

In the Matter of the Application of)
Windstream Ohio, Inc. to Add New) Case No. 13-2160-TP-ATA
Tariff Language.)

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Windstream Ohio, Inc. proposes that it be allowed to seek payments in advance of the rendering of service from certain customers who initiate basic local exchange service. OCC is filing on behalf of Windstream's residential telephone customers. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support. OCC also includes Comments on Windstream's proposed tariff.

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¹ R.C. Chapter 4911.

- (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 Windstream's residential customers in this case involving the inclusion of an advance payment requirement in Windstream's basic service tariff. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that Windstream's advance payment requirement should not be allowed as a means for customers to establish creditworthiness. 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 proceedings. 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where Windstream seeks the authority to require residential customers to make an advance payment before service is initiated.

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 PUCO 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 customers. 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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.²

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

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 customers, the PUCO should grant OCC's Motion to Intervene.

II. COMMENTS

In its Application, Windstream proposes to add the following language to its basic local exchange service tariff:

Advanced Payment

An applicant for service or facilities may be required to pay in advance of installation an amount not to exceed applicable service connection, installation, or other non-recurring charges plus charges for one month of service. The amount of any advance payment collected is credited to the customer's account after service is established. Where construction charges are applicable, the payment thereof may be required before construction begins.³

As part of discussions with Windstream regarding the proposed tariff addition, OCC was informed that Windstream could use the advance payment in situations where an applicant for new service cannot establish creditworthiness. The PUCO should not allow advance payments as a means to establish creditworthiness.

The Ohio Revised Code limits how much a telephone company may charge an applicant who cannot establish creditworthiness. R.C. 4927.08(B)(6) states: "A telephone company may require a deposit, not to exceed two hundred thirty per cent of a reasonable estimate of one month's service charges, for the installation of basic local exchange service for any person that it determines, in its discretion, is not creditworthy." Windstream's tariff already has a deposit provision reflecting the statutory provision.⁴

³ See Application, Exhibit B, First Revised Sheet No. 9.

⁴ See id.

Thus, it is unnecessary for Windstream to also have advance payments as a means for applicants to establish their creditworthiness to obtain service.

The use of advance payments to establish creditworthiness could circumvent R.C. 4927.08(B)(6). The 230% limitation in the statute is specifically applicable to *deposits*, not to advance payments. Thus, under the tariff language Windstream could require applicants who have not established creditworthiness to make an advance payment that is more than a deposit of 230% of one month's basic service charge. This would negate the consumer protection contained in the statute limiting, to no more than 230% of one month's basic service charges, the amount of a deposit that telephone companies may require of customers who cannot establish their creditworthiness.

The PUCO should not allow the consumer protections in R.C. 4927.08(B)(6) to be diminished. To protect consumers, the PUCO should require Windstream to specify in its tariff that advance payments will not be used with regard to customer creditworthiness.

III. CONCLUSION

OCC has met the criteria for intervention in this proceeding. The PUCO should grant OCC's motion to intervene.

Windstream's proposed tariff regarding advance payments would harm consumers by circumventing the consumer protections in R.C. 4927.08(B)(6). The PUCO should prevent Windstream from using advance payments as a means for applicants to establish creditworthiness.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene and Comments was served on the persons stated below via electronic transmission this 26th day of November 2013.

/s/ Terry L. Etter

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Summary: Motion Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.