

**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.)	

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

The Supreme Court of Ohio has held, in a case where the PUCO denied OCC’s intervention motion, that “intervention ought to be *liberally allowed* so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.”¹ In the “absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted.”²

Despite the Court’s liberal standard for participating in PUCO cases, AT&T Ohio opposes intervention in this case by the Office of Ohio Consumers’ Counsel (“OCC”). That is to say AT&T Ohio opposes participation in this case by the Ohio consumers who could be adversely affected.³ The Public Utilities Commission of Ohio (“PUCO”) should reject the arguments in AT&T Ohio’s Memorandum Contra, and grant OCC’s Motion to Intervene (“Motion”) on behalf of consumers in this proceeding.

¹ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 388; 2006-Ohio-5853, ¶ 20 (2006) (emphasis added).

² *Id.*

³ *See* R.C. Chapter 4911.

AT&T Ohio first objects to the timing of OCC's Motion. AT&T Ohio claims that OCC's Motion is premature because the PUCO has not yet initiated an investigation as requested by the Communications Workers of America ("CWA") in the Complaint filed in this case.⁴ That is no reason to deny OCC's intervention. Under the PUCO's own regulations, a motion to intervene is timely as long as it is filed five days before any hearing (or by a specific deadline set by the PUCO), and there is no bar to intervening earlier.⁵ Indeed, a motion to intervene may be made once the PUCO opens a docket, thereby commencing a proceeding.⁶ CWA's filing of the Complaint caused a proceeding to commence. Intervention is not premature.

Next, AT&T Ohio claims that OCC will not be "adversely affected" if the PUCO decides not to initiate an investigation.⁷ According to AT&T Ohio, "[t]he OCC may miss out on an opportunity to participate in an investigation, but that is not the type of 'adverse affect' [sic] that justifies participation in the process at this stage."⁸ AT&T Ohio cites no authority for its novel position (because there is none) and in any event, its argument makes no sense. OCC represents the interests of AT&T Ohio's residential customers, who most certainly could be adversely affected if the PUCO does not initiate an investigation.

⁴ Memorandum Contra at 1.

⁵ Ohio Adm. Code 4901-1-11(E).

⁶ See Ohio Adm Code 4901-1-11 (allowing a person to intervene in a proceeding); Ohio Adm. Code 4901-1-17(A) (permitting discovery by a party to begin immediately after a proceeding is commenced).

⁷ Memorandum Contra at 2.

⁸ *Id.*

The CWA's Complaint sets forth 25 specific allegations regarding AT&T Ohio's failure to maintain its facilities, which could jeopardize public safety and impair the adequacy and reliability of AT&T Ohio's services to Ohioans.⁹ Moreover, the Complaint alleges the existence of additional substandard facilities, which the CWA cannot disclose without violating AT&T Ohio's Code of Business Conduct.¹⁰ Given the serious nature of the Complaint's allegations, and the CWA's inability to reveal the full extent of AT&T Ohio's failure to maintain its facilities, OCC's intervention at this stage of the proceeding is absolutely necessary to ensure the protection of customers.

AT&T Ohio further asserts that OCC's intervention should be denied because OCC's interests in this proceeding would be "thoroughly represented" by the CWA.¹¹ The PUCO should reject that argument as well.

AT&T Ohio relies on the provision in the PUCO's rules, Ohio Adm. Code 4901-1-11(B)(5), which requires the PUCO to consider "the extent to which a person's interest is represented by existing parties." But this reliance is misplaced for a number of reasons.

To begin, R.C. 4903.221(B), the statute that reformed the intervention process in 1983, controls intervention in PUCO proceedings. And it does not contain any requirement that an intervenor show that its interests are unrepresented. OCC meets the four requirements under the statute, 4903.221(B)(1-4), and thus its intervention should be granted.

⁹ See Complaint, ¶ 17.

¹⁰ *Id.*, ¶ 16.

¹¹ Memorandum Contra at 2.

OCC meets the requirements of intervention that are set forth under the PUCO's rules as well, despite AT&T Ohio's assertions to the contrary.

The CWA represents itself as an AT&T Ohio customer and the interests of its members, some of whom are AT&T Ohio employees who maintain physical facilities used to provide telecommunications service to the public.¹² By contrast, OCC is unique in that it has been designated – under Ohio law – as the representative of the interests of all of Ohio's residential utility customers.¹³ Moreover, AT&T Ohio's Code of Business Conduct is said to restrict the CWA from fully disclosing relevant information regarding the maintenance of AT&T Ohio's facilities. OCC has no such restriction. Therefore, OCC's interest in representing AT&T Ohio's residential customers in this proceeding cannot, and will not, be represented by the CWA. There are no identical interests that would preclude OCC's intervention.

The PUCO has permitted intervention in other proceedings where parties represent similar interests. Indeed, the PUCO has stated that its “policy is to encourage the broadest possible participation in its proceedings.”¹⁴ For example, in *Jeffrey Pitzer v. Duke Energy Ohio, Inc.* (which involved a complaint against a utility by the estate of two customers who died of hypothermia after the utility disconnected the customers' gas and electric service), the PUCO granted OCC's intervention over the utility's objection that

¹² See Complaint, ¶¶ 1-2.

¹³ See R.C. Chapter 4911.

¹⁴ *In the Matter of the Application of The Cleveland Electric Illuminating Company*, Case No. 85-675-EL-AIR, Entry (1/14/86) at ¶ 6 (granting intervention of consumer groups who had interests similar to existing parties).

OCC and the complainant had identical interests.¹⁵ The PUCO should likewise reject AT&T Ohio's argument, and grant OCC's intervention in this case.

Finally, AT&T Ohio itself conceded in its Motion to Dismiss the Complaint that CWA's interest is different from that of OCC. There, AT&T Ohio argued that "the CWA does not have standing to bring a service quality complaint on behalf of the general public."¹⁶ AT&T Ohio argued the same in its Reply in Support of its Motion to Dismiss.¹⁷ OCC, however, does have standing. AT&T Ohio cannot have it both ways in its filings.

Based on the foregoing, and for the reasons set forth in OCC's Motion to Intervene, OCC satisfies the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio. The PUCO should therefore grant OCC's Motion in this case.

¹⁵ *In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, Entry (7/10/15), at ¶¶ 8, 10. See also *In the Matter of Application of the Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan*, Case No. 99-1658-EL-ETP, *et al.*, Entry (4/28/00) at ¶ 3 (granting intervention to parties whose interests were partially represented by other parties); and *In the Matter of the Complaint of Allnet Communications Services, Inc., Complainant v. The Ohio Bell Telephone Co.*, Case No. 86-771-TP-CSS, Entry (2/24/89) at ¶ 5 (granting intervention to MCI despite similar interests with complainant/competitor and requiring MCI to be added as a complainant).

¹⁶ AT&T Ohio's Motion to Dismiss at 12.

¹⁷ AT&T Ohio's Reply in Support of its Motion to Dismiss (7/24/19) at 1-2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply to AT&T Ohio's Memorandum Contra was served on the persons stated below via electronic transmission, this 26th day of July 2019.

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