

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of Chapter 4901:1-6 of the Ohio)	Case No. 14-1554-TP-ORD
Administrative Code, Regarding)	
Telephone Company Procedures and)	
Standards.)	

**COMMENTS ON THE PUCO STAFF'S PROPOSED RULE CHANGES
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I. INTRODUCTION

The rules in Ohio Adm. Code Chapter 4901:1-6 govern the service that telephone companies in Ohio provide to their customers. As required by law,¹ the Public Utilities Commission of Ohio ("PUCO") is conducting its five-year review of Chapter 4901:1-6. The PUCO should ensure that the consumer protections in Chapter 4901:1-6 are not diminished, and in fact are strengthened.

The PUCO Staff has proposed several changes to the rules, primarily as they relate to Lifeline service. On January 7, 2015, the PUCO issued an Entry asking for public comment on the PUCO Staff's proposed changes to the telephone rules.

In response to the Entry, Edgemont Neighborhood Coalition, Legal Aid Society of Southwest Ohio LLC, the Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (collectively, "Consumer

¹ R.C. 106.03; R.C. 111.15.

Advocates”) submit these Comments. Several of the PUCO Staff’s proposed changes may cause many low-income Ohioans to lose their Lifeline telephone service. In particular, the PUCO Staff (1) proposes that participation in disability assistance should no longer be a criterion for Lifeline eligibility;² (2) would make automatic enrollment of Lifeline customers elective for a telephone company that is the only eligible telecommunications carrier (“ETC”) serving an exchange; and (3) would require incumbent ETCs to remove customers who do not use their Lifeline service for 90 days, even though the Lifeline service is not usage-based.³ These proposed changes do not protect low-income consumers, and the PUCO should reject the changes.

In these Comments, the Consumer Advocates discuss why the PUCO should not adopt these proposed changes to Chapter 4901:1-6. The Consumer Advocates also comment on other portions of the rules.

II. DISCUSSION

A. Customers receiving Disability Financial Assistance should continue to be eligible for Lifeline.

If a consumer participates in any of the programs listed in Ohio Adm. Code 4901:1-6-19(H)(1), the consumer is eligible for Lifeline service in Ohio. The PUCO Staff proposes to delete subsection (H)(1)(i).⁴ By deleting this subsection, the PUCO Staff would remove participation in “[g]eneral assistance, including disability assistance (DA)” as a criterion for Lifeline eligibility.

² See Entry, Attachment A at 30.

³ See *id.* at 30-31.

⁴ *Id.* at 30.

Removing “general assistance” makes sense because the general assistance program no longer exists in Ohio. However, there is still a means-tested state disability assistance program that targets some of the poorest and most incapacitated Ohioans. Disability Financial Assistance (“DFA”) provides a small monthly cash benefit to eligible low-income individuals with disabilities who did not meet all the requirements necessary to receive help from federal and state programs, such as Supplemental Security Income (“SSI”) and Ohio Works First. Many DFA recipients are individuals with total and permanent disabilities who are awaiting a decision on their pending application or appeal for SSI disability benefits.

It can easily take more than a year after an SSI disability application is filed before the Social Security Administration issues a final decision on the application or any resulting appeals. In the meantime, those individuals may have to survive on their very meager DFA benefit and any help they can obtain from friends and relatives.

Eligible individuals for DFA include those who:

- Are determined by the Ohio Department of Job and Family Services to be disabled, or
- Were at least 60 years old and receiving DFA as of June 2003.⁵

In addition, income and resource limits apply. For example, a family’s resources cannot exceed \$1,000, regardless of the number of individuals in the family. Household resources include cash, savings and stocks. The individual must have little or no income, and the maximum cash benefit is only \$115 per month for one person. For assistance

⁵ See Ohio Adm. Code 5101:1-5-01(D)(1)(b).

groups that consist of more than one person, the maximum benefit increases based on the number of individuals living in the household who have a disability.

