

**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 OHIO’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS**

The Ohio Bell Telephone Company d/b/a AT&T Ohio hereby submits this Reply in Support of its Motion to Dismiss the case brought by the Communications Workers of America (“CWA”). CWA asks the Commission to initiate an investigation into the adequacy and reliability of AT&T Ohio’s telephone facilities and services. As AT&T Ohio’s Motion showed, however, CWA lacks standing to bring a complaint or seek an investigation against AT&T Ohio because it is not a customer of AT&T Ohio’s basic local exchange service (“BLES”) and has not alleged facts indicating that any of the alleged network problems actually affect BLES (or any other service). Furthermore, AT&T Ohio fixed all but one of the alleged network issues before filing its Motion, and will fix the last shortly. The responses filed by CWA and the Office of Consumers’ Counsel (“OCC”) do nothing to refute those points or show any basis for proceeding on CWA’s request.

**ARGUMENT**

**I. The Petition Should Be Dismissed for Lack of Standing**

Although it titled the case as a “Petition” for an investigation and described its request as asking the Commission to initiate an investigation (*Petition* at p. 1, ¶ 12, ¶ 21, p. 21, citing ORC 4927.19), CWA also called its initial pleading a “Complaint” and cited the statute on complaints (ORC 4927.21). *Petition* at 1, 21. Regardless of whether CWA’s request is treated as a “Complaint” or a request to the Commission to initiate an investigation, however, it should be

dismissed for lack of standing, as AT&T Ohio demonstrated in its Memorandum in Support of Its Motion to Dismiss (“*MTD Mem.*”) at 10-12.

It is well-established that in order to bring a complaint against a public utility, a consumer must both (i) be a customer of that entity’s public-utility service (that is, a service over which the Commission has jurisdiction) and (ii) be “directly affected by the alleged unreasonable activity.” *Boros v. Cleveland Elec. Illuminating Co.*, Opinion and Order, Case No. 05-1281-EL-CSS, Opinion and Order at 3 (Apr. 25, 2007); *Complaint of S.G. Foods, Inc. v. FirstEnergy Corp.*, Case No. 04-28-EL-CSS, Entry at ¶¶ 48-52 (Mar. 7, 2006); *see also Holmes v. Cleveland Elec. Illuminating Co.*, Case No. 1202980-EL-CSS, Entry at ¶ 8 (Mar. 23, 2013). CWA does not meet these requirements. CWA does not allege that it is a customer of AT&T Ohio’s BLES, which is the only service over which the Commission has jurisdiction. *Motion* at 11.<sup>1</sup> Nor does CWA claim any direct injury from AT&T Ohio’s alleged conduct. To the contrary, CWA admits that it “is not ‘suing’ AT&T in any traditional sense,” that it “is not seeking damages,” and that “[a]ny remedial measures ordered by the Commission will not benefit CWA in any way.” *CWA Mem. Contra* at 4. These statements confirm that CWA has not been “directly affected” by AT&T Ohio’s alleged conduct, and therefore lacks standing.

CWA responds by claiming that standing requirements should not apply because it is not actually seeking relief against AT&T Ohio, as a true “Complaint” would do, but rather is “merely requesting the Commission to exercise its statutory oversight in the form of a hearing and investigation . . . .” *Id.* OCC argues that standing is irrelevant because ORC 4927.21 does not require a complainant to show it has been injured. *OCC Mem. Contra* at 3. CWA and OCC

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<sup>1</sup> OCC claims that “[w]hether the CWA is in fact a customer of AT&T Ohio is disputed.” *OCC Mem. Contra* at 5. That is incorrect. CWA’s *Memorandum Contra* (at 4) claims it is a “minor customer” of AT&T Ohio, but does not deny AT&T Ohio’s statement that CWA purchases only a single fax line from AT&T Ohio, and that a fax line is not BLES. *MTD Mem.* at 11. Moreover, CWA does not allege any service problems on its fax line.

are incorrect. The decisions in *Boros* and *S.G. Foods*, cited above, both hold that allegations of being a customer of an entity's public-utility service and being "directly affected by the alleged unreasonable activity" are required to establish standing. Because CWA does not meet any of the requirements for standing, its "Complaint" must be dismissed.<sup>2</sup>

To the extent CWA's initial pleading is treated as a request for a Commission-initiated investigation under Section 4927.19, CWA still lacks standing. Section 4927.19(B) states:

(B) The commission may investigate or inspect the plant and facility of any telephone company, subject to the following limitations:

(1) To the extent of the commission's jurisdiction over the company under sections 4927.01 to 4927.21 of the Revised Code;

(2) Only in response to a complaint that implicates the plant or facility to be inspected and that is made by a consumer concerning basic local exchange service or another entity concerning wholesale service.

