

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

AT&T MEMORANDUM CONTRA TO THE OCC MOTION TO INTERVENE

The Ohio Bell Telephone Company (“AT&T Ohio”)¹ hereby submits its Memorandum Contra to the Motion to Intervene filed by the Office of the Ohio Consumers’ Counsel (“OCC”). The motion should be denied because it is premature and because the OCC’s interests are adequately represented by the Communications Workers of America (“CWA”).

The Motion is premature because at this point there is no investigation for the OCC to participate in– there is merely a request that the Commission initiate an investigation. At this stage in the process, there is only the petition of the CWA asking for an investigation and AT&T Ohio’s motion to dismiss. Based on those pleadings, the Commission will decide whether it is reasonable and prudent to exercise its discretion under R.C. 4927.19 to “examine the books, records or practices” of AT&T Ohio’s basic local exchange service. AT&T Ohio’s motion to dismiss demonstrates why the Commission should not investigate. But until the Commission makes that decision, it is premature to permit other entities such as the OCC to intervene.

Moreover, intervention is not appropriate under R.C. 4903.221.² That section permits intervention by any person “who may be adversely affected by a public utilities commission

¹ The Ohio Bell Telephone Company is a public utility in Ohio and provides certain regulated and non-regulated services. The Ohio Bell Telephone Company uses the name AT&T Ohio. The Complaint is against "AT&T Services, Inc." – an entity that does not provide telecommunications services in Ohio.

² R.C. 4903.221 provides as follows: “Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided:
(A) That such other person files a motion to intervene with the commission no later than:
(1) Any specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established;

proceeding.” In this situation, the OCC will not be “adversely affected” by the Commission’s decision because the only thing the Commission will decide is whether or not to initiate the investigation. If it decides not to, the OCC will not be harmed or adversely affected, i.e., it will not lose a legal issue or establish an unfavorable precedent for its members. Nothing will have happened other than the rejection of a request to initiate a new proceeding. The OCC may miss out on an opportunity to participate in an investigation, but that is not the type of “adverse affect” that justifies participation in the process at this stage.

Finally, intervention is not appropriate under Commission Rule 11. Under Rule 11(B), the Commission must consider five factors in deciding whether to permit intervention. The fifth factor is “the extent to which the person’s interest is represented by existing parties.” Ohio Admin. Code 4901-1-11(B)(5). In this situation, the OCC’s “interest” is having the Commission initiate an investigation under R.C. 4927.19. That interest is thoroughly represented by the CWA. The CWA initiated this matter and is strenuously advocating for an investigation. That is the precise “interest” the OCC wishes to pursue and the precise interest that the CWA is pursuing. That fact that it is being vigorously pursued by the CWA means that the OCC’s interest will be fully served without its direct participation, and the Commission may deny its motion to intervene on that basis.

(2) Five days prior to the scheduled date of hearing. The public utilities commission may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.

(B) That the commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

- (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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues."

WHEREFORE, AT&T Ohio respectfully requests that the Motion to Intervene filed by the Office of the Ohio Consumers' Counsel be denied.

Dated: July 20, 2019

Respectfully Submitted,

AT&T Ohio

/s/ Mark R. Ortlieb

Mark R. Ortlieb (0094118)

AT&T Ohio

225 West Randolph, Floor 25D

Chicago, IL 60606

(312) 727-6705

mo2753@att.com

(willing to accept service by email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this 20th day of July 2019 by U.S. Mail and/or electronic mail on the parties shown below.

/s/ Mark R. Ortlieb

Mark R. Ortlieb

Marianne Townsend
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
Marianne.Townsend@puc.state.oh.us

Matthew R. Harris (OH-0087653)
CWA District 4 Counsel
20525 Center Ridge Rd., Suite 700
Rocky River, OH 44116
mrharris@cwa-union.org

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Summary: Memorandum AT&T Memorandum Contra to the OCC Motion to Intervene electronically filed by Mr. Mark R Ortlieb on behalf of AT&T Ohio and Ohio Bell Telephone Company