DFA participants are qualifying low-income consumers under the federal Lifeline rules. Those rules provide that a “qualifying low-income consumer” is one who “meets additional eligibility criteria established by a state for its residents, provided that such-state specific criteria are based solely on income or other factors directly related to income.”⁶

The Consumer Advocates oppose the removal of “disability assistance” from the list of qualifying programs for Lifeline in the PUCO’s rules. DFA recipients are indeed among the “poorest of the poor” in Ohio, and should not lose Lifeline eligibility. To rectify this oversight, the Consumer Advocates recommend that the PUCO amend (not delete) subsection (H)(1)(i) as follows⁷:

(i) ~~General assistance, including~~ Disability financial assistance (DFA).

B. Eligible consumers in exchanges served by only one ETC should continue to be automatically enrolled in Lifeline.

The automatic enrollment process allows social service agencies to enroll a consumer in a Lifeline program without the consumer submitting an application or even giving affirmative consent. If the consumer is eligible for a qualifying program, the consumer is automatically eligible for Lifeline, and the agency may inform the consumer’s incumbent ETC that the consumer should be given the Lifeline benefit.

⁶ 47 C.F.R. §54.409(a)(3).

⁷ In these Comments, deletions from a rule are signified by ~~striketrough~~ and additions to a rule are signified by underlining.

The General Assembly has required the PUCO to encourage automatic enrollment of Lifeline customers in Ohio. R.C. 4927.13(C)(1) states:

The public utilities commission shall adopt rules establishing requirements for the implementation of automatic enrollment of eligible individuals for lifeline assistance. The public utilities commission shall work with the appropriate state agencies that administer federal or state low-income assistance programs and with carriers to negotiate and acquire information necessary to verify an individual's eligibility and the data necessary to automatically enroll eligible individuals for lifeline service. Every incumbent local exchange carrier required to implement lifeline service under division (A) of this section shall implement automatic enrollment in accordance with the applicable rules of the public utilities commission and to the extent that appropriate state agencies are able to accommodate the automatic enrollment.

The PUCO's current rules implement R.C. 4927.13(C)(1). Rule 19(J) states:

"The commission shall work with the appropriate state agencies that administer federal or state low-income assistance programs and with carriers to negotiate and acquire information necessary to verify an individual's eligibility and the data necessary to automatically enroll eligible persons for lifeline service." Rule 19(K) provides: "To the extent that appropriate state agencies are able to accommodate automatic enrollment, every ILEC ETC shall automatically enroll customers into lifeline assistance who participate in a qualifying program."

The PUCO, acting in response to the Federal Communications Commission's ("FCC") Lifeline Reform Order, has suspended these rules.⁸ In the Lifeline Reform Order, the FCC stated that "[w]hile automatic enrollment programs increase consumer enrollment in Lifeline, some features of these programs may have the unintended

⁸ *In the Matter of the Commission Investigation into the Provision of Nontraditional Lifeline Service by Competitive Eligible Telecommunications Carriers*, Case No. 10-2377-TP-COI, Finding and Order (May 23, 2012) ("10-2377 Order").

consequences of excessively burdening the Fund, may undermine Commission objectives to reduce waste and prevent duplicative support, and limit ETCs' opportunities to compete for consumers.”⁹ The FCC required states to modify their automatic enrollment programs to comply with the FCC's rules “so that consumers are not automatically enrolled without consumers' express consent.”¹⁰ The FCC also encouraged states to adopt coordinated enrollment,¹¹ whereby consumers are permitted but not compelled to enroll in Lifeline and Link Up at the same time they enroll in a qualifying public assistance program.¹²

The PUCO Staff has proposed to change these rules apparently to address the FCC's directive. The PUCO Staff proposes to delete current Rule 19(J) in its entirety. The PUCO Staff also would amend current Rule 19(K) so that it reads as follows:

To the extent that an ILEC ETC is the only lifeline service provider in a particular exchange the ILEC ETC, where possible, may provide automatic enrollment at its election. ILEC ETCs electing to enroll subscribers via automatic enrollment shall take all necessary steps to ensure that there is no duplication of lifeline service for a specific subscriber.¹³

Although the rule specifically mentions incumbent ETCs, the PUCO Staff also proposes to make the rule applicable to competitive ETCs (“CETC”).¹⁴

⁹ *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, et al., Report and Order and Further Notice of Proposed Rulemaking (released February 6, 2012), ¶ 173.