Subsection (B)(1) limits network investigations "to the extent of the commission's jurisdiction over the company[.]" The Commission has jurisdiction only over AT&T Ohio's BLES, and CWA has not alleged any impact on BLES as a result of alleged network problems (which, in any event, have been or are being repaired). *MTD Mem.* at 5-6, 11. Similarly, subsection (B)(2) limits the Commission to initiating "plant or facility" investigations "[o]nly in response to a complaint that implicates the plant or facility to be inspected and that is made by a consumer concerning basic local exchange service[.]" (Emphasis added). CWA's Petition here is not made by a "consumer concerning basic local exchange service," because CWA does not

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<sup>2</sup> Another, independent basis for dismissal is that CWA's "Complaint" seeks an investigation of "AT&T Services, Inc." But AT&T Services, Inc. is not a public utility. *MTD Mem.* at 2 n.1. Sections 4929.21 and 4927.19 allow a complaint or investigation only against an actual public utility.

purchase BLES from AT&T Ohio. *MTD Mem.* at 11. Accordingly, there is no statutory provision that authorizes initiating a network investigation at CWA's request.<sup>3</sup>

## **II. The Petition Fails to Demonstrate Any Basis for an Investigation**

Even if CWA had standing (which it does not), the decision whether to initiate an investigation of AT&T Ohio's network lies entirely within the Commission's discretion.<sup>4</sup> Nothing requires the Commission to do anything simply because CWA asks it to. And there is no basis to do anything here, because CWA's Petition and *Memorandum Contra* fail to establish any basis for the Commission to invoke the heavy machinery of a network investigation.

To begin with, even though CWA did not allege that any of the 25 alleged network problems were service-affecting, much less that they affected BLES, AT&T Ohio has now fixed all but one of those alleged problems, and will fix the last one shortly.<sup>5</sup> *MTD Mem.* at 3 & Ex. A. Nor does CWA allege that AT&T Ohio has failed to meet any of the specific statutory service-quality requirements for BLES (which, in any event, have self-effectuating enforcement remedies for each individual instance of failure). *Id.* at 10.

CWA's claim (at 3) that AT&T Ohio "has not pointed to any measures undertaken that would demonstrate it has remedied issues not yet made public" is both cryptic and inaccurate,

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<sup>3</sup> Nor would ORC 4927.19(A) authorize an investigation of AT&T Ohio's "books, records, or practices." That subsection authorizes an investigation "only to the extent of the commission's jurisdiction." Because CWA's initial pleading does not allege any impact on BLES, it does not implicate any matters within the Commission's jurisdiction.

<sup>4</sup> Subsections (A) and (B) of ORC 4927.19 both say only that the Commission "may" initiate an investigation. The term "may" gives the Commission full discretion to decide on its own whether to investigate.

<sup>5</sup> OCC (at 2-3) says the Commission cannot take AT&T Ohio's word on this point, but rather must assume that every allegation in CWA's Petition is true. That view, however, assumes that CWA filed a traditional "Complaint," when in fact it did not. CWA used "Complaint" in the title of its pleading, but it is clear from the case caption chosen by CWA, and by CWA's own statement that it is not "suing" AT&T Ohio (*CWA Mem. Contra* at 4), that this case is about CWA's request that the Commission exercise its discretion to open an investigation. *See Petition*, p. 21. When exercising such discretion and making the significant decision of whether to open an investigation, it is only prudent for the Commission to consider all the relevant facts *at present*, including steps taken since CWA's initial filing.

and provides no support for an investigation. How could AT&T Ohio remedy (or show it has already remedied) “issues” that have not even been identified, and that may not even relate to BLES or be service-affecting? And how could the Commission justify an investigation based on the alleged lack of measures to correct unspecified problems that may not even exist? Moreover, AT&T Ohio *does* have an established system to address network repair issues promptly, including the routine types of issues referred to in CWA’s initial pleading. As discussed in the Motion to Dismiss, AT&T Ohio instructs its field technicians to repair equipment in the field if they spot an unreported issue, or, if they cannot fix it at that time, to report the issue electronically, via an app, so it can be scheduled for repair. *MTD Mem.* at 5.

Finally, CWA’s and OCC’s claim that CWA’s Petition merely referred to “a sampling” of equipment issues that are “representative of a larger epidemic” provides no basis for mobilizing Commission resources and putting AT&T Ohio to the burden and expense of an investigation. *CWA Mem. Contra* at 1; *OCC Mem. Contra* at 4. Before beginning the extensive and costly task of a network investigation, the Commission should have strong, specific, and verifiable reasons to believe that there are material network deficiencies affecting AT&T Ohio’s BLES customers today. Mere innuendo cannot be enough – especially not mere innuendo from an entity that appears to be using the Commission’s processes as a tool to exert bargaining pressure in labor negotiations over which the Commission has no authority. In this instance, AT&T Ohio has fixed or is fixing the routine, non-service-affecting issues that CWA identified, leaving nothing but CWA’s entirely unsupported speculation about unidentified matters. That is no basis for the Commission to undertake an investigation.

## **CONCLUSION**

For the reasons stated above and in AT&T Ohio's Motion to Dismiss, the Commission should decline to initiate an investigation, and should dismiss and close this proceeding.

Dated: July 24, 2019

Respectfully submitted,

AT&T Ohio

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served this 24<sup>th</sup> day of July 2019 by U.S. Mail and/or electronic mail on the parties shown below.

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Company