

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Tennessee Telephone Service, LLC d/b/a	)	Case No. 09-602-TP-ACE
Freedom Communications USA, LLC to	)	
Provide Competitive Facilities-Based and	)	
Resold Local and Interexchange Services	)	
Throughout the State of Ohio.	)	

---

**MOTION TO INTERVENE  
AND  
STATEMENT OF GOOD CAUSE WHY THE APPLICATION AS FILED  
SHOULD NOT BE GRANTED  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC ("TTS") seeks authorization to provide residential telephone service in Ohio.<sup>1</sup> OCC is filing on behalf of Ohio's residential consumers.<sup>2</sup> The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene are further set forth in the attached Memorandum in Support.

In addition, OCC files a statement as to why TTS's Application, as filed, should not be granted.<sup>3</sup> As discussed herein, the "Prompt Pay Discount" that TTS proposes for its prepaid local service is, in reality, a \$10 late payment charge assessed on residential

---

<sup>1</sup> Application (July 20, 2009).

<sup>2</sup> OCC seeks intervention pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11.and Ohio Adm. Code 4901:1-6-10(H)(1).

<sup>3</sup> OCC files the statement pursuant to Ohio Adm. Code 4901:1-6-10(H)(1).

customers who do not pay on time. Because the service will most likely be attractive to low-income consumers and consumers who are credit challenged, OCC is concerned that the charge – which would increase customers' bills by as much as 25% – will be assessed against consumers who can afford it least. The manner in which TTS proposes to impose the charge may also confuse many consumers. In order to examine the appropriateness of the charge, and to allow for several problems in the tariff to be corrected, the Commission should suspend the Application, pursuant to Ohio Adm. Code 4901:1-6-07, so that it is not automatically approved under the PUCO's rules.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Terry L. Etter  
Terry L. Etter, Counsel of Record  
David C. Bergmann  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574  
etter@occ.state.oh.us  
bergmann@occ.state.oh.us

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Tennessee Telephone Service, LLC d/b/a	)	Case No. 09-602-TP-ACE
Freedom Communications USA, LLC to	)	
Provide Competitive Facilities-Based and	)	
Resold Local and Interexchange Services	)	
Throughout the State of Ohio.	)	

---

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE  
AND  
STATEMENT OF GOOD CAUSE WHY THE APPLICATION AS FILED  
SHOULD NOT BE GRANTED**

---

**I. INTRODUCTION**

TTS proposes to offer traditional residential telephone service in the AT&T Ohio and Verizon service territories.<sup>4</sup> In addition, TTS proposes two residential prepaid service bundles: basic prepaid for \$49.95 per month;<sup>5</sup> and a “deluxe” package that includes Caller ID, Call Return, Three-Way Calling, Call Waiting, Call Forwarding and “up to 250 minutes” of long distance for \$59.95 per month.<sup>6</sup> The Company also proposes to offer enhanced Lifeline service.<sup>7</sup>

Under Ohio Adm. Code 4901:1-6-10(H)(1), “[i]nterested entities who can show good cause why [an] application should not be granted must file with the commission a written statement detailing the reasons, as well as a motion to intervene, within fifteen

---

<sup>4</sup> See Application, proposed tariff sections 3.2.1 and 3.2.2.

<sup>5</sup> See id., proposed tariff section 5.3.2(A).

<sup>6</sup> See id., proposed tariff sections 5.1 and 5.3.2(A).

<sup>7</sup> See id., proposed tariff sections 3.6 through 3.7.3.

calendar days after the application is docketed.” OCC files a Motion to Intervene on behalf of Ohio’s residential customers.

In addition, OCC submits a written statement presenting good cause why the Application, as filed, should not be granted. The “Prompt Pay Discount” TTS proposes for its prepaid local service is, in reality, a \$10 late payment charge that would increase customers’ bills by as much as 25%. Imposition of the charge may also confuse many consumers. The Commission should suspend the Application, pursuant to Ohio Adm. Code 4901:1-6-07, so that it is not automatically approved under the PUCO’s rules.

