

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

<i>In re</i> Petition of Communications Workers of America for a Public, On-the-Record Commission Investigation of the Adequacy and Reliability of Service Provided by AT&T Services, Inc.	Case No. 19-1314-TP-CSS
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***CWA Memorandum Contra* to AT&T’s Motion to Dismiss**

CWA now comes before the Commission pursuant to OAC §4901-1-12(B)(1) and submits its *Memorandum Contra* to AT&T’s Motion to Dismiss. AT&T served CWA with a copy of its Motion to Dismiss on July 2, 2019. In its Motion, AT&T requests dismissal of CWA’s Complaint and Request for an Investigation. CWA’s response is set forth below.

Firstly, AT&T argues that “there are no reasonable grounds for the relief requested.” (AT&T Mtn. to Dismiss, p. 4) In support, AT&T argues that (1) it has remedied most of the issues presented in CWA’s Complaint, (2) it maintains a skilled workforce of technicians to support its facilities, (3) the conditions identified *may* not be service affecting, (4) CWA’s Complaint is really aimed at matters related to collective bargaining, and (5) there is precedent for dismissal. Each of these arguments is addressed in turn.

With regard to the first argument, CWA pointed out in its Complaint that the identified examples are merely a sampling, and are representative of a larger epidemic. AT&T further argues that because it has remedied the issues identified, there is no further cause for concern. However, CWA is prepared to present evidence of larger, more widespread issues to the

Commission in the course of this proceeding. Further, merely remedying the issues made known to the public in CWA's filing does not relieve the Company of its continuing and ongoing obligation to provide adequate and reliable service to its customers. Nor does AT&T's limited remedial conduct relieve the Company of its burden to ensure safe working conditions for its employees.

With regard to the second argument, for the past several years AT&T has whittled down its workforce, consistently laying off employees nearly every financial quarter. In fact, during the pendency of the instant Complaint, AT&T declared a "surplus"¹ of employees in many of the problem areas identified in CWA's Complaint. The constant and continued elimination of its skilled employees is obviously a contributing factor to the state of disrepair of Company facilities. Again, this is an issue that should be explored in the course of an investigation, as CWA has requested.

With regard to the third argument, AT&T speculates that the issues identified in the Complaint *may* not be service affecting. No substantive evidence or arguments are presented by AT&T that would demonstrate the issues identified are not in fact service affecting. In any event, this argument again misses the point: CWA's Complaint identifies merely a sampling of issues. Were it to identify every potentially service-affecting issue with AT&T's outside plant, CWA's Complaint would have been exponentially longer. However, it is not the role of CWA to identify every issue with AT&T's outside plant. Rather, it is the burden of AT&T to demonstrate to the Commission that it is complying with Revised Code. CWA's Complaint calls AT&T's compliance into doubt. As such, the only way to resolve the disputed issues is for the Commission to conduct a hearing and an investigation. CWA is prepared to present testimony

¹ A "surplus" is a determination made by the Company that too many employees are on payroll and a layoff is impending.

and evidence of more widespread concerns if permitted by this Commission. Further, it is worth noting that AT&T's argument in this respect is undercut by its conduct: If the conditions identified in CWA's Complaint are of no real concern, there would have been no need to remedy them as AT&T has done. Finally, AT&T has not pointed to any measures undertaken that would demonstrate it has remedied issues not yet made public.

With regard to the fourth argument, the parties recently reached a tentative agreement over a successor collective bargaining agreement. Hence, there is no current labor controversy as AT&T suggests. Presently, CWA still wishes to pursue this matter because of overriding concerns relating to the service AT&T provides to the public, and because of parallel concerns relating to the safety of CWA's bargaining unit members.

Finally, the *Holmes* case cited by the Company is inapposite. As AT&T noted, that matter related to a utility company's efforts to restore service to customers affected by a severe weather event. Here, CWA has identified major concerns with AT&T's ongoing maintenance (or lack thereof) of its facilities. The various conditions identified in CWA's Complaint have and will continue to cause service disruptions, affecting the reliability of services provided to AT&T consumers in Ohio. Moreover, these same conditions pose risks to the safety of AT&T employees. The instant Complaint identifies issues within the immediate control of AT&T; it does not involve a *force de majeure* as in *Holmes*.

AT&T further argues that the allegation that AT&T fails to provide available, adequate and reliable basic local exchange service is insufficient. (AT&T Mtn. to Dismiss, p. 8) In conclusory fashion, AT&T notes, "Interruptions cannot always be avoided . . . The critical factor is whether AT&T Ohio's BLES service is available (it is) and whether it works (it does)." (AT&T Mtn. to Dismiss, p. 10) AT&T fails to support these overarching statements with any

concrete proof, which is yet another reason for a hearing and investigation. CWA is not satisfied with such broad, unsupported declarations and the Commission should afford these statements little weight. The numerous documented examples of bad plant conditions and the details set forth in CWA's Complaint provide more than enough support for CWA's contention that AT&T's services must be examined by the Commission in the course of a hearing and investigation.

Further, AT&T argues CWA does not have standing to sue AT&T. CWA is not "suing" AT&T in any traditional sense. CWA is merely requesting the Commission exercise its statutory oversight in the form of a hearing and investigation examining the adequacy, availability, reliability and safety of the Company's services and facilities. Further, CWA is not seeking damages, as would also be customary in traditional litigation. Any remedial measures ordered by the Commission will not benefit CWA in any way (other than as a minor consumer of its services)². CWA has already set forth the legal bases in support of its Complaint and cited the applicable portions of the Ohio Revised Code in support. Those citations need not be revisited here.

Finally, AT&T argues that matters raised in the Complaint are also covered by a collective bargaining agreement³ and/or "labor and employment law." Even assuming, *arguendo*, the Commission finds merit to this argument, the fact that varying areas of law and/or private contracts touch the same controversy has absolutely no bearing on the authority of this Commission to pursue and remedy the issues identified in CWA's Complaint. CWA seeks a hearing and investigation pursuant to the statutory authority cited in its Complaint, which vests

² It is worth noting the Office of the Ohio Consumers' Council has sought intervention in this matter, seeking to advocate on behalf of residential customers of AT&T.

³ The applicable collective bargaining agreement expired on April 14, 2018. There is currently no CBA in effect. However, as noted, a tentative agreement has been reached over the terms of a successor CBA.

the Commission with jurisdiction over the availability, adequacy and reliability of basic local exchange services.

For these reasons, AT&T's Motion to Dismiss should be DENIED.

Respectfully submitted,

/s/ Matthew R. Harris

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CERTIFICATE OF SERVICE

Pursuant to the Commission's Rules the undersigned hereby certifies that a copy of the foregoing was filed electronically on July 17, 2019. A copy of the same was submitted to the following individuals via regular U.S. mail and email the same day.

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Summary: Memorandum CWA Memorandum Contra to AT&T's Motion to Dismiss
electronically filed by Mr. Matthew R Harris on behalf of CWA