¹⁰ *Id.*

¹¹ See *id.*, ¶ 174.

¹² See *id.*, ¶ 170.

¹³ See Entry, Attachment A at 30-31.

¹⁴ *Id.* at 33. The sole ETC in the exchange would likely be the incumbent, but there could be instances where an incumbent may relinquish its ETC status under 47 C.F.R. §54.205 and Ohio Adm. Code 4901:1-6-09(D)(2), leaving only a CETC as the only ETC serving an exchange.

Under the PUCO Staff's proposal, a carrier that is the only eligible ETC serving an exchange would be able to choose whether to allow automatic enrollment of Lifeline customers in that exchange.¹⁵ But this is not in line with the FCC's directive.

Although the FCC is concerned that automatic enrollment unfairly steers customers away from CETCs, it is also concerned with decreasing duplicative use of the Universal Service Fund and eliminating enrollment of consumers in Lifeline without their affirmative consent.¹⁶ The PUCO should consider all these concerns.

First, current Rule 19(J) should not be eliminated altogether. The FCC has encouraged states to adopt coordinated enrollment. The FCC has also recognized coordinated enrollment as "a best practice in light of the overwhelming support in the record and the benefits of coordinated enrollment."¹⁷ And the FCC noted that coordinated enrollment "can increase the effectiveness of state eligibility databases which are currently in use and any national eligibility database which the Commission may adopt in the future."¹⁸ The PUCO thus should be promoting coordinated enrollment of Lifeline customers.

Hence the Consumer Advocates recommend that current Rule 19(J) be amended as follows:

The commission shall work with the appropriate state agencies that administer federal or state low-income assistance programs and with carriers to negotiate and acquire information necessary to verify an individual's eligibility and ~~the data necessary to~~

¹⁵ It is unclear from the PUCO Staff's proposal whether the incumbent ETC must be the only service provider or the only ETC (even though there might be other service providers who are not ETCs) serving the exchange. Because this rule deals with Lifeline service, the Consumer Advocates assume that "service provider" refers to an ETC.

¹⁶ See Lifeline Reform Order, ¶¶ 172-175.

¹⁷ Id., ¶ 174.

¹⁸ Id.

~~automatically coordinate the enrollment of eligible individuals in eligible persons for lifeline service.”~~

Second, in exchanges served by only one ETC, the effect on other ETCs is not an issue because there are no other ETCs in the exchange. Automatic enrollment should be allowed, so long as the consumer may opt out of the Lifeline program.

The PUCO Staff’s proposed Rule 19(K) turns the law on its head by making the use of databases optional in exchanges that are served by only one ETC. R.C. 4927.13(A)(1) requires each incumbent ETC to implement automatic enrollment not only in accordance with PUCO rules but also “to the extent that appropriate state agencies are able to accommodate the automatic enrollment.” If a state agency can accommodate automatic enrollment, then a Lifeline-eligible customer who participates in the agency’s program should be enrolled automatically. The PUCO should not allow the only ETC in an exchange to stand in the way of automatic enrollment of Lifeline customers where automatic enrollment is possible.

Third, there is no good reason to exempt the only ETC in the exchange from automatically enrolling Lifeline-eligible customers. There is no cost involved in accessing databases to verify customer eligibility. All the ETC would need is a computer.

The PUCO Staff’s proposed revisions to Rule 19(K) ignore the availability of automatic enrollment from some agencies, and would make it more difficult for low-income consumers to enroll for Lifeline service. This contravenes the General Assembly’s directive that the PUCO promote enrollment of Lifeline customers.

The PUCO should adopt the following changes to the PUCO Staff’s proposed Rule 19(K):

To the extent that an ILEC ETC is the only lifeline service provider in a particular exchange the ILEC ETC, where possible, ~~may~~ shall provide automatic enrollment ~~at its election of lifeline customers.~~ ILEC ETCs ~~electing to enrolling~~ subscribers via automatic enrollment shall take all necessary steps to ensure that there is no duplication of lifeline service for a specific subscriber.

C. Consumers who have traditional Lifeline service should not lose Lifeline eligibility if they do not use their service for ninety continuous days, as the PUCO Staff has proposed.

