

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Middle Point Home Telephone Company)	Case No. 14-191-TP-UNC
to Amend its Basic Local Exchange)	
Service Tariff and to Authorize a)	
Mechanism to Change Its Residential)	
BLES Rates under R.C.4927.15(C).)	

**MOTION TO INTERVENE
AND
COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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February 21, 2014

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Middle Point Home Telephone Company ("Middle Point") seeks special approval to raise the rates its residential customers pay for basic local exchange service. Under the basic service pricing flexibility Middle Point sought and received last year,¹ Middle Point may increase its monthly basic service rates by \$1.25 per year.² In order to meet the floor established by the Federal Communications Commission ("FCC") for high-cost Universal Service funding, Middle Point wants to raise its monthly basic service rate by 122%, from the current rate of \$6.30 to \$14.³ OCC is filing on behalf of Middle Point's residential telephone customers. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the

¹ *In the Matter of Middle Point Home Telephone Company to Obtain BLES Pricing Flexibility*, Case No. 13-1249-TP-BLS.

² See R.C. 4927.12(C)(1)(b).

³ See Application, Exhibit C at 1, 2.

attached Memorandum in Support. OCC also includes Comments on Middle Point's proposed rate increase.⁴

Respectfully submitted,

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⁴ OCC's Motion to Intervene and Comments are filed in response to the Entry issued in this proceeding on February 7, 2014.

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MEMORANDUM IN SUPPORT

I. INTERVENTION

In its Application filed on February 3, 2014 in this proceeding, Middle Point asks the PUCO for special approval so that Middle Point can raise the rates it charges residential customers for basic service by 122%. Middle Point states that it must raise its basic service rate to \$14, from the current rate of \$6.30, to meet the floor for High Cost Line Support (“HCLS”) established by the FCC.⁵ OCC has authority under law to represent the interests of Middle Point’s residential customers.⁶

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in this case where Middle Point is seeking authority to raise the rates its residential customers must pay for basic service. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

⁵ Id.

⁶ R.C. Chapter 4911.

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing Middle Point's residential customers in this case involving a request to significantly increase the rate they must pay for basic service. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that Middle Point's residential customers should pay rates that are just, reasonable and no higher than allowed by law. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where Middle Point seeks special authority to raise the rates residential customers must pay for basic service.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in

denying OCC's interventions and that OCC should have been granted intervention in both proceedings.⁷

OCC meets 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 for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC's Motion to Intervene.

II. COMMENTS

In adopting its *Transformation Order* in 2011,⁸ the FCC moved from providing Universal Service support for local voice service to providing Universal Service support for broadband service. The FCC determined that it would no longer allow telephone companies to use HCLS to keep basic service rates artificially low. The FCC stated:

We do not believe that Congress intended to create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in section 254(b); rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly higher than in urban areas.⁹

The FCC also recognized that the previous HCLS regime served as a disincentive for small, rural telephone companies to increase their rates through rate cases. The FCC noted: "Section 254 obligates states to share in the responsibility of ensuring universal service. We recognize some state commissions may not have examined local rates in many years, and carriers may lack incentives to pursue a rate increase when federal universal service support is available. Based on evidence in the record, however, there

⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

⁸ *Connect America Fund*, FCC WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011.

⁹ *Id.*, ¶ 235.

are a number of carriers with local rates that are significantly lower than rates that urban consumers pay.”¹⁰

To help ease the transition to its new HCLS regime, the FCC phased-in its urban floor. The FCC set the initial rate floor of \$10 for the period July 1, 2012 through June 30, 2013 and \$14 for the period July 1, 2013 through June 30, 2014.¹¹ Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the FCC’s Wireline Competition Bureau completes an updated annual survey of voice rates.¹²

The FCC expected affected telephone companies to prepare for the implementation of the urban floor so that the effects on the companies and their customers would be lessened. The FCC stated: “We assume, however, that by 2013 carriers will have taken necessary steps to mitigate the impact of the rule change. By adopting a multi-year transition, we seek to avoid a flash cut that would dramatically affect either carriers or the consumers they serve.”¹³ The Application in this case would create the flash cut the FCC sought to avoid in its *Transformation Order*.

