

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of First)
Communications, LLC and GCI Globalcom,)
Inc. dba First Communications for a Waiver) Case No. 09-284-TP-WVR
of Certain Minimum Telephone Service)
Standards as Set Forth in Chapter 4901:1-5,)
Ohio Administrative Code.)

**MOTION TO INTERVENE
AND
MEMORANDUM CONTRA
FIRST COMMUNICATIONS' MOTION FOR A WAIVER
OF OHIO ADMINISTRATIVE CODE SECTION 4901:1-5-03(B)
TO CEASE PROVIDING FOR AUTOMATIC DISTRIBUTION OF
WHITE PAGES DIRECTORIES TO CONSUMERS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where First Communications, LLC and GCI Globalcom, Inc. dba First Communications ("First Communications") proposes to cease the longstanding automatic distribution of white pages directories to consumers, as required by Ohio Adm. Code 4901:1-5-03(B) ("Rule 3(B)").¹ First Communications is seeking a waiver of Rule 3(B) identical to that recently granted AT&T Ohio, whereby AT&T Ohio's customers will no longer automatically receive a printed residential white pages directory.² OCC is filing on behalf of First Communications' residential consumers. The reasons the Public

¹ See First Communications' Joint Application for a Waiver of Minimum Telephone Service Standard 4901:1-5-03(B) (April 1, 2009) ("Application") at 2. OCC seeks intervention pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

² *In the Matter of the Application of AT&T Ohio for Waiver of Certain Minimum Telephone Service Standards Pursuant to Chapter 4901:1-5, Ohio Administrative Code*, Case No. 09-42-TP-WVR, Finding and Order (February 11, 2009) ("AT&T Ohio Order").

Utilities Commission of Ohio (“Commission” or “PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

In addition, OCC files a Memorandum Contra First Communications’ Application.³ Among other issues, the AT&T Ohio Order did not require AT&T Ohio to adequately notify its customers that they would no longer receive a printed residential white pages directory. The issue of inadequate customer notice is heightened in this proceeding, which affects consumers who are not AT&T Ohio customers but who up to now have received AT&T Ohio directories, and might not realize that they must contact AT&T Ohio in order to receive a printed residential white pages directory. The Commission should ensure that all consumers in AT&T Ohio’s service territory – whether they are customers of AT&T Ohio or another provider – have adequate notice of the options available for obtaining residential white pages information and especially the availability of a free printed residential white pages directory.

Respectfully submitted,

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

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
AND
MEMORANDUM CONTRA
FIRST COMMUNICATIONS' 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 April 1, 2009, First Communications filed with the PUCO an Application for a waiver of Rule 3(B). First Communications bases its Application on the AT&T Ohio Order,⁴ which authorized AT&T Ohio to cease the longstanding distribution of residential white pages directories to consumers and, instead to make directory information available, without charge, on its website.⁵ Under the AT&T Ohio Order, consumers in AT&T Ohio's service territory who want a printed residential white pages directory will

⁴ Application at 3.

⁵ AT&T Ohio Order at 6.

need to contact AT&T Ohio and ask that a directory be delivered to them.⁶ First Communications stated that it relies exclusively on AT&T Ohio to deliver white pages directories to First Communications' customers, under an interconnection agreement with AT&T Ohio.⁷ Thus, First Communications asserts, it cannot comply with Rule 3(B).⁸

OCC believes that all consumers in Ohio should receive a printed residential white pages directory, unless they affirmatively choose otherwise. That is an important issue in the rehearing of the AT&T Ohio Order.

In addition, all Ohio consumers should be adequately informed about their options for accessing residential white pages directory information. This is necessary for a variety of reasons, not the least of which is the ability of local exchanges carriers to increase their directory assistance rates on zero-day notice.⁹ Like AT&T Ohio's customers, however, the only notification that First Communications' customers will receive about the need to request a printed residential white pages directory is only through information in AT&T Ohio's yellow pages directory.¹⁰ But such notice does not sufficiently notify consumers that they will no longer automatically receive a printed residential white pages directory. This is especially true for consumers in AT&T Ohio's

⁶ Id. at 7.

⁷ Application at 2.

⁸ Id.

⁹ For example, only seven days after the PUCO affirmed a waiver of Rule 3(B) for Cincinnati Bell ("CBT"), CBT and its competitive LEC affiliate, Cincinnati Bell Extended Territories, raised their directory assistance charges by 17%, from \$1.49 to \$1.75. See the zero-day notice applications filed in Case Nos. 90-5013 and 90-9301 on March 17, 2009. The waiver was affirmed in *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, Entry on Rehearing (March 10, 2009).

¹⁰ See AT&T Ohio Order at 6-7.

service territory, such as First Communications' customers, who do not receive telephone service from AT&T Ohio.

The Commission should require First Communications to use a variety of means, such as bill inserts and bill messages, to notify its customers of their options for electronic directory assistance and the need to contact AT&T Ohio to have a printed residential white pages directory delivered. The Commission should also ensure that First Communications' new customers are adequately informed about their options for accessing residential white pages information, including the availability of printed residential white pages directories.

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,¹¹ especially if the consumers were unrepresented in a proceeding that would give First Communications the authority to cease providing printed residential white pages directories. 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

¹¹ First Communications provides telephone service to residential customers. See First Communications P.U.C.O. Tariff No. 6, Section 5 (Residential Bundled Packages).

(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 First Communications' 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 First Communications, 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 First Communications 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.¹² Further, OCC was granted intervention in the AT&T Ohio white pages directory case,¹³ which served as the catalyst for 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. The PUCO should grant OCC’s Motion to Intervene on behalf of Ohio residential consumers.

