

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Buckeye)
Telesystem, Inc. for a Waiver of Certain) Case No. 09-370-TP-WVR
Minimum Telephone Service Standards as)
Set Forth in Chapter 4901:1-5, Ohio)
Administrative Code.)

**MOTION TO INTERVENE
AND
MEMORANDUM CONTRA BUCKEYE TELESYSTEM’S MOTION FOR A
WAIVER TO CEASE PROVIDING FOR AUTOMATIC DISTRIBUTION OF
WHITE PAGES DIRECTORIES TO CONSUMERS IN VERIZON’S AND
EMBARQ’S SERVICE TERRITORIES
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where Buckeye Telesystem, Inc. (“Buckeye”) proposes to cease the longstanding automatic distribution of residential white pages directories to consumers, as required by Ohio Adm. Code 4901:1-5-03(B)(1) (“Rule 3(B)(1)”)¹. OCC is filing on behalf of residential consumers. The reasons the Public Utilities Commission of Ohio (“Commission” or “PUCO”) should grant OCC’s Motion to Intervene are set forth in the attached Memorandum in Support.

OCC also files a Memorandum Contra Buckeye’s waiver request concerning the Verizon and Embarq service territories. Buckeye seeks a “blanket me too” waiver of Rule 3(B)(1) regarding distribution of residential white pages directories to its customers who reside in Verizon’s and Embarq’s service territories, even though, as Buckeye

¹ See Application (April 30, 2009) (“Application”) at 2-3. OCC seeks intervention pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

acknowledges, neither Verizon nor Embarq has sought or been granted a waiver of Rule 3(B)(1).² As discussed herein, the “blanket me too” waiver sought by Buckeye is contrary to prior Commission rulings and is not in the public interest. Buckeye also has not shown good cause for a waiver of Rule 3(B)(1) concerning its customers who reside in Verizon’s and Embarq’s service territories. The Commission should deny that portion of Buckeye’s waiver request.

Respectfully submitted,

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² Id. at 3.

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
AND
MEMORANDUM CONTRA BUCKEYE’S WAIVER REQUEST FOR THE
VERIZON AND EMBARQ SERVICE TERRITORIES**

I. INTRODUCTION

On April 30, 2009, Buckeye filed with the PUCO an Application for a waiver of Rule 3(B)(1). Buckeye bases its Application on the AT&T Ohio Order,³ 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.⁴ Under the AT&T Ohio Order, consumers in AT&T Ohio’s service territory who want a printed residential white pages directory will need to contact AT&T Ohio and ask that a directory be delivered to them.⁵ Buckeye stated that, under an interconnection agreement with AT&T Ohio, it relies exclusively on AT&T Ohio to

³ Application at 3.

⁴ 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”) at 6.

⁵ Id. at 7. AT&T Ohio will continue distribution of business white pages listings in its yellow pages directory. See id. at 3.

deliver white pages directories to Buckeye's customers who reside in AT&T Ohio's service territory.⁶ Thus, Buckeye asserts, it cannot comply with Rule 3(B)(1).⁷

Buckeye also seeks a "blanket me too" waiver "in the event that Verizon North and/or Embarq subsequently seek such a waiver."⁸ Although Buckeye recognizes that "neither of these two incumbent local exchange carriers have [sic] sought a waiver" of Rule 3(B)(1), Buckeye nevertheless asserts that "administrative convenience will be served by the Commission's grant of Buckeye's request for a 'blanket Me Too' waiver at this time."⁹ For the reasons discussed herein, OCC opposes Buckeye's "blanket me too" waiver request.

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 interest of Ohio's residential consumers may be adversely affected by this case, especially if the consumers are unrepresented in a proceeding that would give Buckeye the authority to cease automatically providing printed residential white pages directories. Thus, the PUCO's decision regarding Buckeye's waiver request may affect the interests of

⁶ Application at 2.

⁷ Id. The PUCO has approved "me too" waivers for competitive local exchange carriers ("CLECs") affecting their operations in AT&T Ohio's service territory only. Case Nos. 09-156-TP-WVR, *et al.*, Entry (April 15, 2009) ("CLEC Entry"). OCC opposed AT&T Ohio's and the CLECs' waiver requests because, among other things, the transition away from printed directories is premature for Ohioans who, for example, lack Internet access, and customers would not be adequately notified regarding the need to contact AT&T Ohio to request a residential white pages directory. The PUCO rejected OCC's arguments in the AT&T Ohio Order, the CLEC Entry and on rehearing of the AT&T Ohio Order. The PUCO evidently has set its – and Ohio's – course on the issue. Thus, OCC does not challenge Buckeye's "me too" waiver of Rule 3(B)(1) regarding the distribution of residential white pages directories to Buckeye's customers who reside in AT&T Ohio's service territory. OCC focuses specifically on Buckeye's waiver request regarding the distribution of residential white pages directories to Buckeye's customers who reside in Verizon's and Embarq's service territories.

