

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Filing of Annual)
Reports for Calendar Year 2011 by) Case No. 12-05-TP-RPT
Competitive and Wireless Telecommuni-)
cations Service Providers.)

SECOND ENTRY ON REHEARING

The Commission finds:

- (1) On February 14, 2012, the Commission issued an entry that, *inter alia*, directed each wireless telecommunications service provider to submit an annual report, pursuant to Sections 4905.02 and 4905.14, Revised Code, by April 30, 2012. As in past years, the entry indicated that such wireless reports were not to be publicly filed in this docket but could be submitted via electronic mail. The second sentence of Finding 7 of the February 14, 2012, entry also stated that "[a]ll reports received by the Commission are public records and will not be accorded confidential treatment."
- (2) On March 15, 2012, the Ohio Telecom Association (OTA) filed a motion to intervene in this proceeding, and an application for rehearing of the February 14, 2012 entry. OTA argues that the February 14, 2012 entry is unlawful and unreasonable in that it does not provide for the protection of confidential information contained in the annual reports filed by competitive wireless and telecommunication service providers that they are afforded under Section 4905.14(A)(2)(a), Revised Code, and in keeping with the Commission's own precedent established under *In re Implementation of Section 749.10 of Amended Substitute House Bill 153*, Case No. 11-5384-AU-UNC, Finding and Order, (December 14, 2011) ("OCC Assessment Case").
- (3) On April 11, 2012, the Commission issued an entry granting OTA's motion to intervene and granting rehearing to consider the arguments raised in the application for rehearing.
- (4) Senate Bill 162 of the 128th General Assembly, effective September 13, 2010, amended Section 4905.14, Revised Code,

to, *inter alia*, add a new subsection (A)(2), which now reads as follows:

(a) Except as provided in division (A)(2)(b) of this section, in the case of a telephone company, including a wireless service provider, the annual report shall be limited to information necessary for the commission to calculate the assessment provided for in section 4905.10 of the Revised Code. The commission shall protect any confidential information in every company and provider report.

(b) With respect to a telephone company subject to section 4905.71 of the Revised Code, the commission shall adopt rules that require such a telephone company to also include in the annual report information required by the commission to calculate pole attachment and conduit occupancy rates and any other information the commission determines necessary and requires by rule for the commission to fulfill its responsibility under section 4905.71 of the Revised Code.

- (5) OTA argues that this new provision requires the Commission to keep confidential the annual reports submitted by wireless service providers. OTA notes the Commission's recent discussion of this provision in our December 14, 2011, Finding and Order in the OCC Assessment Case, at 21, where the Commission directed that information derived from the annual reports of wireless service providers would be treated as confidential, consistent with the statutory requirements of Section 4905.14, Revised Code.
- (6) We first note that in past years, wireless service providers were permitted to submit assessment reports which, while not treated as filed under seal in the same manner as confidential materials protected under Rule 4901-1-24, Ohio Administrative Code (O.A.C.), these wireless assessment reports were not docketed in a case or made publicly accessible on the Commission's website. This same process

was followed for both the past year (see, Finding 2 of the March 9, 2011, entry in Case No. 11-05-TR-RPT) and the current proceeding. Second, although not specifically identified in OTA's pleadings in this case, the confidential information for which OTA sought protection in the OCC Assessment Case was the intrastate revenues on the wireless service provider assessment reports. Upon further consideration, we do not believe that a wireless service provider's reporting of its intrastate revenue within Ohio for the previous calendar year should merit the protection of confidential information referenced in Section 4905.14(A)(2)(a), Revised Code. Accordingly, the OTA's application for rehearing is denied. However, given the Commission's past practice, we will grant any wireless service provider 30 days from the date of this order to file a motion for protective order to identify all confidential information contained in its report, and present arguments as to why such information should not be publicly disclosed.

It is, therefore,


ORDERED, That OTA's application for rehearing be denied. It is, further,

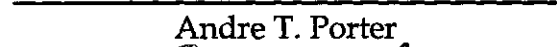
ORDERED, That all wireless service providers be granted 30 days from the issuance of this order to file motions for protective orders, pursuant to Rule 4901-1-24, O.A.C., to identify all confidential information and present arguments as to why such information should not be publicly disclosed. It is, further,

ORDERED, That notice of this entry on rehearing be served via the Commission's telephone industry listserve, and upon all competitive and wireless telecommunications service providers, and parties of record.

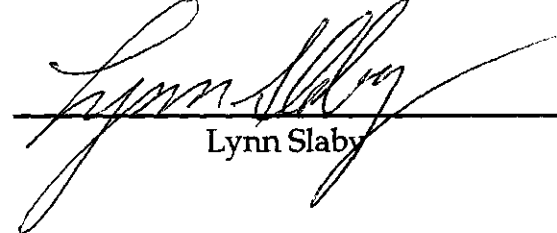
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

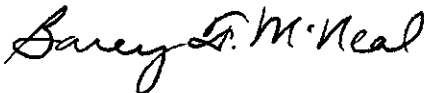

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Entered in the Journal

MAY 23 2012


Barcy F. McNeal

Barcy F. McNeal
Secretary