In its Entry, the PUCO listed what it considers to be the “more significant” changes to the rules proposed by the PUCO Staff.¹⁹ Missing from the list is the new proposed Rule 19(M),²⁰ which states: “Following any continuous sixty-day period of nonusage, an ILEC ETC shall notify the customer through any reasonable means that he/she is no longer eligible to receive lifeline benefits, and shall afford the customer a thirty-day grace during which the customer may demonstrate usage.”²¹ This provision should not apply to incumbent ETCs and other providers of traditional Lifeline service.

The inapposite application of this requirement to the incumbent ETCs extends from the PUCO’s investigation, in Case No. 10-2377, of “nontraditional” Lifeline service offered by CETCs. The focus of that proceeding was on prepaid Lifeline service (i.e., any Lifeline service for which usage is charged in advance) and the free Lifeline service offerings of CETCs.²² The case did not involve the postpaid offerings of traditional Lifeline service providers.²³

¹⁹ Entry at 3-4.

²⁰ The PUCO did mention the deletion of current Rule 19(N) (id. at 3) and made a general reference to “the incorporation of substantive determinations” from the PUCO’s Order in Case No. 10-2377 (id. at 4). But the proposed new Rule 19(M) was not specifically mentioned.

²¹ Id., Attachment A at 31.

²² See 10-2377 Order at 2, n. 1.

²³ See id. at 2.

In the 10-2377 case, the PUCO made a sharp distinction between traditional Lifeline offerings and what it deemed to be “nontraditional” Lifeline offerings:

For purposes of clarification, the ILEC Lifeline model involves a landline service for which the ILEC provides a monthly discount off of its standard residential rates. Under this model, service is paid in advance while any usage-based charges are billed in arrears. As previously noted, our current Lifeline rules were adopted with the intent that they apply to traditional Lifeline services offered by the ILECs and, where applicable, any CETCs following the ILEC Lifeline model, but did not necessarily contemplate the various nontraditional Lifeline service offerings that have subsequently been brought to market and have gained a strong foothold in the Lifeline marketplace. Furthermore, as this investigation has revealed, these service offerings are not necessarily “prepaid” but are nontraditional in the sense that they do not follow the ILEC Lifeline model. As such, we find it appropriate to broaden the scope of this investigation to include all nontraditional Lifeline service offerings rather than simply those that are prepaid. Accordingly, in this Order, we shall use the terminology contained in the Commission’s Entry of November 3, 2010, and the subsequent stakeholder comments when referring to such, but shall frame our rulings in the context of traditional and nontraditional Lifeline services.²⁴

In the 10-2377 Order, the PUCO discussed the issue of Lifeline customers of free nontraditional Lifeline services who did not use the service for extended periods.²⁵ Non-usage of nontraditional Lifeline service is often an indication that the customer does not need the service or is subscribed to more than one Lifeline service.²⁶

In the Order, the PUCO noted that some wireless companies had suggested in their comments that a customer should lose Lifeline eligibility following a 60-day non-usage period, with a 30-day grace period for the customer to demonstrate Lifeline

²⁴ Id. at 5-6.

²⁵ Id. at 29.

²⁶ See, e.g., id. at 20.

usage.²⁷ The PUCO adopted this approach as a means to guard against waste, fraud and abuse of the Universal Service Fund, and applied it to all **nontraditional** Lifeline services:

The 60-day nonusage period proposed by Virgin Mobile and i-wireless is consistent with the nonusage period recently adopted by the FCC for prepaid ETCs. ... Accordingly, following any continuous 60-day period of nonusage each **nontraditional** Lifeline service provider shall notify the customer through any reasonable means that he/she is no longer eligible to receive Lifeline benefits and shall afford the customer a 30-day grace period during which the customer may demonstrate usage. At the conclusion of the 30-day grace period, a **nontraditional** Lifeline service provider may terminate the customer's Lifeline service if the customer has not demonstrated usage during that time.²⁸

But in proposed Rule 19(M), the PUCO Staff has inappropriately expanded the PUCO's 10-2377 Order and has improperly applied this requirement to traditional Lifeline service offered by incumbent ETCs. This is unreasonable.

