

February 28, 2011

Via Hand Delivery

Ms. Reneé J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: In the Matter of the Adoption of Rules to Implement Substitute Senate Bill 162,
PUCO Case No. 10-1010-TP-ORD

PUCO

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Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of the Ohio Telecom Association's Memorandum Contra OPTC Application for Rehearing, to be filed in connection with the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Carolyn S. Flahive

Enclosure

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules)
to Implement Substitute Senate Bill 162) Case No. 10-1010-TP-ORD

THE OHIO TELECOM ASSOCIATION
MEMORANDUM CONTRA APPLICATION FOR REHEARING OF
MEMBERS OF OHIOANS PROTECTING TELEPHONE CONSUMERS

THE OHIO TELECOM ASSOCIATION, for and on behalf of its members ("OTA"), pursuant to Ohio Adm. Code 4901-1-35, hereby responds to the Application for Rehearing ("OPTC Application") filed February 18, 2011 by members of Ohioans Protecting Telephone Consumers ("OPTC"). The OPTC Application is a dubious attempt to delay the full implementation of the regulatory relief provided by Substitute Senate Bill 162. In addition to filing this Memorandum Contra, the OTA also supports the Memorandum Contra filed by the AT&T Entities.

The OPTC Application seeks a wholly-unnecessary rewrite of the Commission's template customer notices and telecommunications forms, and proposes another rulemaking (also wholly-unnecessary) to establish the fine details of the detariffing process, the goal of which is to *reduce* regulatory burdens, not *augment* them. None of the four assignments of error raises legitimate or lawful grounds for rehearing.

1. The Commission's template customer detariffing notices are neither inadequate nor inaccurate.

The OPTC argues in its first assignment of error that the Commission's template customer detariffing notices fail "to adequately and accurately inform customers about the

changes in their service that result from detariffing, thus violating R.C. 4927.06(A)(1).”¹ The customer notices definitely do not violate that statute, which is intended to protect customers from unfair or deceptive acts or practices. Moreover, the notices comply with Ohio Adm.Code 4901-6-07(D) setting forth the requirements for customer notices. The template notices identify the company name and provide a toll-free telephone number and website. More importantly, the notices provide “a clear description of the impact on the customer” as required by the rule. The notices inform the customer that: a) the prices, service descriptions, and terms and conditions for services other than a primary line for non-residential customers and local flat rate service for residential customers will no longer be on file with the Commission, b) such detariffing does not automatically result in a change to those prices, terms, or conditions of the customer’s current services, c) they will receive advance notice of rate increases, changes in terms and conditions, and the discontinuance of existing services, d) they can request a copy of the company’s service offerings by contacting the company, and e) the agreement reached between the customer and the company will control new services or changes in services. The notices are simple, straightforward and easily understood by the affected customers.

The OPTC’s first assignment of error amounts to little more than wordsmithing that should be rejected.

2. The detariffing process is not unjust, unreasonable, or unlawful.

The OPTC’s suggestion that the contents of the customer notices should have been put out for public comment is more than simply unnecessary – it is excessive and little more than a delay tactic and effort to re-regulate the services being detariffed. The Commission has

¹ OPTC Application at 4.

established a reasonable detariffing process that accomplishes implementation of the new rules and ensures compliance with the pertinent statutes.

The OPTC is attempting a second bite at the regulatory apple with its laundry list of new issues and demands. Included within the OPTC Application is a “sampling of other key issues” it would have the Commission explore: mandatory written agreements, early termination fees, mandatory arbitration clauses, and forum and other aspects of telephone complaints.² The OPTC had more than ample opportunity to address such issues during the legislative process and the comment period during the rulemaking process. The OTA members are well aware of their responsibility, and know it is to their benefit to ensure that their customers are fully informed as to the rates, terms, and conditions of the services provided. The OPTC’s second assignment of error should be rejected.

3. Another rulemaking is unnecessary.

The essence of the OPTC’s third assignment of error is that it seeks to delay implementation of the final procedural steps (i.e., customer notifications, detariffing, applicable filings) necessary to implement the new law. The OPTC faults the Commission for not complying with Rev. Code §4927.03(E), which allows – *but does not require* – the Commission to adopt other rules, including rules regarding the removal from tariffs of services that were required to be tarified. The OTA directs the OPTC to Ohio Adm.Code 4901:1-6-11, which clearly sets forth the services to be tarified and detarified, as well as the tariffing requirements. No further rulemaking is necessary, and there can be no error in declining to initiate a rulemaking that is not mandated by law.

² Id. at 10-11.

4. The Commission's application process for LEC and CETC applications is just and reasonable.

In its fourth assignment of error, the OPTC complains that the LEC and CETC certification applications do not encompass all of the OPTC's recommendations. Yet the OPTC acknowledges that the Commission stated in its Opinion and Order that it believes it appropriate to leave the details of such certifications to the telecommunications filing form and to future Commission procedural entries. The Commission did not err in not requiring the information sought by OPTC to be included in the certification applications. The Commission is within its statutory authority to determine the process by which it shall gather the information necessary in a certification or ETC designation case. OPTC's arguments to the contrary are without merit and should be rejected.

CONCLUSION

For the foregoing reasons, the Commission should deny the OPTC Application for Rehearing in its entirety.

Respectfully submitted,

OHIO TELECOM ASSOCIATION

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below by electronic mail and via U.S. mail, postage pre-paid, this 28th day of February 2011.

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