⁸ Application at 3.

⁹ Id.

residential customers. 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 residential consumers in order to ensure that they receive all the protections of the Minimum Telephone Service Standards ("MTSS"), including with regard to the availability of the white pages directory. This interest is different from any other party's interest and especially different from Buckeye's, whose advocacy includes its own financial interest.

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 to equitably and lawfully decide 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 Buckeye 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.¹⁰ Further, OCC was granted intervention in the AT&T Ohio white pages directory case,¹¹ which served as the catalyst for this proceeding, and in the CLEC "me too" waiver cases.¹²

III. MEMORANDUM CONTRA

A. 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.

Under Ohio Adm. Code 4901:1-5-02(B)(1) ("Rule 2(B)(1)"), the Commission may waive these requirements "[f]or good cause shown...."

¹⁰ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

¹¹ AT&T Ohio Order at 4.

¹² CLEC Entry at 4. OCC was also granted intervention in the Rule 3(B)(1) waiver case brought by Cincinnati Bell. In the Matter of the Application of Cincinnati Bell Telephone Company LLC for a 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) at 5. The term "ILEC" refers to an incumbent local exchange carrier.

B. Buckeye’s Request for a “Me Too” Waiver Regarding Distribution of Residential White Pages Directories to Its Customers Who Reside in Verizon’s and Embarq’s Service Territories Is Contrary to Prior Commission Rulings.

In addition to the waiver of Rule 3(B)(1) regarding its customers who reside in AT&T Ohio’s service territory, Buckeye also seeks a waiver of the obligation to distribute residential white pages directories to its customers who reside in Verizon’s and Embarq’s service territory. Buckeye does not claim that Verizon and Embarq have such a waiver; indeed, Buckeye recognizes that “neither of these two incumbent local exchange carriers have [sic] sought a waiver” of Rule 3(B)(1).¹³ Instead, Buckeye seeks what it calls a “blanket me too” waiver based on the mere possibility that Verizon and/or Embarq may subsequently, at some unspecified time in the future, seek such a waiver.¹⁴

Insofar as the waiver request pertains to Buckeye’s customers who reside in Verizon’s and Embarq’s service territory, however, the request is not a “me too” waiver. A “me too” waiver cannot be based on some possible future waiver. As the Commission has determined, “A ‘me-too’ [waiver] request is one based **solely** on circumstances which **have already been found** to be sufficient for the grant of the waiver in a **prior** case.”¹⁵

The PUCO has refused to grant “me too” waiver requests that are based on mere speculation. In a certification case involving the Voice over Internet Protocol (“VoIP”) service of Time Warner Communications Information Services (“TWCIS”), TWCIS had sought waivers of several MTSS requirements as part of its application for authority to

¹³ Application at 3.

¹⁴ Id. at 3.

¹⁵ In the Matter of the Commission Investigation into the Implementation of Sections 4927.01 Through 4927.05, Revised Code as They Relate to Competitive Telecommunications Services, Case No. 89-563-TP-COI, Entry on Rehearing (December 22, 1993) at 6 (emphasis added).

provide local service.¹⁶ Although the PUCO specifically authorized TWCIS to provide, pending resolution of jurisdictional issues, “IP-based voice services in the manner set forth in the company’s application,”¹⁷ the PUCO left open the issue regarding the waiver requests. The PUCO stated: “As to the concerns raised by the intervenors regarding the MTSS waivers, the Commission intends to address these concerns industry-wide in a thorough manner and on a more permanent basis” in the generic VoIP proceeding.¹⁸

Subsequently, SBC Ohio (now, AT&T Ohio) filed a “me too” waiver request, seeking the same waivers that the Commission ostensibly granted TWCIS.¹⁹ SBC Ohio assumed that the Commission had granted the waivers to TWCIS.²⁰ In addition, the Ohio Telecom Association (“OTA”), in an application for rehearing of the TWCIS decision, suggested that any ILEC that competed with TWCIS should receive the same waivers that had supposedly been granted to TWCIS.²¹

The Commission, however, denied as premature the “me too” waivers sought by SBC Ohio and OTA. The Commission stated: “Because no waiver has yet been granted to TWCIS, there is no basis for granting, to SBC Ohio or any other telephone company, a me-too waiver premised on any alleged waiver that TWCIS has never received.”²²

The Commission should make the same determination here. As Buckeye acknowledged, neither Verizon nor Embarq has been granted, or even has sought, a

¹⁶ See In the Matter of the Application of Time Warner Cable Information Services (Ohio), LLC to Offer Local and Interexchange Voice Services, Case No. 03-2229-TP-ACE, Request for Waivers (November 5, 2003).

