

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Petition of Communications Workers of)
America for a Public, On-The-Record)
Commission Investigation of the) Case No. 19-1314-TP-CSS
Adequacy and Reliability of Service)
Provided by AT&T Services Inc.)

**MEMORANDUM CONTRA AT&T OHIO’S MOTION TO DISMISS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Communications Workers of America (“CWA”) filed a Complaint against AT&T Services, Inc. d/b/a AT&T Midwest (“AT&T Ohio”) specifically alleging 25 instances where AT&T Ohio has failed to maintain its physical plant and facilities as required by Ohio law.¹ The Complaint further alleges the existence of many more violations by AT&T Ohio, which the CWA claims it cannot disclose without violating AT&T Ohio’s Code of Business Conduct.² The alleged violations could threaten service quality and even the physical safety of AT&T Ohio’s customers. To protect AT&T Ohio’s customers, the Public Utilities Commission of Ohio (“PUCO”) should initiate an investigation into the adequacy and reliability of AT&T Ohio’s facilities and service quality.

¹ Complaint at ¶17.

² *Id.* at ¶¶15-16.

On July 2, 2019, AT&T Ohio filed a Motion to Dismiss (“Motion”) the Complaint asserting that the CWA fails to allege reasonable grounds for a PUCO investigation.³ In AT&T Ohio’s view, the state of disrepair of the facilities identified in the Complaint is merely cosmetic, and poses no immediate threat to service quality or public safety.⁴ AT&T Ohio also argues that dismissal is required because the CWA does not allege an injury and thus, lacks standing. AT&T Ohio is wrong on both counts, and the Motion should be denied.

The Office of the Ohio Consumers’ Counsel (“OCC”), which represents AT&T Ohio’s residential utility customers under R.C. 4911, filed a Motion to Intervene in this case on July 5, 2019.

II. DISCUSSION

A. **The CWA’s allegations more than establish the need for a PUCO investigation into the adequacy and reliability of AT&T Ohio’s telephone service.**

The PUCO stated its standard for reviewing a motion to dismiss in *OCC v. Dominion Retail*.⁵ There, the PUCO stated: “[W]hen a motion to dismiss is being considered, all material allegations of the complaint must be accepted as true and

³ AT&T Ohio’s Memorandum in Support of Its Motion to Dismiss, Case No. 19-1314-TP-CSS at 2 (July 2, 2019). In note 1 of the Motion, AT&T Ohio states that The Ohio Bell Telephone Company d/b/a AT&T Ohio (not AT&T Services, Inc.) is the public utility in Ohio that provides regulated services. Use of the name “AT&T Ohio” herein refers to the public utility that provides services regulated by the PUCO.

⁴ *Id.* at 6, 9.

⁵ *OCC v. Dominion Retail*, Case No. 09-257-GA-CSS, Entry (July 1, 2009) at ¶7, citing *In the Matter of the Complaint of XO Ohio, Inc. v. City of Upper Arlington*, Case No. 03-870-AU-PWC, Entry on Rehearing (July 1, 2003).

construed in favor of the complaining party.”⁶ Under this standard of review, the PUCO should not dismiss the Complaint.

The Complaint specifically identifies (with photographs) 25 instances of facilities throughout Ohio in major disrepair.⁷ Even more concerning are the Complaint’s allegations of additional violations, which the CWA will not disclose for fear of violating AT&T Ohio’s Code of Business Conduct.⁸ When these allegations are construed in favor of the CWA, it is clear that AT&T Ohio’s Motion must be denied. AT&T Ohio’s claim that it has addressed the issues identified in the Complaint cannot be verified without a PUCO investigation. And the PUCO should not risk residential customers’ physical safety and service quality based solely on AT&T Ohio’s word.

R.C. § 4927.21(A) states that “any person may file with the [PUCO], or the [PUCO] may initiate, a complaint against a telephone company . . . *alleging* that any rate, practice, or service of the company is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any provision of sections 4927.01 to 4927.20” (emphasis added). The plain language of the statute does not require the CWA – or any of AT&T Ohio’s residential customers – to show that it has been injured for the PUCO to investigate. Further, R.C. § 4927.21(B) provides that “[i]f it appears that reasonable grounds for complaint are stated by a complaint filed under division (A) of this section, the commission *shall* fix a time for hearing ” and “[t]he parties to the complaint *shall* be entitled to be heard” (emphasis added).

⁶ *Id.*

⁷ Complaint at ¶17.

⁸ *Id.* at ¶16.

The CWA’s allegations are more than sufficient to establish “reasonable grounds” for the Complaint and thus, the PUCO “shall,” under Ohio law, set the matter for hearing and provide an opportunity for the parties to be heard. In addition to the allegations discussed above, the CWA alleges that the PUCO has received over 6,000 informal customer complaints from AT&T Ohio’s customers since 2016.⁹ AT&T Ohio disputes this allegation,¹⁰ but that is no reason for dismissing the Complaint. This is an issue the PUCO should investigate, along with whether AT&T Ohio is properly maintaining its facilities.