## **II. MEMORANDUM IN SUPPORT OF 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 involving the certification of a company offering residential prepaid service that includes an exorbitant charge for payments received after the due date.<sup>8</sup> Thus, OCC satisfies this element of 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

---

<sup>8</sup> TTS proposes to offer residential service. See Application, proposed tariff sections 3.2 and 5.

(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 services offered to them are adequate and have reasonable rates. This interest is different from that of any other party and especially different from that of TTS, whose advocacy includes the financial interest of its owners.

Second, OCC's advocacy for consumers will include advancing the position that telephone services should have reasonable late payment charges and should not be confusing to consumers. 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 TTS is proposing a residential prepaid service that includes an exorbitant charge for late payments.

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, given the language of R.C. 4903.221(B), 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.<sup>9</sup>

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’s residential consumers.

### **III. STATEMENT OF GOOD CAUSE WHY THE APPLICATION AS FILED SHOULD NOT BE GRANTED**

Under Ohio Adm. Code 4901:1-6-10(I), “[i]t is the applicant’s responsibility to satisfy the commission that the requirements of section 4905.24 of the Revised Code, have been met.” R.C. 4905.24 conditions certification of an applicant for local telephone service “upon a finding by the commission that such operations are proper and necessary

---

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

for the public convenience.” TTS has not shown that its proposed service is necessary and proper for the public convenience.

**A. The “Prompt Pay Discount” Is, in Effect, a \$10 Late Payment Charge, Which Adds Up to 25% to a Customer’s Bill.**

TTS plans to offer a “Prompt Pay Discount” to customers of the prepaid service.<sup>10</sup>

Under this program, customers who pay their account balance in full on or before the due date will receive a \$10 “discount.” But section 5.6 of the proposed tariff states:

In anticipation of timely payment, the Prompt Pay Discount is applied to the customers [sic] account at the time of billing.

The Prompt Pay Discount will be removed from an account where payment in full has not been received by the due date.

Thus, for example, instead of being billed \$49.95 for the basic prepaid service, a customer apparently would be billed \$39.95, and would be charged \$10 more if TTS does not receive the payment by the due date. In essence, then, TTS will charge customers of a prepaid service a \$10 late fee, in addition to its tariffed 1.5% late charge.<sup>11</sup>

There are at least two problems with the proposal. First, the \$10 charge for late payments is exorbitant. It amounts to a 25% late fee on the basic prepaid service (billed at \$39.95) and a 20% late charge on the “deluxe” package (billed at \$49.95). Considering that the customers who are attracted to this service are likely to have low incomes and/or have credit problems,<sup>12</sup> the \$10 charge will harm consumers who are already in bad financial straits. TTS should tariff its prepaid services at the rates that will show up on customers’ bills (i.e., no more \$39.95 for basic and no more than \$49.95 for “deluxe”).

---

<sup>10</sup> The discount is not offered to customers of TTS’s traditional basic service.

<sup>11</sup> Id., proposed tariff section 5.4. The proposed tariff does not specifically contain a late payment charge for TTS’s traditional service, although a 1.5% charge is mentioned in proposed tariff section 1.8.4.E.

<sup>12</sup> See *In the Matter of the Application of NOW Communications, Inc. to Offer Resold Local Exchange and Intrastate Interexchange Services*, Case No. 98-1466-TP-ACE, *et al.*, Consumer Parties’ Joint Brief (November 2, 1999) at 11-19.

In addition, customers who do not pay on time should not be charged more than the tariffed 1.5% late payment fee.

Second, the operation of TTS's discount program is likely to cause confusion for consumers of the prepaid service regarding the amount owed to TTS.<sup>13</sup> When signing up for prepaid service, consumers may be quoted one price (\$49.95 for basic or \$59.95 for "deluxe"), then see another price on their bill (\$39.95 for basic or \$49.95 for "deluxe"). Customers may thus be confused about how much TTS is charging them for telephone service. Further, the late payment charge is applied the day after the due date.<sup>14</sup> Thus, if a customer sends a payment to TTS before the due date, but it is not received or processed until after the due date, the customer may receive a disconnection notice demanding payment of an amount (i.e., the billed amount plus the \$10 "discount"/late payment charge) different from that which the customer was billed and paid.<sup>15</sup> Not only would that be contrary to Ohio Adm. Code 4901:1-5-10(F)(3),<sup>16</sup> it would also add to the customer's confusion.<sup>17</sup>

The exorbitant penalty for late payments and the potential for customer confusion should lead the Commission to conclude that TTS's proposed prepaid service is not

---

<sup>13</sup> The Commission has recognized that consumers who are targeted for prepaid telephone service are "the ones most likely to be less informed." Case No. 98-1466-TP-ACE, *et al.*, Opinion and Order (November 2, 2000) at 58.