The 10-2377 Order's limitation on nontraditional Lifeline service was prompted by changes in the FCC's rules.²⁹ But the FCC specifically applied its rules to prepaid Lifeline service that does not bill customers on a regular basis. In so doing, the FCC stated that traditional, postpaid Lifeline service is not affected by the rule:

We extend the consumer usage condition only to pre-paid services, which are those services for which subscribers do not receive monthly bills and do not have any regular billing relationship with the ETC, and decline at this time to impose this condition on other types of Lifeline supported services. A number of commenters raised concern with a usage rule being applied to post-paid ETCs, with several pointing out that post-paid service does not present the same risk of phantom accounts that can be detected only by inactivity. Similarly, others argue that even a minimum payment on post-paid accounts is a clear indication of the subscriber's intent

²⁷ Id.

²⁸ Id. at 29-30 (citation omitted; footnote omitted) (emphasis added).

²⁹ Id. at 29, citing Lifeline Reform Order, ¶ 257.

to maintain the Lifeline service. Another commenter points out that a paying subscriber who is away from their phone does not signal that the consumer does not want the service. **We conclude that subscribers of post-paid ETCs do not present the same risk of inactivity as subscribers of pre-paid services.** The possibility that a wireless phone has been lost, is no longer working, or the subscriber has abandoned or improperly transferred the account is much greater for pre-paid services. **We are sensitive to the administrative burden that a 60-day usage requirement may have on post-paid services, and at this time do not extend the usage requirements to post-paid services, whether wireline or wireless.** For pre-paid service with no monthly charge, by contrast, there may be no other means beside usage patterns to track whether a consumer is still receiving the benefit of the supported service. Thus, **the 60-day usage requirement we adopt is applicable only to subscribers of pre-paid ETCs who, because of the pre-paid contract arrangement, do not have regular contact with the ETC that would provide a reasonable opportunity to ascertain a continued desire to continue to receive Lifeline benefits.**³⁰

Thus, application of proposed Rule 19(M) to traditional Lifeline service is inappropriate. Traditional Lifeline service is not usage-based. Rather, it is based on paying a flat rate for an unlimited number of local calls.³¹ Because the service is not usage-based, an incumbent ETC (or other provider of traditional Lifeline service) has no way to determine whether a Lifeline customer is using the service during a particular month.

Further, there are many reasons why traditional Lifeline customers might not use the service for extended periods of time. Some consumers use telephone service sporadically, and only to contact family members or doctors. They might not have occasion to make or receive a call for 60 days or more. There might also be instances where the traditional Lifeline service customer may be living with relatives or in care

³⁰ Lifeline Reform Order, ¶ 263 (emphasis added).

³¹ See Ohio Adm. Code 4901:1-6-19(B); Ohio Adm. Code 4901:1-6-01(O).

facilities for extended periods, and cannot take their landline-based traditional Lifeline service with them.

Basing Lifeline eligibility on usage does not fit into the traditional Lifeline model. The PUCO should reject proposed Rule 19(M). Instead, the proposed rule should only apply to CETCs that provide non-traditional Lifeline service, and should only be included in proposed Rule 19(T), which addresses CETCs' Lifeline requirements.

D. Miscellaneous changes

In addition to the changes discussed above, the PUCO should make the following changes to the PUCO Staff's proposed rules.

Proposed Rule 17(A): The PUCO Staff had no changes to this rule. However, the current rule incorrectly identifies the FCC's Truth-in-Billing rule. Instead of referencing 47 C.F.R. 64.201, the rule should reference 47 C.F.R. 64.2401.

Proposed Rule 19(T)(1): Because preceding provisions were deleted, the PUCO Staff proposes to renumber current Rule 19(U) as 19(T). Proposed Rule 19(T) lists several paragraphs of Rule 19 and states that the requirements found in these paragraphs apply to CETCs, as applicable to their service offerings. The PUCO Staff proposes to add the phrase "unless exempted by these rules or waived by the commission."³²

The PUCO Staff's proposed addition makes the rule confusing. The rule already uses the term "as applicable to that CETC's service offerings." Thus a CETC should know whether a given rule applies to its service. The phrase "unless exempted by these rules" adds an additional step of inquiry. In order to determine whether a CETC's service is exempted by the rules, one not only has to refer back to the other paragraphs listed in

³² Entry, Attachment A at 33.

proposed Rule 19(T)(1), but also has to determine whether the CETC's service is somehow exempt from the given rule by some other provision. If a service offering is exempt from a given rule, the rule should say so.

