even if they no longer wish to receive it...”¹⁵ Such conjecture does not constitute good cause.

¹³ According to Connect Ohio, as of March 2008 approximately 30% of Ohio homes do not have Internet access (either broadband or dial-up) and approximately 25% of Ohio homes do not have a computer. See http://connectohio.org/_documents/Res_OH_09182008_FINAL.pdf, slide 4.

¹⁴ Waiver Request at 4.

¹⁵ Id. at 4.

Thus, the Commission should deny the Waiver Request and require the Company to gathered data concerning customers' desire for a printed directory.

The Commission should require AT&T Ohio, over a two-year period, to conduct an "opt out" campaign that would prominently notify customers that they can "opt out" of receiving a white pages directory. After the two-year period, the Commission – with stakeholder input – should assess whether the percentage of customers who "opt out" of receiving a white pages directory is sufficient to justify implementation of AT&T Ohio's proposal. Customers should be also invited to send any comments on the directory issue to the PUCO and OCC. Considering that more than a million and a half consumers would be affected by this Waiver Request,¹⁶ any decision to waive the current provision of directories to these customers must be implemented with gradualism.

If the Commission, however, approves AT&T Ohio's Waiver Request in some form, customers should be given adequate time to adapt to the "opt in" aspect of receiving a printed directory. In addition to the notices proposed by AT&T Ohio, customers should receive at least two more printed directories, with a notice prominently informing them of the need to request one from the Company in the near future. Customers could thus become informed that they would need to contact AT&T Ohio if they want to continue receiving a printed directory.

Although the Commission did not require CBT to phase-in its waiver of Rule 3(B), such a phase-in would be appropriate in this proceeding, given that AT&T Ohio is the largest ILEC in the state, and thus a waiver would affect a much larger number of Ohio consumers. In addition, unlike CBT, AT&T Ohio does not appear to be ready to

¹⁶ AT&T Ohio has approximately 1,641,000 residential customers. See Schedule 28 of AT&T Ohio's 2007 annual report submitted to the PUCO.

implement the switch to an electronic directory.¹⁷ Thus, a phase-in of any waiver granted to AT&T Ohio in this proceeding would not unduly delay implementation of the waiver.

B. The Commission Should Ensure That AT&T Ohio Adequately Notifies Its Customers, Especially New Customers, That They Must Request a Printed White Pages Directory.

If the PUCO grants AT&T Ohio's Waiver Request, customers must be adequately notified that they will no longer automatically receive a printed white pages directory.

But rather than using a variety of means to notify customers, AT&T Ohio apparently will rely exclusively on information inserted in the Company's yellow pages directory:

In order to ensure that customers are aware of the directory delivery changes and that they always have a readily available, written explanation of their options, a full page, informational notice will be prominently placed in the front section of the printed directory containing the Customer Guide, the business white pages and the AT&T Real Yellow Pages that will continue to be delivered annually to customers in the event this waiver is granted. This page of information will describe all of the alternatives for acquiring residential directory information, including how to access free listings at www.RealPagesLive.com and how to obtain a free printed copy of the residential white pages listings, a free copy of the CD-ROM (in Columbus and Cleveland) and the toll free number to use to order that information. In addition, a "ridealong" card or letter containing the same information detailing the directory options available to the customer will be delivered with the printed AT&T Real Yellow Pages **during the first delivery cycle associated with directories for which electronic alternatives are replacing delivery of printed residential white pages listings.**¹⁸

This is in stark contrast to the broad-ranging customer notification campaign that CBT proposed and the Commission approved:

CBT will conduct an extensive informational campaign for its customers to educate them on the availability of the electronic directory. CBT will use bill inserts and billing messages to promote

¹⁷ CBT stated that it was ready to implement an electronic directory in the Fall of 2008. See Case No. 08-1197-TP-WVR, Application (October 31, 2008) ("CBT Application") at 4.

¹⁸ Waiver Request at 7 (emphasis added).

its new, easy to use, “green” edition of the directory. CBT will also send e-mail messages to its Internet service customers and text messages to its wireless affiliate’s customers. Information will be posted on the Cincinnati Bell website and in retail stores. Customers will be made well aware of how to access and use the on-line electronic directory.¹⁹

In the CBT Order, the Commission determined that CBT should be granted a waiver of Rule 3(B) “so long as customers’ interests are protected as regards obtaining information regarding the policy change contemplated by grant of the waiver, obtaining essential information regarding a telephone customer’s rights and responsibilities, and as regards a customer’s right and ability to go about requesting and obtaining free annual printed directories.”²⁰ The multimedia customer notification campaign that the Commission approved in the CBT Order is essential to protecting consumers’ interests.