<sup>14</sup> See Application, proposed tariff section 5.6 (the "discount" does not apply if payment has not been received by the due date).

<sup>15</sup> It is not clear whether, in those cases where the customer sends a payment before the due date but TTS does not receive it until after the due date, the discount/late payment charge would be assessed on the customer's next bill.

<sup>16</sup> The rule requires that disconnection notices include "[t]he total dollar amount due to avoid disconnection which shall not exceed the past due amount for the service(s) subject to disconnection."

<sup>17</sup> In addition, because "[t]he Prompt Pay Discount will be removed from an account where payment in full has not been received by the due date" (*id.*), it is unclear whether a customer who makes just one late payment would be disqualified from future discounts.



necessary and proper for the public convenience. The Commission should not approve the Application as filed.

**B. The Proposed Tariff Contains Numerous Errors That Should Be Corrected.**

In addition to the problems discussed above, the Application's proposed tariff contains numerous inconsistencies and other flaws that should be corrected before TTS is authorized to provide local service in Ohio. The major problems with the proposed tariff are discussed below.

*TTS Tariffed 2-Party and 4-Party Lines for Its Traditional Service.* Proposed tariff section 3.2.2.C contains rates for 2-party and 4-party lines in Verizon's service territory. Verizon, however, does not tariff party lines.<sup>18</sup> TTS will provide service as a reseller and through unbundled network elements,<sup>19</sup> and thus cannot offer for sale any service not tariffed by the underlying carrier. The references to these party lines, and the charges for them, should be removed from TTS's proposed tariff.

*Installation and Reconnection Charges for the Traditional Service Are Not Tariffed.* Although several sections of the proposed tariff mention installation or reconnection charges,<sup>20</sup> the charges for installation or reconnection of traditional local service are not tariffed.<sup>21</sup> Customers should not be required to pay any installation or reconnection charges that are not tariffed.

*Some Tariff Sections Are Inconsistent with PUCO Rules.* Tariff section 1.8.4.B states that charges are due and payable **within** 14 days of the postmark on the bill. This

---

<sup>18</sup> See Verizon North Tariff PUCO 7, Section 3.

<sup>19</sup> See Application, Exhibit B.

<sup>20</sup> See, e.g., *id.*, proposed tariff sections 1.8.4.B, 2.6.A and 3.2 (installation); section 1.8.1.D (reconnection).

<sup>21</sup> Proposed tariff section 5.3.2(B) contains a \$20 installation charge for only the prepaid services.

is inconsistent with Ohio Adm. Code 4901:1-5-07(C), which requires that payments may be due **no sooner than** 14 days from the postmark on the bill.

In this regard, proposed tariff section 5.4 states that “[c]ustomers will be charged 1.5% of any amounts owed to the Company beyond the due date for such payment.” But late charges can be applied only to those regulated charges that a customer has not paid at least 19 days after the postmark on the bill.<sup>22</sup> Thus, TTS’s proposal to apply late charges the day after the due date would require TTS to ensure that customer bills are postmarked at least 19 days before the due date. The late charge may also apply to regulated services only, and not to unregulated services (e.g., inside wire maintenance).

Also, under tariff section 1.8.5.A “[t]he existence of a disputed amount does not relieve the customer of their [sic] obligation to pay current charges.” This is at odds with Ohio Adm. Code 4901:1-5-10(I)(3), which prohibits disconnection of service so long as the customer pays the undisputed portion of the bill. Under this rule, a customer who disputes some current charges is not obligated to pay the disputed amount while the dispute is unresolved. Nevertheless, TTS’s proposed tariff apparently would allow TTS to disconnect a customer for nonpayment of a disputed amount.

