

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Oversight Concerning the Ohio Small Local) Case No. 97-414-TP-UNC
Exchange Carriers Association.)

FINDING AND ORDER

The Commission finds:

- (1) On May 3, 2013, as amended on June 5, 2013, the Ohio Small Local Exchange Carriers Association (OSLECA)¹ and the Northwest Ohio Independent Telecommunications Association, Inc. (NWOITA)² (collectively, joint petitioners) filed a petition to discontinue OSLECA's operations due to its proposed merger with NWOITA. Both OSLECA and NWOITA maintain tax exempt status under the Federal Income Tax Code Section 501(c)(6). Pursuant to the proposed plan of merger, OSLECA will cease to exist and NWOITA will be the surviving entity, including its articles of incorporation and by-laws.
- (2) According to the joint petitioners, the Hardship Fund was established in 1987 to assist small rural incumbent local

¹ OSLECA consists of the following member companies: Arcadia Telephone Company, Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone Company, Benton Ridge Telephone Company, Buckland Telephone Company, Champaign Telephone Company, Columbus Grove Telephone Company, Conneaut Telephone Company, Continental Telephone Company, Doylestown Telephone Company, Farmers Mutual Telephone Company, Fort Jennings Telephone Company, Frontier Communications of Michigan, Germantown Independent Telephone Company, Glandorf Telephone Company, Kalida Telephone, Inc., Little Miami Communications Corporation, McClure Telephone Company, Middle Point Home Telephone Company, Minford Telephone Company, New Knoxville Telephone Company, Nova Telephone Company, Oakwood Telephone Company, Ottoville Mutual Telephone Company, Pattersonville Telephone Company, Ridgeville Telephone Company, Sherwood Mutual Telephone Association, Sycamore Telephone Company, Telephone Service Company, Vanlue Telephone Company, Vaughnsville Telephone Company, and Wabash Mutual Telephone Company.

² All of NWOITA's current members are rural telephone operating in the state of Ohio and, with the exception of Frontier Communications of Michigan Inc., are members of OSLECA. Additionally, Chillicothe Telephone Company and Orwell Telephone Company are members of NWOITA but are not members of OSLECA. NWOITA is an unregulated entity whose purpose is: (a) to promote the business of telecommunications (including broadband deployment) in the state of Ohio; (b) to assist its members to more effectively compete in the provision of telecommunications and broadband services to their customers; (c) to provide their customers with adequate, up-to-date and reliable service at affordable prices; and (d) to promote common business interests of its members.

exchange carriers (ILECs). OSLECA was created and, among other responsibilities, began administering the Hardship Fund, subject to Commission oversight, pursuant to the Commission's February 12, 1997, Finding and Order in Case No. 83-464-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Intrastate Access Charges* (83-464 Order). According to the petition, OSLECA has maintained two separate allocations: (a) the original Hardship Fund and (b) an Operating Fund principally comprised of interest earned on the Hardship Fund monies. When OSLECA oversight began, the Hardship Fund equaled approximately \$7.3 million. Joint petitioners represent that since 1997 the Hardship Fund, with prior Commission approval, has distributed monies to rural ILECs for a variety of projects, including network improvements, negotiating interconnection agreements, studies to identify phantom traffic, the implementation of number portability, Communications Assistance for Law Enforcement, and wireless E9-1-1.

As part of their petition, OSLECA and NWOITA note *infra* that the original Hardship Fund no longer has any monies associated with it and that the money contained in the Operating Fund consists largely of interest earned. Therefore, joint petitioners submit that the Commission should relinquish all existing controls over OSLECA and the Hardship Fund, including the general Operating Fund monies.

- (3) According to the joint petition, Ohio small rural local exchange companies currently maintain two separate associations (i.e., OSLECA and NWOITA) both focused on the same purposes. Joint petitioners submit that the requested consolidation is necessary in order to provide cost savings and efficiencies through the operation of a single association. Joint petitioners represent that this cost savings will come about through the elimination of duplicate accounting, auditing, management, annual meetings etc. Further, joint petitioners assert that continuing Commission control over the Operating Fund monies is costly and ineffective for OSLECA, NWOITA, and the Commission Staff.

