

**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 CWA’S MOTION FOR VOLUNTARY DISMISSAL
OF COMPLAINT REGARDING THE ADEQUACY OF AT&T OHIO’S
FACILITIES FOR SERVING CONSUMERS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

On July 12, 2019, the Communications Workers of America (“CWA”) filed a Complaint against AT&T Ohio, alleging 25 instances where AT&T Ohio failed to maintain its physical plant and facilities as required by Ohio law for telephone service to consumers.¹ CWA further alleged the existence of many more violations of service standards by AT&T Ohio, which the CWA claims it cannot divulge without violating AT&T Ohio’s Code of Business Conduct.² According to the CWA, AT&T Ohio’s facilities are so deteriorated that “the safety of AT&T’s employees and the public is being jeopardized every day.”³ Accordingly, CWA asked the Public Utilities Commission of

¹ See, e.g., Complaint, ¶¶ 7-8, 17.

² *Id.*, ¶¶ 23-27.

³ *Id.*, ¶15.

Ohio (“PUCO”) to initiate a “comprehensive, state-wide investigation” into the adequacy and reliability of AT&T Ohio’s facilities and services for consumers.⁴

On July 2, 2019, AT&T Ohio filed its Motion to Dismiss the Complaint, asserting that it had repaired nearly all the 25 violations alleged in CWA’s pleading and would complete the remaining repairs by August 1, 2019.⁵ On August 6, 2019, CWA filed a motion to voluntarily dismiss the Complaint. CWA stated it had verified that AT&T Ohio had remedied or had taken “reasonable steps to remedy all issues identified in the instant Petition.”⁶

The Office of the Ohio Consumers’ Counsel (“OCC”), which represents AT&T Ohio’s residential utility customers,⁷ asks the PUCO to take steps to ensure consumer protection before any dismissal of CWA’s motion. Even if AT&T Ohio repaired the facilities specifically identified in the Complaint, the CWA alleged many more violations that it would not divulge for fear of violating AT&T Ohio’s Code of Business Conduct. The PUCO should investigate any and all alleged violations. For consumer protection, the PUCO should initiate the investigation of AT&T Ohio’s service quality that CWA requested.⁸

⁴ *Id.*, ¶21.

⁵ AT&T Motion to Dismiss (July 2, 2019) at 3.

⁶ CWA Motion at 1.

⁷ OCC Motion to Intervene (July 5, 2019).

⁸ Complaint, ¶21.

II. THE BELL FOR CONSUMER PROTECTION THAT CWA RANG CANNOT NOW BE UN-RUNG BY A SIMPLE DISMISSAL OF THE CWA COMPLAINT; THE PUCO INVESTIGATION SOUGHT BY CWA SHOULD BE CONDUCTED FOR CONSUMERS.

A. CWA's Complaint more than establishes 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*.⁹ 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 construed in favor of the complaining party.”¹⁰ Under this standard of review, even where the Complainant has moved to dismiss, the PUCO should not dismiss the Complaint.

Despite CWA's motion to voluntarily dismiss the Complaint, the PUCO should initiate the investigation of AT&T Ohio's facilities sought by CWA.¹¹ CWA specifically identified 25 instances of facilities throughout Ohio in major disrepair.¹² CWA now asserts that these violations have been or will be remedied. But the Complaint alleged additional violations that the CWA would not disclose because of restrictions in AT&T Ohio's Code of Business Conduct.¹³ In addition to impeding or impairing consumers' telephone service, the CWA alleges that some of these additional violations “pose a safety hazard to employees and the public”.¹⁴ The PUCO should not risk the public's

⁹ *OCC v. Dominion Retail*, Case No. 09-257-GA-CSS, Entry (July 1, 2009) at 3, 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).

¹⁰ *Id.*

¹¹ See Ohio Adm. Code 4901:1-6-03(C).

¹² Complaint, ¶17.

¹³ *Id.*, ¶16.

¹⁴ *Id.*, ¶26.

physical safety and residential customers' service quality because AT&T Ohio considers its information to be confidential.¹⁵

In addition to the allegations discussed above, CWA alleges that the PUCO has received over 6,000 informal customer complaints from AT&T Ohio's customers since 2016.¹⁶ This provides more reason for the PUCO to grant the investigation of AT&T's service that CWA sought.

B. The PUCO has statutory authority to investigate whether AT&T Ohio's facilities are inadequate or "pose a safety hazard to employees and the public," as alleged by CWA.¹⁷

The PUCO 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" that is the subject of a consumer complaint concerning basic service, as acknowledged by AT&T.¹⁸ AT&T Ohio is a telephone company that the PUCO can "investigate" or "examine" pursuant to R.C. § 4927.19(A)-(B). The PUCO also has the authority to investigate AT&T Ohio's facilities and service quality issues notwithstanding AT&T Ohio's Code of Business Conduct with AT&T Ohio employees.

III. CONCLUSION

CWA raised concerns about inadequate facilities in AT&T Ohio's network for serving consumers. CWA now asserts that AT&T Ohio has remedied (or will remedy) for consumers the alleged substandard facilities identified in its Complaint. That could be a

¹⁵ *Id.*, ¶¶25-26.

¹⁶ *Id.*, ¶20.

¹⁷ *Id.*, ¶26.

¹⁸ AT&T Motion to Dismiss (July 2, 2019) at 2-3.

good result. But the gravity of CWA's concerns and the numbers of consumers who could be affected by inadequate facilities compel the exercise of the PUCO's regulatory authority for action to ensure consumer protection. The PUCO should conduct for consumers the comprehensive and statewide investigation of AT&T Ohio's facilities that CWA requested in its Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served by electronic mail to the persons listed below, on this 13th day of August 2019.

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Summary: Memorandum Memorandum Contra CWA's Motion for Voluntary Dismissal of Complaint Regarding the Adequacy of AT&T Ohio's Facilities for Serving Consumers by The Office of The Ohio Consumers' Counsel
electronically filed by Mrs. Tracy J Greene on behalf of Angela O'Brien