¹² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

¹³ AT&T Ohio Order at 4. OCC was also granted intervention in the similar waiver case brought by CBT. Case No. 08-1197-TP-WVR, Finding and Order (January 7, 2009) (“CBT Waiver Decision”) at 5.

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 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 PUCO 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.”¹⁴ Thus, the Commission retained printed directories as the primary means for LECs to distribute directory information,

¹⁴ *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.

with the use of electronic directories in lieu of printed directories being at the **customer's** discretion under Rule 3(B)(1).

In the AT&T Ohio Order, however, the Commission authorized AT&T Ohio to provide residential white pages information primarily through electronic means. AT&T Ohio customers may receive a printed residential white pages directory free of charge, upon request. AT&T Ohio apparently has promised to make these directory options available to First Communications' customers.¹⁵

Adequate notice of a change in access to white pages information helps ensure that "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."¹⁶ In its application for a waiver of Rule 3(B), CBT offered numerous means for educating consumers about the need to request a printed white pages directory:

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 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.¹⁷

The PUCO, nevertheless, placed an additional condition on CBT's informational effort:

The extensive informational campaign described in CBT's waiver application, by which the company will educate customers on the

¹⁵ See the Accessible Letter attached to the Application.

¹⁶ CBT Waiver Decision at 6.

¹⁷ Case No. 08-1197-TP-WVR, Application (October 31, 2008) at 5. See also CBT Waiver Decision at 4.

availability of the electronic directory, must include notice to customers that they will no longer automatically be provided annually with a printed directory and also provide clear and explicit directions that those customers who wish to obtain a free printed directory should follow in order to obtain one.¹⁸

But AT&T Ohio's customers, and apparently First Communications' customers, will not receive the same type of consumer protections that the PUCO required CBT to provide its customers. First Communications does not propose to notify its customers about their options for residential white pages directory information by any means other than that provided in the AT&T Ohio Order. Thus, like AT&T Ohio's customers, First Communications' customers will be notified only through a one-page informational notice inside *AT&T Ohio's* yellow pages directory and through a "ride-along" notice affixed to the first yellow pages directory that *AT&T Ohio* issues without an accompanying printed residential white pages directory.¹⁹ This constitutes inadequate notice to *First Communications'* customers for at least three reasons.

First, providing notice only in the AT&T Ohio yellow pages directory is ineffective in making *First Communications'* customers aware that they must contact AT&T Ohio for a residential white pages directory. The AT&T Ohio yellow pages directory is merely one of many yellow pages directories that customers receive. There is no guarantee that First Communications' customers will retain the AT&T Ohio's yellow pages directory. Even if they do, they might not look at it for weeks or possibly months, if at all. Affixing the "ride-along" notice to the front cover of AT&T Ohio's yellow pages directory also does not ensure that First Communications' customers will ever see the notice, let alone read it.

¹⁸ CBT Waiver Decision at 7.

¹⁹ AT&T Ohio Order at 7.

Second, even if First Communications' customers read the notice in AT&T Ohio's yellow pages, they might not make the connection that they need to contact *AT&T Ohio* in order to get a printed residential white pages directory. First Communications' customers are accustomed to dealing with First Communications, not AT&T Ohio, for customer service.²⁰ Thus, they might not realize that they must contact AT&T Ohio, not First Communications, to request delivery of a printed residential white pages directory.

Third, it is not clear that First Communications' customers will receive all the information they need in order to request a residential white pages directory. In the CBT Waiver Decision, the PUCO required CBT to provide “**clear and explicit** directions that those customers who wish to obtain a free printed directory should follow in order to obtain one.”²¹ The notice in AT&T Ohio's yellow pages, however, must only “**describe** all of the alternatives for acquiring residential directory information...”²² AT&T Ohio has too much latitude regarding the directions that consumers are given in order to request a printed residential white pages directory.

Like CBT's customers, First Communications' customers should be informed in numerous ways about electronic options available to them for accessing residential white pages information and about the need to request a printed residential white pages directory. OCC realizes that First Communications cannot cure the inadequacies of the notice included in the AT&T Ohio yellow pages directory. But the insufficiency of

²⁰ For example, the toll-free number that First Communications' customers must call for billing and repair issues is answered as “First Communications.”

²¹ CBT Waiver Decision at 7 (emphasis added).

²² AT&T Ohio Order at 7 (emphasis added). Although on rehearing the PUCO termed AT&T Ohio's methodology for notifying *its* customers of the need to request a printed residential white pages directory as “clear, explicit, and adequate notice” (Case No. 09-42-TP-WVR, Entry on Rehearing (April 1, 2009) at 5), the PUCO did not address the content of AT&T Ohio's notice.

notifying customers only through AT&T Ohio's yellow pages directory points out the need for using other means to inform consumers that they must ask for a printed residential white pages directory. Thus, the Commission should ensure that First Communications adequately notifies *its* customers of the electronic availability of residential white pages information and of the need to request a printed residential white pages directory from AT&T Ohio.

The Commission should require First Communications to inform its customers, through bill messages, bill inserts and other means, of their options for obtaining residential white pages information electronically and of the need to contact AT&T Ohio to request delivery of a printed residential white pages directory. This is especially necessary for new customers. In addition, the Commission should ensure that AT&T Ohio provides the electronic residential white pages information and a printed white pages directory to First Communications' customers free of charge.

V. CONCLUSION

The Commission should grant OCC's intervention in this proceeding. In addition, for the reasons discussed herein, the Commission should require First Communications to give its customers notice, separate from that required of AT&T Ohio, of the changes in access to residential white pages information, including the need to request a printed residential white pages directory from AT&T Ohio. Such a requirement would help protect the interest of First Communications' residential customers.

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 14th day of April 2009.

/s/ Terry L. Etter

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