¹⁷ Case No. 03-2229, Entry (December 17, 2003) at 3.

¹⁸ Id. at 4.

¹⁹ 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. 00-1265-TP-ORD, SBC Ohio’s Request for Waiver (January 16, 2004).

²⁰ See id. at 2.

²¹ Case No. 03-2229, OTA’s Application for Rehearing (January 16, 2004) at 5.

²² Case No. 03-2229, Entry on Rehearing (February 11, 2004) at 6.

waiver of Rule 3(B)(1). Thus, there is no basis for Buckeye's "me too" waiver of Rule 3(B)(1) regarding delivery of residential white pages to its customers who reside in Verizon's and Embarq's service territories. The Commission should deny Buckeye's "blanket me too" waiver request.

C. Buckeye Has Not Shown Good Cause for a Waiver Regarding Distribution of Residential White Pages Directories to Its Customers Who Reside in Verizon's And Embarq's Service Territories, and Such a Waiver Is Not in the Public Interest.

Buckeye has also failed to show "good cause," under Rule 2(B)(1), for a waiver of Rule 3(B)(1) concerning its customers who reside in Verizon's and Embarq's service territories. In defending its "blanket me too" waiver request, Buckeye asserted that "administrative convenience will be served by the Commission's grant of Buckeye's request for a 'blanket Me Too' waiver at this time."²³ This appears to be a "good cause" argument. Nevertheless, Buckeye is wrong for at least two reasons.

First, Buckeye's assertion is conditioned on the premise that any waiver of Rule 3(B)(1) that the Commission might grant Verizon and/or Embarq at some point in the future would be similar to the waiver granted AT&T Ohio.²⁴ If, however, Verizon and/or Embarq should receive a waiver containing conditions that are "significantly different" from AT&T Ohio's waiver, then "Buckeye agrees to seek an additional waiver."²⁵ Thus, if Verizon and/or Embarq eventually seek and are granted a waiver of Rule 3(B)(1), the Commission would have to make a separate determination as to whether the conditions of those waivers are significantly different enough from AT&T Ohio's waiver to require Buckeye to seek yet another waiver. This does not further administrative efficiency.

²³ Application at 3.

²⁴ Id.

²⁵ Id.

Second, and more importantly, granting Buckeye the requested waiver of Rule 3(B)(1) concerning Buckeye's customers who reside in Verizon's and Embarq's service territories would open the door for other CLECs to seek similar anticipatory "me too" waivers. To illustrate this point, in the 30 days since the CLEC Entry was issued, at least five CLECs, in addition to Buckeye, have sought "me too" waivers regarding distribution of residential white pages directories to customers in AT&T Ohio's service territory.²⁶ If Buckeye's "blanket me too" waiver is granted, the Commission could be inundated with needless "me too" waiver requests for Verizon's and Embarq's (or other ILECs') service territories premised on waivers that may never occur. Thus, granting Buckeye a "blanket me too" waiver of Rule 3(B)(1) would impede, rather than further, administrative efficiency, and would not be in the public interest.

In addition, Buckeye gives no reason why it needs to have a Rule 3(B)(1) waiver for the Verizon and Embarq service territories at this time. If Verizon and/or Embarq are ever granted a waiver of Rule 3(B)(1), Buckeye and other CLECs should have ample time to seek a "me too" waiver afterwards.

Buckeye has not shown good cause for its waiver request concerning the Verizon and Embarq service territories, and such a waiver would not be in the public interest. The Commission should thus deny Buckeye's "blanket me too" waiver request.

²⁶ Cbeyond Communications, Case No. 09-404-TP-WVR (May 11, 2009); Citynet Ohio, Case No. 09-403-TP-WVR (May 11, 2009); Budget Phone, Case No. 09-397-TP-WVR (May 7, 2009); Bullseye Telecom, Case No. 09-396-TP-WVR (May 7, 2009); ACN Communications, Case No. 09-395-TP-WVR (May 7, 2009).

IV. CONCLUSION

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.

In addition, Buckeye's proposed "blanket me too" waiver of Rule 3(B)(1), based on the possibility that Verizon and/or Embarq may at some time in the future seek a similar waiver, is contrary to prior PUCO determinations, lacks good cause and is not in the public interest. In order to protect the interest of Buckeye's customers who reside in Verizon's and Embarq's service territory, the Commission should deny Buckeye a "me too" waiver premised on waivers that Verizon and Embarq have not received.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum Contra by the Office of the Ohio Consumers' Counsel was provided electronically and by First Class United States Mail, postage prepaid, to the persons listed below this 15th day of May 2009.

/s/ Terry L. Etter

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