Middle Point’s current basic service rate is \$6.30 per month,¹⁴ which is \$7.70 below the current floor the FCC established for HCLS. Middle Point states that because, under the requirements of the basic service pricing flexibility it applied for and received in 2013, Middle Point may raise its monthly basic service rates by \$1.25 per year.

¹⁰ Id.

¹¹ Id., ¶ 239.

¹² Id.

¹³ Id., ¶ 242.

¹⁴ See Application, Exhibit A.

Middle Point asks the PUCO to create a mechanism for Middle Point to increase its basic service rates to meet the floor.¹⁵

Middle Point thus asks the PUCO to approve a 122% increase in the rates Middle Point's residential customers pay for basic service,¹⁶ to become effective June 1, 2014. If the PUCO approves the Application, the 122% increase would become effective in less than four months and with just 30 days' notice to affected customers. This would dramatically and adversely affect customers. Customers would have little option but to pay the increase; the alternative services available to them are even higher priced than the new rate they would pay for Middle Point's basic service.

Middle Point contends that the PUCO "is authorized to address changes in HCLS" and points to two statutes: R.C. 4927.15(B) and (C).¹⁷ Contrary to Middle Point's assertions, there is no statutory basis for the PUCO to approve the Application.

R.C. 4927.15(B) and (C) specifically address carrier access charges, i.e., the charges one telephone company must pay to another telephone company to access its network. Neither authorizes the PUCO to raise the basic service rates paid by residential customers of telephone companies to avoid reductions in federal HCLS. The two statutes provide:

(B) The public utilities commission may order changes in a telephone company's rates for carrier access in this state subject to this division. In the event that the public utilities commission reduces a telephone company's rates for carrier access that are in effect on September 13, 2010, that reduction shall be on a revenue-neutral basis under terms and conditions established by the public utilities commission, and any resulting rate changes necessary to

¹⁵ Id., Exhibit C at 1.

¹⁶ \$7.70 is 122% of \$6.30.

¹⁷ Application, Exhibit C at 3.

comply with division (B) or (C) of this section shall be in addition to any upward rate alteration made under section 4927.12 of the Revised Code.

(C) The public utilities commission has authority to address carrier access policy and to create and administer mechanisms for carrier access reform, including, but not limited to, high cost support.

Middle Point states that R.C. 4927.15(C) “directs the Commission to address carrier access policy and to create and administer mechanisms for carrier access reforms including high cost support.”¹⁸ Middle Point misreads the statute.

R.C. 4927.15(C) gives the PUCO the **authority to** address carrier access issues. It does not *direct* the PUCO to do anything regarding carrier access issues.

In addition, R.C. 4927.15(C) mentions HCLS only in conjunction with carrier access reform. Thus, the statute authorizes the PUCO to address HCLS *only if* the PUCO creates or administers mechanisms for carrier access reform.

In order to address HCLS under R.C. 4927.15(C), the PUCO may do so only as part of a proceeding dealing with the generic issue of the charges that carriers charge one another to access their networks. Unlike R.C. 4927.15(B), R.C. 4927.15(C) does not contain the phrase “a telephone company.” R.C. 4927.15(C) thus does not authorize the PUCO to address carrier access policy or create/administer mechanisms for carrier access reform solely for one telephone company. The statute does not provide for the company-specific mechanism that Middle Point requests. R.C. 4927.15(C) would require either a rulemaking or a PUCO-ordered investigation to create or administer mechanisms.

R.C. 4927.15(B) also is inapplicable to Middle Point’s request. Although the statute allows the PUCO to address access charge issues on a company-specific basis, it

¹⁸ Id.

does not apply to Middle Point's situation for two reasons. First, like paragraph (C), paragraph (B) also deals specifically with access charges, not high cost universal service support. Second, the statute allows the PUCO to make rate changes only if the PUCO itself reduces a telephone company's carrier access rates. The circumstances for which Middle Point seeks relief are the result of FCC action. R.C. 4927.15(B) thus does not apply.