*There Is a Discrepancy in TTS’s Directory Assistance Charges.* Tariff section 2.8.1 states that the charge for directory assistance is \$1.00, with an additional 40 cents charged for directory assistance call completion. Tariff section 3.5, however, lists the directory assistance charge at \$1.10 and the directory assistance call completion charge at 35 cents. This discrepancy should be resolved.

---

<sup>22</sup> Ohio Adm. Code 4901:1-5-07(D)(1).

*Many Features and Charges Are Not Described.* It is important for customers to know what a calling feature does, so they know what they are paying for. The proposed tariff, however, does not describe many of the features that TTS proposes to offer. Features listed in section 3.2.1.B include Distinctive Ring, Automatic Busy Redial, Automatic Callback, Call Selector, Call Return, Call Screening and Call Trace. None of these features, however, are described in the proposed tariff. Similarly, there is no description for the following features listed in section 3.2.2: \*69, Anonymous Call Block, Call Block, Do Not Disturb, Priority Call and Select Call Forwarding.

TTS also does not provide the details of the inside wiring maintenance plan (section 5.2) and the Service Transfer charge (section 5.3.2), both of which apparently apply only to the prepaid services. TTS's proposed should provide descriptions of all features offered to customers and charges that customers may incur.

*Lifeline Customers Should Not Be Assessed Installation Charges.* Tariff section 3.6.5(B) states: "Service Charges are applicable for installing or changing Lifeline service." Lifeline customers should receive a waiver of installation charges.

*The Long Distance Aspect of "Deluxe" Prepaid Service Is Unclear.* Tariff section 5.1 states that the "Deluxe Prepaid Package" includes "up to 250 minutes of free long distance per month...." This is vague. Customers should know the exact number of free long distance minutes in the package.<sup>23</sup>

In addition, tariff section 5.3.2 appears to exclude long distance from the "Deluxe Prepaid Package" price. A footnote to the section, which appears to apply to the

---

<sup>23</sup> Tariff section 5.1 also refers to "local calling areas within the State of Illinois..."; this should be changed to the State of Ohio.

“Deluxe” package, states that “[m]onthly charges include local exchange phone service only.” This conflict between sections 5.1 and 5.3.2 should be resolved.

**C. The Commission Should Suspend Automatic Approval of the Application.**

Under Ohio Adm. Code 4901:1-6-10(H)(2), certification applications are automatically approved 30 days after being filed, unless full or partially suspended. Ohio Adm. Code 4901:1-6-07 allows for full or partial suspension of applications.

The concerns regarding the late payment charge and the errors in the proposed tariff, discussed herein, are good cause why the Application, as filed, should not be granted. The Commission should thus fully suspend the Application, pursuant to Ohio Adm. Code 4901:1-6-07.

**IV. CONCLUSION**

The Commission should grant OCC’s intervention in this proceeding. In addition, the Commission should fully suspend the Application in order to address the concerns raised by OCC.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS’ COUNSEL

/s/ Terry L. Etter  
Terry L. Etter, Counsel of Record  
David C. Bergmann  
Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574  
etter@occ.state.oh.us  
bergmann@occ.state.oh.us

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion to Intervene and Statement by the Office of the Ohio Consumers' Counsel was sent by First Class United States Mail, postage prepaid, and provided electronically to the persons listed below this 4<sup>th</sup> day of August 2009.

/s/ Terry L. Etter  
Terry L. Etter  
Assistant Consumers' Counsel

## **SERVICE LIST**

**DUANE W. LUCKEY**  
Assistant Attorney General  
Chief, Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793  
duane.luckey@puc.state.oh.us

**LANCE J.M. STEINHART**  
Lance J.M. Steinhart, P.C.  
1720 Windward Concourse, Suite 115  
Alpharetta, Georgia 30005  
lsteinhart@telecomcounsel.com

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/4/2009 3:45:44 PM**

**in**

**Case No(s). 09-0602-TP-ACE**

Summary: Motion Motion to Intervene and Statement of Good Cause Why the Application as Filed Should Not be Granted by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.