Further, the statement "or waived by the commission" is unnecessary because Rule 2(E) allows the PUCO to waive any rule (other than one required by statute) for good cause shown. Putting the waiver language in Rule 19(T)(1) is redundant and can cause confusion. The PUCO should reject the proposed revision to this rule.

In addition, proposed Rule 19(T)(1) should include proposed Rule 19(P) (which is current Rule 19(Q)) as a provision that is applicable to CETCs. According to proposed Rule 19(T)(1), proposed Rule 19(O) is applicable to CETCs. That provision allows a CETC to collect Lifeline costs from its non-Lifeline customers, through a surcharge on customers' bills.³³ Proposed Rule 19(P) (current Rule 19(Q)) prohibits including the Lifeline surcharge in the section of the bill reserved for taxes and government-mandated surcharges.³⁴ If a CETC has non-Lifeline customers and is collecting Lifeline costs from them through a surcharge, it should not be allowed to list the surcharge with taxes and government-mandated surcharges on customer bills. Proposed Rule 19(P) (current Rule 19(Q)) should be included with the rules applicable to CETCs.

Proposed Rule 19(H)(1)(g): This rule (which is currently 19(H)(1)(h)) lists "Temporary assistance for needy families (TANF/Ohio works)" among the programs upon which eligibility for Lifeline can be based.³⁵ "Ohio works" is a reference to the program Ohio Works First. Because the actual names of other programs are used in Rule

³³ Id. at 31.

³⁴ Id. at 32.

³⁵ Id. at 30.

19(H)(1), the actual name of Ohio Works First should be used in the rule. The PUCO should change “Ohio works” to “Ohio Works First” in the rule.

Proposed Rule 19(O)(2): In two places, the rule refers to “paragraph (P)(1) of this rule....”³⁶ This rule is currently Rule 19(P), but is renumbered in the PUCO Staff’s proposal because of the proposed deletion of current Rule 19(J).³⁷ If the PUCO renumbers the rule as the PUCO Staff proposes, the references should be changed to “paragraph (O)(1) of this rule....”

Proposed Rules 19(P) and (Q): Similar to proposed Rule 19(O)(2), proposed rules 19(P) and (Q) reference “paragraph (P)(1) or (P)(2) of this rule....”³⁸ If the PUCO renumbers the rule as the PUCO Staff proposes, the references should be changed to “paragraph (O)(1) or (O)(2) of this rule....”

Proposed Rule 22: This rule sets out parameters for intrastate calls using inmate operator services (“IOS”). For interstate IOS calls, the FCC requires the service provider to disclose, upon request, how charges will be collected and how complaints will be resolved.³⁹ This requirement is not included in either current Rule 22 or the PUCO Staff’s proposed Rule 22. In order to give consumers the same protections for intrastate IOS calls that apply to interstate IOS calls, the PUCO should add a new Rule 22(I) with the following language: “All IOS providers must, on intrastate IOS calls, disclose immediately to the billed party, upon request and at no charge to the billed party, the

³⁶ Id. at 32.

³⁷ Id. at 30.

³⁸ Id. at 32.

³⁹ 47 C.F.R. §64.710(a)(3).

methods by which its rates or charges for the call will be collected, and the methods by which complaints concerning such rates, charges or collection practices will be resolved.”

III. CONCLUSION

The Consumer Advocates’ recommendations would improve consumer protections for Ohioans in the PUCO’s rules. The recommendations would also help ensure that consumers’ rights under federal Lifeline rules are maintained in Ohio. The PUCO should adopt the recommendations discussed in these Comments.

Respectfully submitted,

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I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission this 6th day of February 2015.

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Summary: Comments Comments on the PUCO Staff's Proposed Rule Changes by Edgemont Neighborhood Coalition, Legal Aid Society of Southwest Ohio LLC, The Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.