Joint petitioners contend that it would be best if the remaining dollars were managed by the small rural ILECs themselves on a collective basis, in accordance with the NWOITA by-laws, for

the purpose of maintaining a strong rural local exchange carrier community organization focused upon common interests and concerns. OSLECA notes that consistent with its by-laws (Article XIX, Section I), upon dissolution “assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code” (Petition at 5).

Joint petitioners submit that “[t]he small local exchange carriers desire to evolve their associational representation to include a greater focus on rural broadband deployment and education, including the provisioning of unregulated services. The industry overall is transitioning from regulated services to new, unregulated services, including Internet protocol-enabled services.” (*Id.* at 4.)

- (4) On May 10, 2013, the Office of the Ohio Consumers’ Counsel (OCC) filed comments regarding OSLECA’s merger petition. Specifically, OCC notes that, consistent with the Commission’s 83-464 Order, the Hardship Fund was to be utilized for the mutual benefit of the small local exchange companies and their customers.

Notwithstanding this prior determination, OCC notes that OSLECA now seeks to utilize the identified money for one or more exempt purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code (OCC Initial Comments at 2 citing Petition at 5). OCC submits that such purposes could solely pertain to unlimited lobbying and general advocacy activities related to NWOITA that may be detrimental to the customers of NWOITA’s members. In support of its position, OCC states that neither the Commission nor the Supreme Court of Ohio has ruled that customers are benefitted by the lobbying efforts of public utilities. Additionally, OCC attempts to analogize lobbying expenses to advertising expenses, which OCC contends were disallowed due to the fact that they were of “questionable benefit to customers” (OCC Initial Comments at 7 citing *City of Cleveland v. Public Util. Comm’n* (1980), 63 Ohio St. 2d 62, 73; 406 N.E.2d 1370; 1980 Ohio LEXIS 773).

Therefore, OCC requests that if the Commission approves the petition, it should do so only if it requires NWOITA to place the money at issue in an escrow account that can only be used

for purposes that are mutually beneficial to small local exchange companies and their customers.

- (5) On May 16, 2013, joint petitioners filed Reply Comments to OCC's Comments. Joint petitioners reiterate the benefits that they believe will be derived from approval of the petition. Specific to the concerns expressed by OCC, joint petitioners assert that the source of the Hardship Fund was not end user money and that the entities that contributed to the Hardship Fund support the petition. Further, joint petitioners note that OCC does not dispute the problems identified in the petition regarding the current administration of OSLECA monies and the benefits to be realized by the approval of the petition. In response to OCC's belief that continued oversight is necessary in light of the fact that the money might be used contrary to the interest of retail consumers, joint petitioners consider this to be nothing more than speculation with no specifics delineated or consequences recognized (Reply Comments at 2). In support of this position, joint petitioners contend that OCC has failed to identify any instances in which the small local exchange companies have argued contrary to the customer's interests (*Id.* at 4).

Specific to OCC's request that restrictions should continue to be placed upon the use of funds along with the establishment of a separate escrow account, joint petitioners assert that OCC fails to recognize that there are costs associated with maintaining and administering an escrow account and with complying with the proposed restrictions. Further, joint petitioners state that OCC has failed to acknowledge the problems identified in the application and has failed to address an alternative process for the Commission's consideration.

In regard to OCC's proposition that the fund monies should be utilized to benefit both the companies and their customers, joint petitioners contend that it is not always easy to clearly define and accomplish these objectives on a mutual basis. For example, joint petitioners point to the dispute between the small local exchange companies and OCC in Case No. 10-2387-TP-COI, *In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162*, regarding the creation of an Access Restructuring Plan. As further support for their position, joint petitioners also point to

OCC's objection to Telephone Service Company and Champaign Telephone Company seeking OSLECA monies to pay for the increase in Lifeline benefits associated with the conversion to alternative regulation (Reply Comments at 3).