AT&T Ohio’s proposal fails to protect customers’ interests. Instead of using the numerous ways at its disposal to inform its customers that they would no longer receive a printed directory, AT&T Ohio proposes to include a one-time “ridealong card or letter” and a one-page annual notice in its yellow pages directory. This is inadequate to protect customers’ interests for at least two reasons. First, as noted above, the AT&T Ohio yellow pages directory is but one of many yellow pages directories that customers may receive each year. There is no guarantee that customers would even open the AT&T Ohio yellow pages directory when it arrives, let alone at any time during the year.

Second, the “ridealong card or letter” may also never reach customers. Such inserts may fall out of the directory even before customers receive the directory, or may easily be discarded by customers as junk mail.

¹⁹ CBT Application at 5.

²⁰ CBT Order at 6.

Any PUCO grant of AT&T Ohio's Waiver Request should be conditioned on the Company using a variety of ways to notify customers that they will no longer receive a printed white pages directory unless they request it, and how they may receive a directory. Customers should receive bill inserts and bill messages every month between the time the PUCO grants the waiver and the time that the white pages directory would ordinarily be delivered. AT&T Ohio should also notify customers prominently on the Company's website, and customers who authorize AT&T Ohio to transact business with them by e-mail should also be notified by e-mail. The Commission should also require that AT&T Ohio use broadcast and print advertising to inform customers that printed directories would be available only on request.

In addition, there are special concerns about new customers, who would not receive the proposed yellow pages insert from AT&T Ohio before signing up for service. In the CBT Order, the Commission ordered that "[n]ew CBT customers, at the time they initially enroll for telephone service from CBT, must be provided with all of the same information regarding CBT's methods of providing directory information" as CBT is required to provide in its annual notice to all customers.²¹ Similarly, the Commission should require AT&T Ohio to notify its new customers, at the time of enrollment, that they may have a printed white pages directory delivered to them free of charge, at which time the new customers should be informed they could then opt in, during the call for new service, to free delivery of a printed white pages directory. The opt-in should be for recurring delivery of the white pages directory free of charge.

²¹ Id. at 8.

The Commission should also ensure that AT&T Ohio provides a verbatim printing of the telephone customer rights and responsibilities to new customers who do not request a printed white pages directory. New customers who do not request a printed white pages directory might not be aware of the consumer protections contained in the telephone customer rights and responsibilities. The Commission should require AT&T Ohio to provide **all** new customers with a verbatim printing of the telephone customer rights and responsibilities, possibly in the welcome letter they receive from the Company.

Customers cannot protect their interests concerning a printed white pages directory unless they are adequately informed that they will no longer receive a directory from AT&T Ohio except upon request. The Company's proposal is inadequate to protect consumers' interests. The Commission should not approve the Company's Waiver Request without requiring that AT&T Ohio conduct a multimedia information program that will give customers sufficient notice about the need to request a printed directory from AT&T Ohio and information regarding how to obtain a printed directory.

Further, the Company should be required to ship the printed white pages directory promptly to those customers who request a directory. The Commission should require AT&T Ohio to ship the directory so that requesting customers receive their directory within seven days of their request.

V. CONCLUSION

Rule 3(B) gives customers the right to receive a printed directory, with an electronic directory in lieu of a printed directory being at the **customer's** option. AT&T Ohio has not provided data to support the need for the waiver, but instead relies on a mere belief that customers do not use white pages directories. AT&T Ohio, therefore,

has not stated good cause for a waiver, and its Waiver Request should be denied as not in the interest of Ohio consumers. In order to review the need for AT&T Ohio's proposal, the Commission should require the Company to conduct a two-year promotional campaign to inform customers of their ability to "opt out" of receiving a printed directory, with an assessment of the campaign – and stakeholder input – at the end of the two-year period.

If the Commission, however, approves the Waiver Request in some form, AT&T Ohio should be allowed to offer an electronic directory in lieu of a printed white pages directory **only if** the Company provides customers – especially new customers – adequate notice of the availability of a free printed white pages directory that would be delivered to customers' locations free of charge. AT&T Ohio's proposed customer notice is inadequate to ensure that consumers are aware that they must request a free printed directory. The Commission should ensure that AT&T Ohio's customers continue to receive the protections in Rule 3(B).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Intervene and Memorandum Contra by the Office of the Ohio Consumers' Counsel was provided electronically to the persons listed below this 4th day of February 2009.

/s/ Terry L. Etter

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Summary: Motion Motion to Intervene and Memorandum Contra AT&T Ohio's Motion for a Waiver of Ohio Administrative Code Section 4901:1-5-03(B) to Cease its Routine Distribution of White Pages Directories to Consumers 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