

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|--|---|------------------------|
| In the Matter of the Application of |) | |
| Cincinnati Bell Telephone Company LLC |) | Case No. 09-875-TP-BLS |
| for Approval of an Alternative Form of |) | |
| Regulation of Basic Local Exchange |) | |
| Service and Other Tier 1 Services |) | |
| Pursuant to Chapter 4901:1-4, Ohio |) | |
| Administrative Code. |) | |

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned proceeding where the PUCO will consider allowing for increases in rates for basic telephone service. This Motion is filed pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and Ohio Adm. Code 4901:1-4-09(D). The reasons for granting OCC's motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

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| Chapter 4901:1-4, Ohio Administrative Code. |) | |

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On October 1, 2009, Cincinnati Bell Telephone Company LLC (“CBT”) filed an Application seeking alternative regulation (“alt. reg.”) for its Tier 1 Core services in the Clermont and Newtonsville exchanges.¹ The services at issue include basic local exchange service (“basic service”) and basic Caller ID.² If the Application is approved, CBT could increase customers’ basic service rates by \$1.25 per month and basic Caller ID rates by 50 cents per month in the two exchanges each year without further PUCO review.³

OCC is the state agency that represents Ohio’s residential utility consumers. OCC is moving to intervene in this case to protect the interests of the approximately 27,700 CBT residential customers in the two exchanges,⁴ many of whom could be

¹ The Application was filed pursuant to Ohio Adm. Code 4901:1-4-09.

² See Ohio Adm. Code 4901:1-6-04(A)(1)(a). Basic service is defined in R.C. 4927.01(A) and Ohio Adm. Code 4901:1-6-01(B).

³ Ohio Adm. Code 4901:1-6-11(A).

⁴ See Schedule 28 of CBT’s 2008 Annual Report submitted to the PUCO.

subjected to annual increases in their rates as a result of the Application, just as customers in the six exchanges for which CBT has been granted basic service alt. reg. have seen.⁵

The Commission should grant OCC's Motion to Intervene so that OCC can fully participate in this proceeding and protect the interests of residential customers.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent the interests of the residential telephone customers in the state of Ohio, pursuant to R.C. Chapter 4911. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

R.C. 4903.221 allows for intervention by persons who may be adversely affected by PUCO proceedings. Because CBT is seeking the ability to raise the rates of residential basic service customers in the Clermont and Newtonsville exchanges, the interests of residential telephone customers may be "adversely affected" by this case, especially if the consumers are unrepresented. Thus, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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;

⁵ After the PUCO approved basic service alt. reg. for the Cincinnati and Hamilton exchanges in Case No. 06-1002-TP-BLS on November 28, 2006, CBT increased its basic service rate for those exchanges by \$1.25 – the maximum allowed under PUCO rules – in a tariff revision filed on January 5, 2007 in Case No. 96-5013-TP-TRF. CBT again increased the basic service rates in those exchanges by the maximum allowed under the PUCO's rules in a tariff revision filed on January 4, 2008. On December 10, 2008, the Commission approved CBT's application for basic service alt. reg. in four exchanges: Bethany, Harrison, Little Miami and Williamsburg. CBT increased its basic service rate for all six exchanges by \$1.25 in a tariff filing on February 17, 2009.

(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 to ensure that alt. reg. for CBT's Tier 1 Core offerings does not result in unreasonable or unlawful rate increases that would harm CBT's residential customers. Therefore, it is essential that the interest of residential customers be represented.

Second, OCC's legal positions include that residential consumers' rates should be "just and reasonable," pursuant to R.C. 4905.22 and R.C. 4927.02(A)(2), among other statutes. This legal position directly relates to the merits of the case.

Third, OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the PUCO's effective treatment of the Application. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of the case.

Fourth, OCC will significantly contribute to the full development and equitable resolution of the issues herein, based on its expertise in regulatory and telephone matters.

OCC also satisfies the intervention criteria in the PUCO's rules, which are subordinate to the Ohio Revised Code criteria that OCC satisfies. 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 real and substantial interest in this case where the outcome could have an effect on the basic service rates paid by residential customers.

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 has already 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 because OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.⁶ That interest is different from, and not represented by, any other entity in Ohio. In addition, OCC has been granted intervention in CBT’s other two basic service alt. reg. cases.⁷

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.⁸

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

⁶ R.C. Chapter 4911.

⁷ Case No. 06-1002-TP-BLS, Entry (September 29, 2006) at 1; Case No. 08-1007-TP-BLS, Entry (September 12, 2009) at 1.

⁸ *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20.

III. CONCLUSION

This proceeding can adversely affect residential customers in CBT's service territory in many ways, including the potential for allowing unlawful or unreasonable rate increases of up to \$1.75 on monthly bills (basic service and Caller ID) each year. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of the approximately 27,700 residential customers who have an interest in the outcome of this case.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Intervene by the Office of the Ohio Consumers' Counsel was provided electronically to the persons listed below this 8th day of October 2009.

/s/ Terry L. Etter
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Summary: Motion Motion to Intervene 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