Hence the PUCO cannot adopt the mechanism Middle Point seeks. Middle Point does not contend that its situation is the result of carrier access reform. Instead, Middle Point's request is designed "[t]o address the FCC's adoption of an urban local floor rate and the timing of reporting requirements affecting HCLS and to avoid a reduction in HCLS...."¹⁹ The catalyst for this mechanism was not the FCC's access charge reform. Instead, it was the FCC's adoption of an urban local floor rate for HCLS as part of universal service reform.

Although the FCC addressed access charge reform and universal service reform in the same document as part of its implementation of the National Broadband Plan,²⁰ the FCC's access charge reform and its universal service reform are separate and distinct matters. The limitations upon HCLS that Middle Point addresses in its Application did not result from access charge reform and were not imposed by the PUCO. Thus the company-specific mechanism provided in R.C. 4927.15(B) is not available to Middle Point.

¹⁹ Id.

²⁰ See *Connect America Fund*, FCC WC Docket No. 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, released February 9, 2011, ¶¶ 6, 7.

Any proceedings involving a telephone company's request to increase its basic service rates because of the FCC's HCLS decision should include a thorough company-specific financial examination. The FCC recognized this when it noted:

During the course of this proceeding, various parties, both incumbents and competitive ETCs, have argued that reductions in current support levels would threaten their financial viability, imperiling service to consumers in the areas they serve. We cannot, however, evaluate those claims absent detailed information about individualized circumstances, and conclude that they are better handled in the course of case-by-case review.²¹

In considering requests for waiver of its urban floor for HCLS, the FCC intends to "subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review."²² The also FCC stated: "In particular, we intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well."²³ A similar review should be undertaken by the PUCO when considering a telephone company's request to increase its basic service rates because of the FCC's HCLS decision.

Middle Point was purchased last year by TSC.²⁴ Thus, in determining the impact that reduced HSLC would have on Middle Point and its customers, the PUCO should also examine TSC's ability to absorb any reduction in HSLC because of Middle Point's low basic service rates. The PUCO's examination should include the extent to which TSC is able to offset HSLC reductions through increases in rates to its non-basic services. This

²¹ *Transformation Order*, ¶ 539 (footnote omitted).

²² *Id.*, ¶ 540.

²³ *Id.*

²⁴ *In the Matter of the Application of The Middle Point Home Telephone Company, Telephone Service Company and Middle Point Acquisition Co., Pursuant to Section 4905.402 of the Revised Code*, Case No. 13-184-TP-AMT.

would help further the FCC's goal of avoiding dramatic rate increases to be paid by basic service customers.

III. CONCLUSION

OCC has met the criteria for intervention in this proceeding. The PUCO should grant OCC's motion to intervene.

Middle Point's Application is not prompted by reduced access charges, and thus the PUCO does not have the statutory authority to increase basic service rates as Middle Point requests. Any mechanism to address HSLC can only be developed through a rulemaking or a PUCO-ordered investigation that also addresses generic access charge policy and/or reform. And any proceedings involving a telephone company's request to increase its basic service rates because of the FCC's HCLS decision should include a thorough company-specific financial examination.

The problem that Middle Point now presents for its customers is what the FCC intended that telephone companies avoid. The FCC stated: "We assume, however, that by 2013 carriers will have taken necessary steps to mitigate the impact of the rule change. By adopting a multi-year transition, we seek to avoid a flash cut that would dramatically affect either carriers or the consumers they serve."²⁵

Unfortunately, for Middle Point's customers, the Application in this case would create the flash cut the FCC sought to avoid in its *Transformation Order*. The PUCO should act to protect customers.

²⁵ *Transformation Order*, ¶ 242.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene and Comments was served on the persons stated below via electronic transmission this 21st day of February 2014.

/s/ Terry L. Etter

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Summary: Motion Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.