AT&T Ohio claims that the substandard facilities shown in the 25 photographs in the Complaint have either been fixed or will be fixed by August 1.¹¹ But the CWA claims there are other instances where AT&T Ohio has failed to maintain its facilities that cannot be identified at this time because of restrictions in AT&T Ohio’s Code of Business Conduct.¹² AT&T Ohio should not be allowed to use its Code of Business Conduct to conceal its failure to properly maintain its facilities

The PUCO also has authority under R.C. § 4927.19(A)-(B) to “investigate or examine the books, records, or practices of any telephone company... [and] investigate or inspect the plant and facility of any telephone company.” AT&T Ohio is a telephone company that the PUCO can “investigate” or “examine” pursuant to R.C. § 4927.19(A)-(B). Accordingly, any claim by AT&T Ohio that the PUCO cannot lawfully initiate an investigation in response to the Complaint should be rejected. Therefore, the PUCO

⁹ *Id.* at ¶20.

¹⁰ Motion at 7.

¹¹ *Id.* at 4-5.

¹² Complaint, ¶16.

should dismiss the Motion and investigate the adequacy and reliability of AT&T Ohio's service being provided to Ohioans.

B. The PUCO decisions that AT&T Ohio cites do not support dismissal of the Complaint.

AT&T Ohio relies on two cases where the PUCO granted motions to dismiss for failure to state reasonable grounds. But neither supports dismissal of the CWA Complaint.

First, AT&T Ohio cites *In the Matter of the Complaint of Eugene Holmes v The Cleveland Electric Illuminating Company*.¹³ While the PUCO did grant the utility's motion to dismiss in *Holmes*, the facts in that case were nothing like the facts presented here. In *Holmes*, the complainant was not a customer of the utility, but merely a caretaker of the utility customer affected by a power outage.¹⁴ Whether the CWA is in fact a customer of AT&T Ohio is disputed. Nevertheless, the CWA has an interest in promoting the safety and well-being of its members. And the CWA alleges that the condition of AT&T Ohio's facilities endangers the safety and well-being of its members. But regardless, there can be no dispute that under Ohio law OCC represents the interests of AT&T Ohio's residential customers who could be (or may have already been) harmed by AT&T Ohio's failure to maintain its facilities.

The complaint in *Holmes* also did not allege that the utility violated any statute, public policy, PUCO rule, or precedent.¹⁵ By contrast, the Complaint here specifically

¹³ Motion, at 8.

¹⁴ Case No. 12-2980-EL-CSS, Entry (March 20, 2013) ¶¶6, 8.

¹⁵ *Id.* at ¶9.

alleges 25 instances where AT&T Ohio failed to properly maintain its facilities in violation of R.C. §§ 4927.02(A)(1) and 4927.08(A).¹⁶

Second, AT&T Ohio relies on *In the Matter of the Complaint of W.D.I.A. Corporation, Inc v Cincinnati Bell Telephone Company*,¹⁷ to support its argument that its outside plant does not have to be perfect or totally free from blemishes.¹⁸ AT&T Ohio's reliance on this case is misplaced. The issue is not merely whether AT&T Ohio's basic local exchange service "works" and is "available."¹⁹ As AT&T Ohio notes, the provision of adequate service also includes "the duty to take reasonable precautions and to reestablish service as quickly as possible."²⁰

The photographs in the Complaint raise the question as to whether AT&T Ohio takes any precautions (reasonable or otherwise) to keep its facilities in working order.²¹ The photographs in the Complaint show hanging lines, exposed lines, hanging terminals, animal damage, unsecured lines hanging from poles, and potentially dangerous "double-pole" situations.²² All of these conditions can, and ultimately will, impair service quality. Worse, these conditions are a potential safety hazard to the public and AT&T Ohio's service technicians. Therefore, the PUCO should dismiss the Motion and investigate the AT&T Ohio's service quality being provided to consumers.

¹⁶ Complaint at ¶¶10-11,17.

¹⁷ Case No. 91-1905-TP-CSS, Opinion and Order (March 10, 1994).

¹⁸ Motion, at 9-10.

¹⁹ *Id.* at 10.

²⁰ *Id.*

²¹ Complaint at ¶17.

²² *Id.*

III. CONCLUSION

The allegations in the CWA's Complaint state reasonable grounds for the PUCO to initiate an investigation into the adequacy and reliability of AT&T Ohio's facilities and service quality. In addition to the specific instances of substandard facilities identified in the Complaint, CWA states that AT&T Ohio's Code of Business Conduct deters its members from identifying more instances. To protect customers, the PUCO should deny AT&T Ohio's Motion and initiate an investigation in this proceeding.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela O'Brien

Angela O'Brien (0097579)
Counsel of Record
David Bergmann (0009991)
Terry Etter (0067445)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [O'Brien]: (614) 466-9531
Telephone [Bergmann] (614) 466-9569
Telephone [Etter]: (614) 466-7964

Angela.obrien@occ.ohio.gov

David.bergmann@occ.ohio.gov

Terry.etter@occ.ohio.gov

(Will accept service via email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra AT&T Ohio's Motion to Dismiss was served by electronic mail to the persons listed below, on this 17th day of July 2019.

/s/ Angela O'Brien _____
Angela O'Brien
Assistant Consumers' Counsel

SERVICE LIST

John.jones@ohioattorneygeneral.gov
mrharris@cwa-union.org

mo2753@att.com

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Summary: Memorandum Memorandum Contra AT&T Ohio's Motion to Dismiss by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of O'Brien, Angela D.