

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Windstream)	
Holdings, Inc. et al. to Transfer Assets.)	Case No. 14-1438-TP-ATR
In the Matter of the Application of Talk America)	
Services, LLC to Provide Competitive Local)	Case No. 14-1439-TP-ACE
Exchange and Competitive Telecommunications)	
Services)	

RESPONSE OF
COMMUNICATIONS WORKERS OF AMERICA
TO APPLICANTS' MEMORANDUM CONTRA MOTION TO INTERVENE

The Communications Workers of America ("CWA") hereby responds to the Applicants' Memorandum Contra Motion to Intervene and Comments of CWA, filed in this proceeding on October 28, 2014 (referred to herein as "Applicants' Memorandum Contra").

Applicants' Memorandum Contra improperly states that CWA was required to intervene in this proceeding within 15 days of the date of filing. In support of this assertion, Applicants cite to Ohio Adm. Code § 4901:1-6-08(C)(1). That provision, however, does not apply to this proceeding.

When Applicants filed this proceeding, they filled out the required form to inform the Commission of the subject matter of the proceeding. On that form, Applicants state that this proceeding is filed under Ohio Adm. Code § 4901:1-6-29(B); not under section 6-08.¹

¹ Section 6-29(B) includes applications to "conduct a transaction involving one or more LECs providing BLES for the purchase, sale, or lease of property, plant, or business which may affect the operating authority of a party to the transaction." Ohio Adm. Code § 4901:1-6-29(B)(1)(b). Section 6-08, however, applies to the filing of an application by a CLEC to provide service. CWA's intervention relates solely to the proposed sale and leaseback of ILEC property under section 6-29; CWA does not oppose the application of Talk America Services under section 6-08.

Importantly, as Applicants apparently recognize on page 2 of their Memorandum Contra, there is no limit on the time to intervene in a section 6-29 proceeding.

Moreover, section 6-29 requires an applicant to provide notice to all of its customers at least 15 days prior to the initiation of the proceeding. Specifically, that rule requires:

(D) Customer notification. A telephone company shall provide to its affected customers, in accordance with rule 4901:1-6-07 of the Administrative Code, at least fifteen days' advance notice (e.g., direct mail, bill insert, or bill notation) of any change in the company's operations identified by this rule that is not transparent to its customers and may impact service, and file a copy of such notice with the commission concurrent with the filing of an application under this rule. In the alternative, a telephone company subject to the notification procedures set forth in 47 C.F.R. 63.71, may submit evidence of a customer notice already provided for the purpose of informing subscribers of a change in operations consistent with the requirements of the federal communications commission.

Ohio Adm. Code § 4901:1-6-29(D) (emphasis added).

Applicants, however, did not provide any such notice to its customers prior to the filing of this proceeding, apparently because Applicants believe the transaction will be "transparent to its customers." In the absence of such a notice, it is not reasonable to apply an extremely short time period for intervening in a proceeding. In this instance, CWA learned of this proceeding as a result of its own research; not as a consequence of any notice Applicants provided either to their customers or to the public at large.

Importantly, Applicants' Memorandum Contra completely fails to address the importance of the letter it filed with this Commission on September 12, 2014. As CWA discussed in its initial filing, that letter appears to substantially alter the financial and operational aspects of this transaction and calls into question whether there will be financial benefit or financial harm to Applicants.

Applicants are correct that CWA had intervened in a similar proceeding in Pennsylvania. CWA subsequently withdrew from the proceeding because it did not involve ILEC operations.

Neither the Pennsylvania proceeding nor, to the best of CWA's knowledge, any other state proceeding initiated by Applicants and their affiliates contains the information found in the September 12 letter submitted to this Commission. As of this date, CWA's review of Applicants' filings with the Securities and Exchange Commission concerning the proposed transaction also fails to disclose the information contained in the September 12 letter to this Commission. Thus, CWA's monitoring or participation in other proceedings, and its monitoring of filings made by Applicants and their affiliates with the Securities and Exchange Commission, did not and could not have made CWA aware of the true financial implications of the proposed transaction.

In other words, the true nature of this transaction was not disclosed by Applicants until September 12; and even that disclosure is incomplete and confusing. Moreover, that disclosure was not made in other state proceedings, was not made publicly available through a Securities and Exchange Commission filing, or otherwise provided in a manner that interested parties, such as CWA, would have notice of it. Thus, it is not reasonable to impose a very short time limit on CWA's intervention in this proceeding.

CWA's research first identified the September 12 letter on or about October 16. After reviewing the letter with counsel and a financial consultant, CWA filed its motion to intervene less than one week later, on October 22. CWA's intervention, therefore, is timely and CWA should be allowed to fully participate in this proceeding.

Finally, CWA has raised significant operational and financial concerns with the proposed transaction. As CWA explained in its initial filing, CWA is concerned that the proposed transaction would adversely affect the interests of its approximately 60 members in Ohio who work for Windstream and are retail customers of Windstream. This proposed transaction and the decisions of this Commission with respect thereto are likely to have a direct and immediate

impact on the people CWA represents, both as employees and as customers of Windstream in Ohio.

CWA respectfully suggests that no one will be more directly affected by the proposed transaction than the employees of Windstream. CWA cannot state the nature of a labor union's interests in a proposed sale any more clearly than they were articulated by an administrative law judge of the Pennsylvania Public Utility Commission, who ruled:

It is clear that the union, representing a collective bargaining unit comprised of 22,500 members in Pennsylvania, including approximately 425 members employed by Commonwealth Telephone Company, has a substantial, direct and immediate interest in the outcome of this case. The very livelihood of the 425 members rests on the management decisions made by Commonwealth, and the myriad of decisions made by that management ... are vital to the members. ... Customer service, safety and reliability, network deployment and the financial health of the two Joint Applicants affect not only the customers of the Joint Applicants but the employees who provide the services.

Joint Application of Commonwealth Telephone Co., Pa. Pub. Util. Comm'n Docket No. A-310800F0010, Order Disposing Of The Preliminary Objections (ALJ Colwell, Dec. 14, 2006), pp. 6-7. See also *Joint Application for Approvals Related to Verizon's Transfer of Property and Customer Relations*, Me. Pub. Util. Comm'n Docket No. 2007-67, Procedural Order (Hearing Examiner Bragdon, Mar. 14, 2007), pp. 7-8.

CWA, therefore, has a direct interest in this proceeding and should be permitted to fully participate in this matter.

Respectfully submitted,



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Dated: October 29, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene was served upon the parties of record listed below this 29th day of October, 2014, via U.S. mail, postage prepaid and/or electronic service:



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Summary: Memorandum Response of CWA to Applicants' Memorandum Contra Motion to Intervene electronically filed by Mr. Matthew R Harris on behalf of CWA