Finally, joint petitioners contend that OCC's position is in conflict with the right of citizens, including through the use of associations, to petition the government concerning the shaping of public policy. Accordingly, joint petitioners argue for treatment like other 501(c)(6) trade associations and for the ability to fund lobbying activities where, in its members' opinion, circumstances warrant (*Id.* at 4).

- (6) Upon a review of the record in this case, the Commission determines that the petition is reasonable and, therefore, should be approved. As a result of this approval, OSLECA shall discontinue its operations and merge into NWOTIA. Additionally, as a result of this approval, NWOTIA will be the surviving entity and OSLECA will cease to exist. Included with the approved merger is the transfer of the OSLECA Operating Fund.

In reaching this determination, the Commission points out that, as noted in the petition, OSLECA has maintained two separate allocations: (a) the original Hardship Fund, the dollars of which were earmarked for distribution directly to member companies and (b) an Operating Fund which consists of general purpose monies, the source of which is principally interest earned on the Hardship Fund. The petition reflects that Hardship Funds have now been distributed to the rural local exchange carriers (OSLECA members) for various Commission-approved projects. According to the petition, the sole funds now remaining are general Operating Fund monies.

While the Commission acknowledges that one of the potential uses of Hardship Fund was for the mutual benefit of the small local exchange companies and their customers, the Commission notes that there is no dispute that the Hardship Fund no longer has any monies associated with it. Rather, the matter currently in dispute concerns the dissolution of OSLECA and the conditions, if any, applicable to the allocation of the monies remaining in the Operating Fund.

There is no requirement that the monies remaining in the Operating Fund upon dissolution be utilized for the mutual benefit of the rural local exchange companies and their customers. In support of this determination, the Commission references the fact that Article XIX, Section 1, of the OSLECA Constitution and By-Laws provides that

[u]pon dissolution of the Association, all non-hardship fund assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code, or corresponding section of any future federal tax code

Inasmuch as there is no specific requirement that these monies be utilized for the mutual benefit of the rural local exchange companies and their customers, the Commission finds that the concerns expressed by OCC are not applicable to the Commission's consideration of the pending petition.

In light of the fact that OSLECA and NWOTIA largely consist of the same membership and are focused on similar industry concerns, the Commission agrees that it is not efficient to continue to expend resources in order to maintain the existence of the two entities. Although Frontier Communications of Michigan, Inc. is a member of OSLECA but not a member of NWOTIA, the Commission notes that the company did not file an objection to the petition under consideration. Further, the members of OSLECA have agreed to the terms of the petition notwithstanding the fact that Chillicothe Telephone Company and Orwell Telephone Company are both members of NWOTIA and not OSLECA.

It is, therefore,


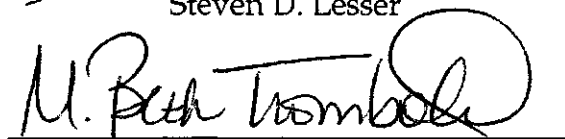


ORDERED, That the petition be approved, including the merger of OSLECA and NWOTIA. It is, further,

ORDERED, That joint petitioners shall file a notice in this docket upon the closing of the merger transaction. It is, further,

ORDERED, That upon the closing of the merger of OSLECA and NWOTIA, that OSLECA will cease to exist and the Operating Fund should be transferred to NWOTIA. It is, further,

ORDERED, That notice of this Finding and Order be served via the Commission's telephone industry electronic mail list serve and that a copy of this Finding and Order be served on any other interested person of record.

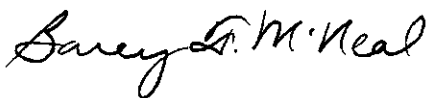
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
Steven D. Lesser
M. Beth Trombold
Lynn Slaby
Asim Z. Haque

JSA/vrm

Entered in the Journal

JUL 02 2013



Barcy F. McNeal
Secretary